

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 No.1518/Chny/2023
निर्धारण वर्ष/Assessment Year: 2017-18

Shri Chinna Ocha Thevar Rajendran, 22, Rajendra 3 Rd Street, Karimedu, Madurai-625 010.	v.	The Income Tax Officer, Non-Ward-1(7), Madurai.
[PAN: ADGPR 0416 A]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri S. Sridhar, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri D. Hema Bhupal, JCIT
सुनवाईकीतारीख/Date of Hearing	:	08.05.2024
घोषणाकीतारीख /Date of Pronouncement	:	17.05.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter 'the Ld.CIT(A)'), Delhi, dated 11.10.2023 for the Assessment Year (hereinafter 'AY') 2017-18.

2. At the outset, it is noted that there is a delay of '9' days to file this appeal and assessee has filed condonation application, which we have perused and finding the contents given therein give rise to reasonable



cause, we are inclined to condone the delay and proceed to hear the appeal.

3. The main grievance of the assessee is against the action of the Ld.CIT(A) confirming the action of the AO by which addition of Rs.20,95,666/- had been confirmed. According to the Ld.AR, the assessee did not get proper opportunity before the Ld.CIT(A)/AO. Therefore, he prayed that the assessee may be granted one more opportunity before the AO.

4. Brief facts are that the assessee had filed his return of income on 04.12.2007 for AY 2017-18, wherein, he returned an income of Rs.2,36,679/-. Later, the return was selected for limited scrutiny and the AO was of the opinion that the assessee had not responded to his statutory notices. Therefore, he expressed his desire to pass an order u/s.144 of the Income Tax Act, 1961, (hereinafter "the Act") (best judgment assessment) and a draft Assessment Order was passed on 02.12.2019 and then the assessment was framed on 07.12.2019, wherein he made an addition of Rs.20,95,000/- u/s.69A of the Act (*amount deposited during demonetization period since assessee could not justify the nature and source of the deposit*). Thereafter, the AO passed suo-moto an order u/s.154 of the Act on 11.12.2019, strangely reiterating the same addition, without making any rectification of the assessment order



passed earlier on 07.12.2019. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A), who confirmed the action of the AO.

5. The assessee has pointed out that in the year under consideration his son Mr.Sashikumar died on 25.04.2016 and that he was working with a IT Company for '7' years before his demise; and he was the breadwinner of the family and used to send money regularly to the assessee, which he has accumulated as savings. And since, the assessee was the nominee of his late son, he received the sum from Insurance/PF to the tune of Rs.17,09,901/- on 01.09.2016, which according to him was totally exempt from taxation. According to him, this amount was credited in his bank account on that date and later on, he withdrew it after '3' days on 03.09.2016. Thereafter, since demonetization was announced, the assessee deposited the amount withdrawn and also his accumulated savings into Savings Bank A/c. According to the assessee, due to loss of the life of his son, the assessee was in a depressed state of mind and was not able to respond to the notice of the AO which resulted in AO passing an *ex parte* order without hearing the assessee. In the light of the aforesaid facts, the Ld.AR prays that the impugned order of the Ld.CIT(A) be set aside to the file of the AO as held by the Hon'ble Supreme Court in the case of TIN Box Company v. CIT reported in [2001] 249 ITR 216 (SC) since assessee did not get proper opportunity before the AO. Though, the Ld.DR opposed the plea of assessee, we have gone through



:: 4 ::

the contemporaneous material filed by assessee to show the reason for not responding to AO, which we find to be reasonable. And since, the assessee had lost his son, was in a disturbed state of mind at the time of assessment. So, we are inclined to grant the prayer of assessee and by relying on the decision of the Hon'ble Supreme Court in the case of TIN Box Company (supra), 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.

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.



ITA No.1518/Chny/2023 (AY 2017-18)
Chinna Ocha Thevar Rajendran

:: 5 ::

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, assessee did not get proper opportunity before the AO, and taking note of the peculiar facts and circumstances, we are inclined to set aside the impugned order of the Ld.CIT(A) and restore the same to the file of the AO for *de novo* assessment. The assessee is directed to file written submissions / relevant documents to substantiate his defense and the AO is directed to frame *de novo* assessment in accordance to law.

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

Order pronounced on the 17th 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**

चेन्नई/Chennai,
दिनांक/Dated: 17th 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



ITA No.1518/Chny/2023 (AY 2017-18)
Chinna Ocha Thevar Rajendran

:: 6 ::

5. विभागीयप्रतिनिधि/DR

6. गार्डफाईल/GF