

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

ITA No. 1761/Del/2023 : Asstt. Year: 2012-13

Virasat Ullah, E-11/93, New Colony, Malviya Nagar, Hauz Rani, Delhi 110017	Vs	ITO Ward 28(3), Delhi 110002
(APPELLANT)		(RESPONDENT)
PAN No. AARPU 6466 H		

Assessee by : Sh. Shahbaj Akhtar, Adv.

Revenue by : Sh. Atiq Ahmed, Sr. DR

Date of Hearing: 16.11.2023

Date of Pronouncement: 16.11.2023

ORDER

Per Dr. B. R. R. Kumar:-

The present appeal has been filed by assessee against the order of Ld. NFAC/CIT(A), New Delhi 11.03.2022.

2. In this case the assessment order has been passed u/s. 144 of Income Tax Act.

3. The said section reads as under:-

Best judgment assessment.

144. (1) If any person—

- (a) fails to make the return required under sub-section (1) of [section 139](#) and has not made a return or a revised return under sub-section (4) or sub-section (5) ⁵[or an updated return under sub-section (8A)] of that section, or
- (b) fails to comply with all the terms of a notice issued under sub-section (1) of [section 142](#) or fails to comply with a direction issued under sub-section (2A) of that section, or
- (c) having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of [section 143](#),

the Assessing Officer, after taking into account all relevant material which the Assessing Officer has gathered, shall, after giving the assessee an opportunity of being heard, make

the assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment :

Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment :

Provided further that it shall not be necessary to give such opportunity in a case where a notice under sub-section (1) of [section 142](#) has been issued prior to the making of an assessment under this section.

(2) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.

4. From the record, it is found that the Assessing Officer has not adhered to the provisions, that an opportunity shall given to the assessee before passing of an order u/s. 144. Since there is a statutory infraction to follow the laid down procedure, it is hereby held that the assessment order be treated as invalid.

5. In the result the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 16/11/2023.

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Dated: 16/11/2023

NV, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, DELHI