

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. रघुनथ, लेखक सदस्य के समक्ष
BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.841/Chny/2024
निर्धारण वर्ष /Assessment Year: 2018-19

M/s. Gemini Arts (P) Ltd.,
(Represented by – Liquidator: Ms. Sripriya Kumar),
No.224A, (New 346/1),
Avvai Shanmugam Salai,
Gopalapuram, Chennai-600086.
[PAN: AAACG 1181D]

The Income Tax Officer,
Non-corporate Ward-10(6),
Chennai.

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri Shrenik Chordia, C.A
: Shri V. Nandakumar, CIT

सुनवाई की तारीख/Date of Hearing

: 25.06.2024

घोषणा की तारीख /Date of Pronouncement

: 28.08.2024

आदेश / **ORDER**

PER S.R. RAGHUNATHA, A.M :

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), (NFAC), Delhi [hereinafter "CIT(A)] in DIN & Order No.ITBA/NFAC/S/250/2023-24/1060306304(1), dated 31.01.2024. The assessment was framed by the Income Tax Officer, National e.Assessment Centre, Delhi for the

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Assessment Year 2018-19 u/s.144 r.w.s 144B of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 25.04.2021.

2. At the outset, the Ld. AR for the assessee stated that the issue in this appeal of assessee is as regards to the order of CIT(A)-NFAC dismissing the appeal in limine by confirming the action of A.O in computing income by making an addition of Rs.16,21,52,504/- as unexplained cash credit U/s.68 of the Act and taxed U/s.115BBE of the Act for the AY 2018-19, without appreciating the submissions made by the assessee or 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 2012.2023 and 26.12.2023. The Id. AR took us through the assessment order and stated that the AO has treated the borrowings of the Company of Rs.16,21,52,504/- as unexplained cash credit U/s.68 of the Act and taxed U/s.115BBE of the Act. He stated that the AO passed this assessment order ex-parte dated 25/04/2021 without providing reasonable opportunity of being heard to the assessee and the CIT(A)-NFAC also confirmed the same by his order dated 31/01/2024 without considering the submissions of the assessee by dismissing the appeal in limine. Therefore, he requested for an

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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 as noted by AO, 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 of the Act 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 the Resolution Plan approval order of the Hon'ble NCLT, Chennai dated 11/08/2023, holding that till the completion of moratorium period or upon the revival of corporate debtor as per the resolution plan approved by the adjudicating authority, the appeal filed by the assessee is treated as dismissed in limine. 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 on best judgment assessment u/s.144 of the Act and the AO has allowed

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four opportunities to submit the details but the assessee is totally non-cooperative. It is noted that the assessee has filed the details of the borrowings before the CIT(A)-NFAC. However, the CIT(A)-NFAC has dismissed the appeal in limine stating that the Resolution Plan approval order of the Hon'ble NCLT, Chennai dated 11/08/2023 has already been existing and hence, the moratorium period has commenced, without considering the issue on merit. Therefore, 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. Considering the facts and to compute real income, the assessee should be allowed one more opportunity before the AO. 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. 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.

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

Order pronounced on 28th August, 2024.

Sd/-

(मनु कुमार गिरि)

(Manu Kumar Giri)

न्यायिक सदस्य / **Judicial Member**

चेन्नई/Chennai, दिनांक/Dated: 28th August, 2024.

EDN/-

Sd/-

(एस. आर. रघुनाथा)

(S.R. Raghunatha)

लेखा सदस्य / **Accountant Member**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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