

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

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 2713/CHNY/2024

निर्धारण वर्ष/Assessment Year: 2017-18

Shri Banesahib Lalbasha,
No.49, Gandhi Market Arni,
Tiruvannamalai District – 632 301.

The Income Tax Officer,
Vs. Ward 2,
Thiruvannamalai.

PAN: ABXPL 3090M

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri D. Anand, Advocate &
Shri Pothi Madhavan, CA

प्रत्यर्थी की ओर से/Respondent by

: Ms. Anitha, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 19.12.2024

घोषणा की तारीख/Date of Pronouncement

: 20.12.2024

आदेश / O R D E R

PER GEORGE GEORGE K, VICE PRESIDENT:

This appeal at the instance of the assessee is directed against CIT(A) - NFAC order dated 28.08.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2017-18.

2. At the very outset, we notice that the CIT(A) has passed an ex-parte order. The CIT(A) has not adjudicated the issues on

merits and has dismissed the appeal *in-limine* for non-prosecuting the case. The reasons for passing an ex-parte order was that assessee did not respond to five notices issued from the office of the First Appellate Authority to furnish his written submissions / documentary evidences in support of his contentions.

3. The Id.AR submitted that the assessee is a commission agent in selling vegetables. He was not conversant with checking e-mails and during the proceedings before the CIT(A) in Form 35, he had given the e-mail id of his GST consultant. It was submitted by the Id.AR, since the GST consultant did not take note of e-mail sent from the office of the First Appellate Authority, the proceedings before the CIT(A) was ex-parte. The Id.AR further submitted that the issue may be restored to the files of the AO. The learned AR submitted that assessee had committed the mistake in conceding before the AO for the addition of Rs.21,82,427/-. It was stated that cash deposits of Rs.21,82,427/- (which was conceded for addition) is out of assessee's business of selling vegetables and has suffered tax. Therefore, taxing the entire amount of Rs.21,82,427/- u/s.68 of the Act would amount to taxation of the said sum twice. It was submitted that assessee had maintained books of accounts and the same was verified by the AO (refer para 3 at page 2 of the

assessment order). It was submitted that the officers of the Department shall not take advantage of the ignorance of the assessee and should assist the tax payer in a very reasonable way. In this context, the Id.AR relied on the Board Circular No.014(XL-35) of 1955 dated 11.04.1955.

4. The Id.DR submitted that the assessee had conceded for addition of Rs.21,82,427/- as unexplained cash credits u/s.68 of the Act. Therefore, it was contended that there is no reason to raise the issue before the CIT(A) and before the ITAT. It was submitted that the appeal of the assessee may be dismissed.

5. We have heard rival submissions and perused the materials on record. The assessee, an individual is a commission agent in selling vegetables. The assessee is not very familiar with the operation of computers and in Form 35, he had given the GST consultant e-mail id. It is the claim of the assessee that the GST Consultant did not take note of the e-mail notices sent from the office of the CIT(A), consequently the proceedings before the CIT(A) was ex-parte. It is the claim of the assessee though the addition has been made by the AO on the concession of the assessee, the cash deposits are only out of the business of selling

vegetables. Admittedly, the assessee has maintained books of accounts and the same has been verified by the AO, which is evident from the assessment order at para 3. If the cash deposits are out of the business of the assessee, again adding the cash deposits as unexplained u/s.68 of the Act would lead to a situation, that the said amount would be taxed twice. In the interest of justice and equity, as a last opportunity, we are of the view that the matter needs to be examined afresh by the AO. Accordingly, the issue of addition of Rs.21,82,427/- made by the AO is being restored to the files of the AO for fresh adjudication. The AO shall afford reasonable opportunity of hearing to the assessee. The assessee is directed to co-operate with the Revenue and shall not seek unnecessary adjournment in the matter. It is ordered accordingly.

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

Order pronounced in the open court on 20th December, 2024 at Chennai.

Sd/-
(जगदीश)

(JAGADISH)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 20th December, 2024

Sd/-
(जॉर्ज जॉर्ज के)

(GEORGE GEORGE K)

उपाध्यक्ष /VICE PRESIDENT

RSR

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..