

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.854 to 856/Chny/2022
निर्धारण वर्ष/Assessment Years: 2006-07 to 2008-09

M/s.DeenDayal Medical & Educational Trust, No.5110, H Block, 1 st Street, 12 th Main Road, Anna Nagar, Chennai-600 040.	v.	The Asst. Commissioner – of Income Tax, Central Circle-2(3), Chennai.
[PAN: AAATD 2757 M]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri S. Sridhar, Adv.
प्रत्यर्थी की ओर से /Respondent by	:	Shri V. Nandakumar, CIT
सुनवाईकीतारीख/Date of Hearing	:	01.05.2024
घोषणाकीतारीख /Date of Pronouncement	:	10.05.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the assessee's Trust against the common order of the Learned Commissioner of Income Tax (Appeals)-18, (hereinafter 'Ld.CIT(A)') Chennai, dated 29.08.2022 for the Assessment Years (hereinafter 'AYs') 2006-07 to 2008-09.

2. At the outset, the Ld.Counsel for the assessee, Shri S. Sridhar, Advocate, drew our attention to Ground No.12 and contended that the



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Ld.CIT(A) erred in passing the impugned order on 29.08.2022, whereas, he had asked the assessee to respond to his queries on 30.08.2022. According to him, thus there was *per se* violation of natural justice. Drawing our attention to Ground No.13, the Ld.AR also brought to our notice that the AO had also passed *best judgment assessment* u/s.144 of the Income Tax Act, 1961 (hereinafter 'the Act'), because, the Managing Trustee of the Trust Shri T.D.Naidu was unable to produce the relevant documents supporting the answers to the queries asked by the AO. Moreover, according to the Ld.Counsel, the documents could not be produced before AO because, they were in the custody of Enforcement Directorate, CBI, etc. It was also brought to our notice that Shri T.D.Naidu was in judicial custody. Therefore, it prevented effective appearances/production of documents before the AO, which resulted in him passing best judgment assessment u/s.144 of the Act. It was also brought to our notice that this Tribunal in the case of Managing Trustee of the assessee, Shri T.D.Naidu had remitted the assessment back to the file of the AO in his appeals [ITA NO.1411/Chny/2017] by order dated 22.03.2018 by observing in Para No.4 as under:

3. The AR submitted that the assessee was in judicial custody as he could not get his bail during the appeal proceedings and was still in judicial custody till the appeal is filed before this tribunal. The CIT(A) dismissed the appeal without effective representation when the assessee was in judicial custody which was known to him. Getting an unfettered bail is the only way to effectively represent himself with free state of mind and in this case it was absent, while the CIT(A)



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dismissed the appeal without effective representation. Per contra, the DR supported the order of the CIT(A).

4. We heard the rival submissions. On the facts represented above, we deem it fit to remit the issues back to the Assessing Officer for a fresh examination. The assessee shall place all the materials in its support before the AO and comply to the AO's requirements as per law. The A O is free to conduct appropriate enquiry as deemed fit, but he shall furnish adequate opportunity to the assessee on the material etc to be used against it and decide the matter in accordance with law.

3. Thereafter, he drew our attention to another order of this Tribunal in the assessee's own case for AY 2010-11 in ITA No.1370 & 1391/Chny/2017 order dated 28.02.2022, wherein, the Tribunal was pleased to remit the assessment back to the file of the AO for *de novo* assessment. Therefore, he prayed that these appeals may also be restored back to the file of the AO for *de novo* adjudication.

4. Per contra, the Ld.DR opposed the plea of the assessee and contended that the assessee should not be given another innings before the AO.

5. Having heard both the parties and after perusal of the records, we note that the AO has passed an *ex parte* / best judgment assessment u/s.144 of the Act. It is noted that the Managing Trustee of the assessee Trust, Shri T.D.Naidu, was the key person, who was running the affairs of the assessee Trust; and pursuant to search in the premise of the assessee on 04.08.2011, the AO initiated proceedings u/s.153A of the Act against the assessee, which resulted in the AO framing the assessment u/s.153A r.w.s.144 of the Act and computed the total income at Rs.97,20,500/- for



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AY 2006-07; and likewise in other AYs 2007-08 & 2008-09. The assessee has brought to our notice that the relevant documents pertaining to the income/expenditure of the Trust has been taken into custody by law enforcement agencies viz., ED, CBI, etc. and Shri T.D.Naidu was in judicial incarceration during the assessment proceedings. Taking note of these factual back ground, this Tribunal in the assessee's own case for AY 2010-11 has already restored assessment back to the file of the AO as well as that of Shri T.D.Naidu for *de novo* assessment. In such a scenario, we relying on the decision of the Hon'ble Supreme Court in the case of TIN Box Company v. CIT reported in [2001] 249 ITR 216 (SC), wherein, the Hon'ble Supreme Court has held that if the assessee did not get proper opportunity before the AO, then the assessment need to be restored back to the file of the AO for *de novo* assessment. It would be gainful to take note of the Hon'ble Supreme Court order which reads 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.



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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 assessee.

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.

6. Since, we have noted that the assessee did not get proper opportunity before the AO due to the circumstances which we have noted (supra), we are inclined to restore the assessment for all the three years back to the file of the AO for *de novo* assessment; and direct the AO to frame it after hearing the assessee; and the assessee is at liberty to adduce evidences in support of its claims and the AO to frame the assessment in accordance with law.

7. In the result, appeals filed by the assessee for AYs 2006-07 to 2008-09 are allowed for statistical purposes.

Order pronounced on the 10th day of May, 2024, in Chennai.

Sd/-
(एस. आर. रघुनाथा)
(S.R.RAGHUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**



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चेन्नई/Chennai,
दिनांक/Dated: 10th May, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित /Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF