

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

श्री एस एस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI S.S. VISWANETHRA RAVI, HON'BLE JUDICIAL MEMBER
AND SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **2123/Chny/2024**
निर्धारण वर्ष / Assessment Year: 2017-18

Mappillai Transport Company, Deputy Commissioner of
193 Suramangalam Main Road, v. Income Tax,
Salem – 636 009. Circle 1(1),
[PAN: AALFM-6103H] Salem.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Ms. T.V. Muthu Abirami, Advocate
प्रत्यर्थी की ओर से/Respondent by : Ms. Gouthami Manivasagam, JCIT

सुनवाई की तारीख/Date of Hearing : 21.10.2024
घोषणा की तारीख/Date of Pronouncement : 23.10.2024

आदेश / O R D E R

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 15.05.2024 and pertains to assessment year 2017-18.

2. At the outset, we find that there is a delay of 26 days in appeal filed by the assessee, for which no petition for condonation of delay has been filed. In the interests of justice

and considering the short delay, we condone delay in filing of appeal and admit appeal filed by the assessee for adjudication.

3. At the outset, the Id.AR for the assessee took us through the exparte order of the AO dated 18.09.2019 which has been passed u/s. 144 of the Act, wherein the assessee is a transport service provider had not filed return of income for the assessment year 2017-18 based on the information available in AIMS module of ITBA. The department had issued a notice u/s. 142(1) of the Act asking assessee to file the return of income. However, assessee did not file the return of income and not responded for any of the notices issued. The AO collected the information from the bank by issuing a notice u/s. 133(6) of the Act that the assessee had deposited an amount of Rs.2,25,78,647/- during the assessment year 2017-18 including an amount of Rs.13 lakhs cash during the demonetization period. Since, the assessee did not participate in the assessment proceedings, the AO passed exparte order u/s. 144 of the Act by considering the entire amount of Rs.2,25,78,647/- as unexplained money u/s. 69A of the Act and brought to tax. Aggrieved by the order of the AO, the assessee preferred an appeal before the Id.CIT(A), NFAC with a delay.

4. The Id.CIT(A) dismissed the appeal in-limine without condoning the delay by passing the order dated 15.05.2024. Aggrieved by the order of the Id.CIT(A), the assessee preferred an appeal before us.

5. The Id.AR for the assessee submitted that the assessee is a firm and having a business of providing transport service and the AO has passed an order without allowing any amount of expenditure by bringing it to tax entire credits and Rs.2,25,78,647/- to tax u/s. 69A of the Act and thereby prayed for remanding the case to AO for denovo assessment.

6. Per contra, the Id.DR argued that the assessee was negligent and had not even filed a return of income even after issuing 142(1) notice. Therefore, the appeal of the assessee deserves to be dismissed.

7. We have heard the rival contentions and gone through the materials available on record and orders of the authorities below. We note that the assessment order passed by the AO u/s. 144 of the Act without considering any of the expenditure by bringing entire credits in the bank account to tax u/s. 69A of the Act. Thus, the Id.CIT(A) also has dismissed the appeal without

condoning the delay in filing the appeal by the assessee. Since, ex parte order has been passed by the AO we deem it fit to set aside the order of the Id.CIT(A) and remit the matter back to the file of the AO by relying on the decision of the Hon'ble Supreme Court in the case of Tin Box Company vs CIT, [2001] 249 ITR 216 (SC) and direct AO to denovo frame the order in accordance to law, after providing reasonable opportunity to the assessee. Needless to say, assessee to be diligent and file written submissions and relevant documents if advised so.

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

Order pronounced in the court on 23rd October, 2024 at Chennai.

Sd/-
(एस एस विश्वनेत्र रवि)
(S.S. VISWANETHRA RAVI)
न्यायिक सदस्य/**Judicial Member**

Sd/-
(एस. आर. रघुनाथा)
(S. R. RAGHUNATHA)
लेखा सदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 23rd October, 2024

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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