

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.:1797/CHNY/2024

निर्धारण वर्ष/Assessment Year:2012-13

**Shri Kathiriyappan Periyur
Shanmuganathan,**
No.5/203, Periyar Village,
Pikkili Post,
Pennagaram Taluk,
Dharmapuri – 636 809

The Income Tax Officer,
Vs. Ward-1,
Dharmapuri.

PAN: DQPPS 7399G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri T.S. Lakshmi Venkatraman, F.C.A

प्रत्यर्थी की ओर से/Respondent by

: Shri Clement Ramesh Kumar, CIT

सुनवाई की तारीख/Date of Hearing

: 21.08.2024

घोषणा की तारीख/Date of Pronouncement

: 21.08.2024

आदेश / O R D E R

PER BENCH:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi in Order No.ITBA/NFAC/S/250/2024-25/1065902153(1) dated 21.06.2024. The assessment was framed by the Income Tax Officer, Ward-1, Dharmapuri for the assessment

year 2012-13 u/s.144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 29.09.2021.

2. At the outset, the Id.AR for the assessee stated that only issue in this appeal of assessee is as regards to the order of CIT(A)-NFAC sustaining the action of AO in assessing the entire cash deposit of Rs.45,56,564/- made in savings bank account maintained by assessee with Lakshmi Villas Bank Ltd., without providing reasonable opportunity of being heard to the assessee. The Id.AR also stated that there is no adjudication in respect to approval given in terms of section 151 of the Act as well as the issue raised in respect to peak credit concept. The Id.AR for the assessee took us through the order of CIT(A)-NFAC and stated that the CIT(A)-NFAC simpliciter dismissed the appeal after discussing the assessment order and thereafter noting that the assessee was provided number of opportunities through notices and this fact is noted by him in his order at pages 10 & 11 as under:-

Further, it is relevant to mention here that during the appellate proceeding, the appellant has not submitted any documentary evidence in support of his defence/contention to controvert the findings of AO by not filing any written submission. Therefore, the contention of the appellant is not found tenable.

The appellant has mentioned "Yes" in column 12 of Form 35 regarding additional evidence filed in terms of Rule 46A and mentioned "Will be produced at the time of hearing" in column 12.1 of Form 35. However, the appellant has not submitted any evidence during the appellate proceedings.

In appellate proceedings, despite being provided a number of opportunities through notices issued to it, the appellant has not responded to any of the notices. It is, thus, evident that the appellant has no evidence to substantiate the grounds taken and it has not even once argued with any supporting, relevant and cogent arguments, constraining me to, therefore, go through the brief submission appearing in the grounds of appeal and statement of facts filed along with the impugned appeal to decide on the merits while adjudicating the same. The appellant has not furnished any justification or documentary evidence in order to substantiate his grounds of appeal, as mentioned earlier.

It is pertinent to state that to decide this appeal in timely manner several notices/ communications through ITBA portal were sent to the appellant as noted above. Hence, in view of the aforesaid non-compliance of the notices/opportunities issued during the course of appellate proceedings by the appellant, the instant appeal is being adjudicated and disposed of, primarily on the basis of documents available on record.

Therefore, in view of above narrated facts and circumstances of the case and also relying on the case laws cited by the AO, I find no infirmity in the action of the AO. In view of this matter, addition made by the Ld. AO is upheld. Consequently, these grounds of the appellant are dismissed.

In term of the above, the Id.counsel for the assessee requested for one more opportunity. On the other hand, the Id.CIT-DR stated that here the CIT(A)-NFAC has decided the issues on merits although assessee was never present despite many notices served on him. One fact more was brought to our notice by Id.AR that even the assessment order is ex-parte and assessment framed u/s.144 r.w.s. 147 of the Act. To counter this argument, the Id.CIT-DR stated that the assessee is a non-filer and he also has not appeared before the AO despite number of notices issued to him.

3. After hearing rival contentions and going through the facts of the case, we noted that the assessee is a non-cooperative assessee and he has not appeared before the AO and the AO was forced to pass order u/s.144 r.w.s. 147 of the Act because it was a time barring assessment. Furthermore the CIT(A)-NFAC also issued number of notices but the assessee was totally negligent and careless and has not responded to any of the notices. Hence, the CIT(A)-NFAC also passed ex-parte order. We noted that the CIT(A)-NFAC simpliciter after discussing the facts from the assessment order confirmed the addition. In the interest of justice and fair play, we feel that the assessee should have been allowed some more opportunity to provide the details. Even otherwise, the Revenue authorities should have collected the details and decide the issues. However, to meet the ends of justice, we set aside the order of AO as well as that of the CIT(A)-NFAC and remand the matter back to the file of the AO, who will make assessment afresh subject to a cost of Rs. 10,000/- (Rupees ten thousand only) to be paid to the Tamil Nadu State Legal Services Authority at Hon'ble High Court of Madras by the assessee within a month's time from the date of receipt of this order. The assessee will pay this cost and produce the receipt before the AO. In term of the above, the matter is remanded back to the file of AO for fresh adjudication after allowing reasonable

opportunity of being heard to the assessee. Accordingly, the appeal of the assessee is allowed for statistical purposes.

4. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court at the time of hearing on 21stAugust, 2024 at Chennai.

Sd/-

(एस.आर. रघुनाथा)

(S.R. RAGHUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 21stAugust, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT