

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2779 /Chny/2024
निर्धारण वर्ष /Assessment Year: 2017-18

Vishnu Prasad Thayalan,
No.41, General Patters Road,
Chennai-600 002.
[PAN: AAFPP5144F]

Vs. The Deputy Commissioner of
Income Tax Officer,
Non-Corp Circle-7(1),
Chennai

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by : Shri R.Venkataraman, C.A
प्रत्यर्थी की ओर से / Revenue by : Ms.V.Asathy, JCIT
सुनवाई की तारीख/Date of Hearing : 18.12.2024
घोषणा की तारीख /Date of Pronouncement : 23.12.2024

आदेश / O R D E R

PER AMITABH SHUKLA, A.M :

This appeal is filed against the order bearing DIN & Order No.ITBA/NFAC/S/250/2024-25/1067674212(1) dated 16.08.2024 of the Learned Commissioner of Income Tax [herein after "CIT(A), National Faceless Appeal Center[NFAC], Delhi, for the assessment years 2017-18. Through the aforesaid appeal the assessee has challenged order u/s 250 dated 16.08.2024 passed by NFAC, Delhi.

:- 2 -:

2.0 At the out set Ld Counsel for the assessee informed that it could not make appropriate representation before the lower authorities on account of compelling personal reasons leading to additions in its case. Accordingly a request was made to be given a last opportunity and to restore the matter to the file of the Ld.AO for readjudication. The Ld Counsel for the assessee submitted it will now make full compliance to all the statutory notices etc. The Ld. DR contested the proposal of the assessee placing reliance upon the order of lower authorities.

3.0 Coming to the factual matrix of the case, as recorded by the Ld. AO in his order dated 28.12.2019, the case was selected for limited scrutiny to verify large deductions of Rs. 31,05,999/- claimed u/s 57 of the act. The Ld. AO had noted that assessee had received deposits under a joint development agreement and had promised to pay interest thereupon. The Ld. AO, on page 2 and 3 of his order, held the view that the assessee has not incurred the expenditure of Rs.31,05,999/- during AY-2017-18 wholly and exclusively for the purposes of making / earning interest income and therefore proceeded to disallow and add the same. Before the Ld. First Appellate Authority, the assessee filed additional submissions / evidences qua which a remand report was solicited from

:- 3 -:

the Ld.AO. In his impugned remand report the Ld. AO reiterated his arguments made in the assessment order. The Ld. CIT(A) noted the arguments taken by the Ld.AO as well as the fact that the assessee had not availed several opportunities of hearing provided by the Ld. AO. He also observed in para 5.4.1 of his order that assessee had failed to submit his rejoinder to the Ld.AO's remand report. The Ld. Counsel for the assessee has argued that the Ld.CIT(A) has proceeded to adjudicate the matter without giving sufficient time for filing a rejoinder to the Ld.AO's remand report.

4.0 We have heard the rival submission in the light of material available on records. We have noted that inadequate submission of details and evidences, before the lower authorities qua admissibility of deduction of interest expenses u/s 57 lies at the core of controversy. We have also noted that as per page 5 of the order of the Ld. CIT(A) the assessee by way of additional submissions had filed a large number of documents for consideration. The remand report of the Ld. AO extracted on page 6 of the order of Ld.CIT(A), does not evidences as to how and whether the details of the assessee were considered by the Ld. AO in the remand proceedings. It is also an undisputed fact on record that the rejoinder of the assessee to the remand report was not / could

:- 4 -:

not considered by the Ld. First Appellate Authority. Before us the Ld.Counsel for the assessee pleaded that one last opportunity be accorded to present its case before the Ld.AO. The Ld. DR relied upon the order of lower authorities. It is seen that the assessing officer is the primary authority under the income tax act to examine facts of a case in the light of available evidences before determining correct taxable income of a tax payer. We are therefore of the view that ends of justice would be met if the assessee is given one last opportunity to present its case and file all supporting evidences before the Ld.AO. We therefore set aside the order of lower authorities on this issue and we direct the Ld. AO to readjudicate the matter de novo by examining the matter afresh in accordance with law and by passing a speaking order. Reliance in this regard is placed upon the decision of Hon'ble Apex Court in the case of TIN box 249 ITR 216. The Ld. AO shall give opportunities of being heard to the assessee and it shall be bounden upon the assessee to comply with the notices issued by the Ld. AO. Any non-compliance on the part of the assessee can be adversely viewed. Accordingly, all the grounds of appeal raised by the assessee on this issue are allowed for statistical purposes.

:- 5 -:

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

Order pronounced on 23rd, December-2024 at Chennai

Sd/-
(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / Judicial Member

चेन्नई/Chennai, दिनांक/Dated: 23rd, December-2024.

KB/-

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

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