

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' 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.244/Chny/2024  
निर्धारण वर्ष/Assessment Year: 2018-19

Shri Mohammad Akram, No.3200/36B, Main Road, Thalavadi, Sathyamangalam Taluk, Erode-638 461.	v.	The Income Tax Officer, Ward-2(1), Erode.
[PAN: BLLPM 6172 N]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri S. Sridhar, Advocate (Erode)
प्रत्यर्थी की ओर से /Respondent by	:	Shri P. Sajit Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing	:	16.05.2024
घोषणाकीतारीख /Date of Pronouncement	:	29.05.2024

**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 03.01.2024 for the Assessment Year (hereinafter 'AY') 2018-19.



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**2.** At the outset, the Ld.AR of the assessee drew our attention to Ground No.3(a) & 4(a) preferred by assessee and contended that the AO erred in passing the assessment order without going through the written submissions filed by the assessee dated on 11.03.2022 which fact can be discerned from perusal of the Assessment Order itself. The Ld.AR drawing our attention to the first page of the Assessment Order, showed us that the AO has passed the assessment order on 11.03.2013 u/s.144 of the Act, whereas assessee has uploaded the written submissions (WS) on 11.03.2023; and therefore, according to him, it can be safely presumed that written submissions of assessee was not considered by the AO, who hurriedly passed the order on 11.03.2023. Further, the Ld.AR pointed out that the AO has not rebutted any of the submissions made in the written submissions wherein assessee had explained the nature and source of cash deposits in the bank account of the assessee for AY 2018-19. Therefore, Ld.AR citing the decision of the Hon'ble Supreme Court in the case of TIN Box Company v. CIT reported in [2001] 249 ITR 216 (SC), prayed that since the assessee did not get proper opportunity before the AO, the issue raised by him in the assessment order needs to be restored back to the file of the AO for de novo assessment. the Hon'ble Supreme Court in the case of TIN Box (supra) held as under:



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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.*

**3.** Since, we note that written submissions filed/uploaded by the assessee dated 11.03.2023 has not been considered by the AO during the course of assessment proceedings which is evident from the perusal of the Assessment Order as discussed (supra), we set aside the impugned order of the Ld.CIT(A) and restore the assessment back to the file of the AO for de novo adjudication. Needless to say that assessee be given



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Mohammad Akram

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proper opportunity of hearing. The assessee is at liberty to file documents to substantiate the nature & source of the cash deposits. The AO is directed to frame fresh assessment order in accordance to law.

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

Order pronounced on the 29<sup>th</sup> 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: 29<sup>th</sup> 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