

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

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री एस.आर.रघुनाथा, लेखा सदस्यके समक्ष
**BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER
AND SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.:839/CHNY/2024

निर्धारण वर्ष/Assessment Year:2017-18

Shri Elango,
2/1/165, Kunjandiyur,
Salem Main Road, Matru,
Salem-636 404.

The Income Tax Officer,
Vs. Ward-1(8),
Salem.

PAN: AAFPE-1697-L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: Shri S. Sridhar, Advocate

प्रत्यर्थीकीओरसे/Respondent by

: Shri D.Hema Bhupal,JCIT

सुनवाई की तारीख/Date of Hearing

: 03.07.2024

घोषणा की तारीख/Date of Pronouncement

: 23.08.2024

आदेश /O R D E R

PER S.R.RAGHUNATHA, AM:

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/250/2023-24/1060182969 (1) dated 29.01.2024. The assessment was framed by the Income Tax Officer, Ward-1(8), Salem for the assessment year 2017-18 u/s.144 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 20.11.2019.

2. At the outset, the Id.AR for the assessee stated that the 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 as Rs.28,66,971/- at 8% on total credits and assessed the amount of Rs.44,33,000/- 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 by the AO. 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 08.03.2021 and 25.12.2023. The Id.AR took us through the assessment order and stated that the AO has treated the deposit of Rs.3,58,37,140/- minus of Rs.44,33,000/- (deposits made during the demonetisation period) as business receipts of the assessee and estimated the profit @ 8% of the total business turnover, which worked out to Rs.28,66,971/-. 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.44,33,000/- 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 2, 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 on 20/11/2019 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 has made payments to HPCL out of the bank deposits made in the name of account holder mentioned as KS & CO. 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.

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

Order pronounced in the open court on 23rd August, 2024

Sd/-
(MANU KUMAR GIRI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(S.R. RAGHUNATHA)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 23.08.2024

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आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त /CIT, Salem
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF.