

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री मंजूनाथा .जी, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.858/Chny/2022
निर्धारण वर्ष /Assessment Year: 2012-13

Mr.Arunachalam,
21/3 (Old No.43A),
2nd Avenue Road,
Indira Nagar, Adyar,
Chennai-600 020.

v. The Income Tax Officer,
Non-Corporate Ward-15(1),
Chennai.

[PAN: ADWPA 9208 M]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Mr.G.Tarun, Adv.
प्रत्यर्थी की ओर से /Respondent by	:	Mr.D. Hema Bhupal, JCIT
सुनवाई की तारीख/Date of Hearing	:	21.03.2023
घोषणा की तारीख /Date of Pronouncement	:	24.03.2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi, dated 30.08.2022 for assessment year (AY) 2012-13.

2. At the outset, the Ld.AR of the assessee pointed out that the impugned order of the Ld.CIT(A), NFAC, is an *ex-parte order* without hearing the assessee; and therefore, the assessee pleads that he may be given an opportunity to be heard before taking a decision on the grounds

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of appeal raised by him. It was also brought to our notice that the assessee could not participate before the AO during the assessment proceedings, which resulted in AO passing the *best judgment assessment* u/s.144 of the Income Tax Act, 1961 (hereinafter "the Act") by making an addition of Rs.74,93,612/- (*unexplained cash credit u/s.68 of the Act and Rs.9,29,293/- as business income*) and thus, total addition of Rs.84,22,905/- was passed against the assessee. According to the Ld.AR, the assessee could not appear before the Ld.CIT(A), since notices were issued during Covid-19 period i.e. initial notice dated 22.01.2021 and thereafter, the assessee was out of town during July, 2022, therefore, the assessee could not comply to the notice dated 01.07.2022 and 20.07.2022, which resulted in assessee not able to file documents to substantiate its stand before the Ld.CIT(A). Be that as it may, it is noted that both the authorities [AO / Ld.CIT(A)] have passed ex-parte orders qua assessee; and by virtue of it, the assessee has been saddled with addition of Rs.84,22,905/-. Since, the AO has passed the best judgment assessment u/s.144 of the Act, because, the assessee did not appear in May, 2019 & July, 2019, the AO has taken adverse view against the assessee. And the assessee undertakes to be diligent in future and participate during the course of assessment proceedings provided an opportunity is granted to him. We note that the assessee an individual did not purposely avoided participating during assessment proceedings and therefore, the non-participation before AO cannot be held to be intentional. Therefore, the

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impugned order of the Ld.CIT(A) is set-aside; and the assessment is resored back to the file of the AO provided the assessee remit Rs.5,000/- (Rupees Five Thousand) to the State Legal Aid Authority, Hon'ble Madras High Court, and produce necessary proof of payment of cost to the AO. The Hon'ble Supreme Court in the case of Tin Box Company v. CIT reported in [2001] 249 ITR 216 (SC), held that if the assessee did not get proper opportunity before the AO, then the assessment has to be restored back to the file of the AO for framing de-novo assessment. The Hon'ble Supreme Court has held as under:

1. 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 straightaway agree with the assessee's submission that the Income-tax Officer had not given to the assessee proper opportunity of being heard."

2. 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 selling 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.

3. Two questions were placed before the High Court, of which the second question is not pressed.

The first question reads thus:

"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?"

4. 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 asses-see.

5. The appeals are allowed. The order under challenge is set aside. The assessment order, 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.

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3. In light of the above facts and taking note that the assessee did not get proper opportunity before the AO, we rely on the decision of the Hon'ble Supreme Court and restore the assessment back to the file of the AO for de novo framing of assessment provided the cost levied has been deposited. The assessee is directed to diligently participate in the assessment proceedings by filing relevant documents/evidences/written submissions before the AO and the AO to frame assessment in accordance to law after hearing the assessee.

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

Order pronounced on the 24th day of March, 2023, in Chennai.

Sd/-

(मंजूनाथा.जी)

(MANJUNATHA.G)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 24th March, 2023.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF