

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH,**  
**MUMBAI**

**BEFORE SHRI ABY T. VARKEY, JM AND SHRI M. BALAGANESH, AM**

आयकर अपील सं/ I.T.A. No. 2593/Mum/2022  
(निर्धारण वर्ष / Assessment Year: 2011-12)

Rekha Raghunath Erande 7, Room No-6, 2 <sup>nd</sup> Floor, Khubchand Masion, Takwadi, Kalbadevi Road, Kalbadevi-400002.	<b><u>बनाम/</u></b> Vs.	Ward-19(3)(1) 1 <sup>st</sup> Floor, Matru Mandir, Tardeo Road, Mumbai- 400007.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABPE4706E</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Ms. Simoni Chauhan
Revenue by:	Shri Vaibhav Jain

सुनवाई की तारीख / Date of Hearing: 14/12/2022  
घोषणा की तारीख /Date of Pronouncement: 23/12/2022

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee an individual against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC. Delhi dated 05.08.2022 for AY 2011-12.

2. The main grievance of the assessee is against the action of the Ld. CIT(A)/NFAC in not considering the grounds raised by the assessee that she did not get proper opportunity during the assessment proceedings i.e before the AO.

3. According to the Ld. AR representing the assessee, the assessee's husband had passed away due to prolonged illness on 05.06.2020; and since she was taking care of him for a long time, she could not attend/participate before AO during the assessment



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proceedings. Therefore, the AO has passed an ex parte order u/s 144 of the Income Tax Act, 1961 (hereinafter "the Act") (i.e, best judgment assessment). And further it is noted that the Ld. CIT(A) has also passed an ex-parte order. Taking note of the submission made at the Bar (supra) as well as taking note of the fact that the AO has passed the assessment order u/s 144 of the Act ex-parte qua assessee, we relying on the decision of the Hon'ble Supreme Court in the case of **Tin Box Company Vs. CIT (249 ITR 216) (SC)**, are inclined to restore the matter/assessment back to the file of AO for de-novo assessment. And before us the assessee has undertaken to be diligent and appear/participate and produce all relevant documents before AO during assessment proceedings. The Hon'ble Supreme Court in case of **Tin Box Company (supra)** has held as under: -

*"It is unnecessary to go into great detail in these matters for there is a statement in the order of the Tribunal, the fact-finding authority, that reads thus :*

*"We will straightway agree with the assessee's submission that the ITO had not given to the assessee proper opportunity of being heard."*

*That the assessee could have placed evidence before the first appellate authority or before the Tribunal is really of no consequence for it is the assessment order that counts. That order must be made after the assessee has been given a reasonable opportunity of setting out his case. We, therefore, do not agree with the Tribunal and the High Court that it was not necessary to set aside the order of assessment and remand the matter to the assessing authority for fresh assessment after giving to the assessee a proper opportunity of being heard.*

*2. Two questions were placed before the High Court, of which the second question is not pressed. The first question reads thus :*



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*"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not setting aside the assessment order in spite of a finding arrived at by it that the Income-tax Officer had not given a proper opportunity of hearing to the assessee ?"*

*In our opinion, there can only be one answer to this question which is inherent in the question itself : in the negative and in favour of the assessee.*

*3. The appeals are allowed. The order under challenge is set aside. The assessment orders, that of the Commissioner (Appeals) and of the Tribunal are also set aside. The matter shall now be remanded to the assessing authority for fresh consideration, as aforesaid. No order as to costs."*

**4.** Since we have found in the present case that no proper opportunity the assessee got before the AO, we relying on the aforesaid decision of the Hon'ble Supreme Court in the case of **Tin Box Company (supra)** set aside the impugned order of the Ld. CIT(A) and remand the same back to the file of the AO and direct the AO to frame the assessment de-novo after hearing the assessee in accordance to law.



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

Order pronounced in the open court on this 23/12/2022.

Sd/-

(M. BALAGANESH)  
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 23/12/2022.  
Vijay Pal Singh, (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai