

आयकर अपीलीय अधिकरण, कोलकाता पीठ "सी", कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA

श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. No. 218/Kol/2024
Assessment Year: 2017-18

Smt. Anisha Agarwal (PAN: ATOPA 3708 A)	Vs.	ACIT, Circle-3(2), Gangtok
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	26.09.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	09.10.2024
For the Appellant/ निर्धारिती की ओर से	Shri S. Jhajharia, A.R
For the Respondent/ राजस्व की ओर से	Smt. Monalisha Pal Mukherjee, JCIT

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 26.12.2023 for the AY 2017-18.

2. At the outset, the Ld. Counsel for the assessee stated that the assessee is in the resident of Sikkim and her income is exempt u/s 10(26AAA) of the Act. The Ld. A.R further submitted that the assessee during the impugned assessment year has deposited cash of Rs. 1,21,04,200/- in her bank account including the deposits during

demonetization period of Rs. 20,33,000/-. Accordingly, the AO issued notice u/s 142(1) of the Act on 22.02.2018 calling upon the assessee to prepare a true and correct return in respect of which the assessee is assessable under the Act for AY 2017-18. But the assessee failed to file the return either u/s 139 or in response to notice u/s 142(1). Finally, the AO made the best judgment assessment u/s 144(1)(b) of the Act on the basis of material gathered assessing the income at Rs. 59,77,559/- which comprised of Rs. 23,51,640/- being 8% of total turnover of Rs. 2,93,95,498/- and Rs. 36,25,919/- u/s 69A as unexplained money.

3. Before the First Appellate Authority, the case was ex-parte and the appeal was dismissed in limine by the Ld. CIT(A).

4. The Ld. A.R submitted that the assessee was bonafide belief that the assessee is not required to file return of income under the Act in view of the provisions of Section 10(26AAA) of the Act which exempts the bonafide residents from paying any income tax under the Act. The Ld. A.R therefore prayed that the case of the assessee may be restored to the file of AO so the necessary documents/evidences could be filed and the income assessed after taking into account the document / evidences.

5. The Ld. D.R on the other hand relied on the orders of authorities below by fairly conceded that since the proceedings were culminated ex-parte before both the authorities below and therefore he has no objection if the appeal is restored to the file of AO for de novo examination.

6. After hearing the rival contentions and perusing the material on record, we find that the AO has made the best judgment assessment by gathering material from third parties when the assessee failed to appear and file necessary evidences and return of income. Similarly the First appellate authority decided the case ex-parte and dismissed the same in limine when the assessee failed to appear. In the interest of justice and fair play, we deem it fit to restore the appeal back to the file of AO to frame the assessment afresh and de novo after taking into account the evidences which may be filed by the assessee.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 9th October, 2024

Sd/-

Sd/-

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 9th October, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Smt. Anisha Agarwal, C/o, M/s Salarpuria Jajodia & Co., 7, C.R. Avenue, 3rd Floor, Kolkata- 700072
2. Respondent – ACIT, Circle-3(2), Gangtok
3. Ld. CIT(A)- NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata