

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.:1798/CHNY/2024

निर्धारण वर्ष/Assessment Year:2017-18

Shri Kandasamy Rajagopal,
Door No.9, Valaraigate,
Velur Road,
Sirumolasi Post,
Thiruchengode Taluk,
Namakkal – 637 211.

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

PAN: ACKPR 5658P

(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/250/2024-25/1064871278(1) dated 14.05.2024. The assessment was framed by the Income Tax Officer, Ward-1, Tiruchengode for the assessment

year 2017-18 u/s.144 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 21.09.2019.

2. At the outset, the Id.AR for the assessee stated that the common issue in this appeal of assessee is as regards to the order of CIT(A)-NFAC confirming the action of AO in computing income from business by estimating the profit rate at 8% on deposits made out of sale of kerosene amounting to Rs.1,78,98,091/- and assessed the amount of Rs.33,10,709/- being cash deposit made during demonetization period added u/s.69A and taxed u/s.115BBE of the Act without providing reasonable opportunity of being heard either by the AO or by the CIT(A). The Id.AR for the assessee first of all stated that the assessment was framed ex-parte u/s.144 of the Act and the CIT(A)-NFAC has not considered the written submissions filed by assessee dated 07.01.2021 and 19.03.2024. The Id.AR took us through the assessment order and stated that the AO has treated the deposit of Rs.1,78,98,091/- as business receipts of the assessee and estimated the profit @ 8% of the total business turnover. He stated that the AO passed this assessment order ex-parte without providing reasonable opportunity of being heard to the assessee and the CIT(A)-NFAC also confirmed the same without considering the submissions of the assessee. Subsequently, the AO also added cash

deposits, deposited during demonetization period in specified bank notes amounting to Rs.33,10,709/- u/s.69A of the Act and taxed the same u/s.115BBE of the Act without providing reasonable opportunity of being heard and the CIT(A)-NFAC also confirmed. Therefore he requested for an opportunity of being heard by the AO and hence, requested that the orders of lower authorities be set aside and matter be remanded back to the file of the AO for fresh adjudication after allowing reasonable opportunity of being heard to the assessee.

3. When these facts were confronted to Id.CIT-DR, he vehemently contested and stated that the assessee is a non-filer first of all and as noted by AO in para 4, lot of opportunities have been provided and notice u/s.142(1) of the Act was also served but no response. Hence the AO has no other alternative except to frame assessment ex-parte u/s.144 i.e, best judgment assessment based on material available with him. As regards to the order of CIT(A)-NFAC, the Id.CIT-DR stated that the CIT(A)-NFAC has passed the appellate order based on material available on record and on merits. Hence, he requested confirmation of order of CIT(A) and that of the AO.

4. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the assessment order is best judgment assessment u/s.144 of the Act and the AO has allowed six opportunities to submit the details but the assessee is totally non-cooperative and careless. Similarly even before us, assessee has not filed any detail nor could explain the source of cash deposits except explaining that these are business receipts out of which deposits were made in bank. However, in the interest of justice, we feel that the assessment order is ex-parte and the order of CIT(A)-NFAC is also based on the same without calling for any details or remand report from the AO. Admittedly, the assessee is in the business of dealing in kerosene trading as a proprietor. But, it is also a fact that the assessee is a non-cooperative and non-filer. But to compute real income, assessee should be allowed one more opportunity. Hence, we set aside the order of CIT(A)-NFAC as well as that of the AO and remand the matter in entirety back to the file of the AO for fresh adjudication after allowing reasonable opportunity of being heard to the assessee. The assessee is also directed to cooperate with the AO and file all the necessary details as required as per law. However, this set aside is subject to a cost of Rs. 25,000/- (Rupees twenty five 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.

5. 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, Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT