

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.21/Chny/2024
निर्धारण वर्ष/Assessment Year: 2018-19

Shri Rajabather Sampath, 1/11, Balambigai Nagar, 4 th Street, Ramapuram, Nandambakkam, Kudiyiruppu S.O., Kanchipuram, Chennai-600 089.	v.	The Income Tax Officer, Non-Corporate Ward-8(1), Chennai.
[PAN: BBKPS 5373 Q]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri Kathir, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri P. Sajit Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing	:	15.05.2024
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, Delhi, (hereinafter 'the Ld.CIT(A)'), dated 22.11.2023 for the Assessment Year (hereinafter 'AY') 2018-19.

2. The main grievance of the assessee is against action of the Ld.CIT(A) dismissing the appeal merely because of an inadvertent



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mistake reflected in Sl.No.8 & 9 of Form No.35 filed before him. Drawing our attention to Form No.35 filed before the Ld CIT(A), the Ld.AR took us to Sl.No.8, wherein, the first mistake inadvertently made by the assessee has been pointed out, wherein assessee while filling up answer to the question No.8 i.e, "whether the return has been filed by the assessee for AY in connection with the appeal filed", the assessee replied it in negative; whereas the answer was in the affirmative; and because, answer to Q.No.8 was 'No', Q.No.9 was answered *as not applicable*; and because of it, the Ld CIT(A) presumed that assessee didn't remit tax on the return filed, which resulted in dismissal of the appeal *in limine* as not maintainable. To appreciate the aforesaid contention, let us look at Q.No.8 & Q.No.9 and answer given therein, which are reproduced as under:

2.1 Sl.No.8 & 9 reads as under:

Details of Taxes paid:	
8. Where a return has been filed by the appellant for the assessment year in connection with which the appeal is filed, whether tax due on income returned has been paid in full	No
8.1. If reply to 8 is Yes, then enter details of return and taxes paid	-
(a) Acknowledgement number	-
(b) Date of filing	-
(c) Total tax paid	-
9. Where no return has been filed by the appellant for the assessment year, whether an amount equal to the amount of advance tax as per section 249(4)(b) of the Income-tax Act, 1961 has been paid	Not Applicable
9.1. If reply to 9 is Yes, then enter details.	-



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2.3 And it was brought to our notice that assessee had remitted tax to the tune of Rs.22,525/- as on 02.05.2022, on the return filed by him i.e, well before filing appeal before Ld CIT(A), and therefore, the assessee ought to have answered 'Yes' to Question No.8, and not entered 'No' to it; and therefore the answer to Sl.No.9, assessee inadvertently typed "not applicable" whereas the answer was "yes" (return filed pursuant to notice u/s.148 of the Act), which was accepted by the AO; and according to the Ld.AR, the mistake happened because, the assessee didn't file the original return u/s.139(1) of the Act, and therefore, the assessee inadvertently had replied to question at Sl.No.9 as "*not applicable*" whereas, assessee duly filed return pursuant to notice u/s.148 of the Act, which was accepted by the AO. Therefore, according to Ld AR, the Ld CIT(A) ought not to have dismissed the appeal as not-maintainable, without atleast asking explanation from assessee and then, assessee could have explained the same and cleared the confusion.

3. Per contra, the Ld.DR submitted that assessee not only made mistake while filing up Form 35, but even did not bother to reply when an opportunity was given by the Ld.CIT(A) when he asked the assessee vide letter dated 07.11.2023, to intimate whether he has made payment of tax. Therefore, the Ld.DR does not want us to give one more innings



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to the assessee. In his rejoinder, the assessee submitted that it did not receive any such notices from the Ld.CIT(A).

4. We have heard both the parties and perused the material available on record. We find that assessee did not file any return u/s.139(1) of the Act for AY 2018-19. Based on certain information, the AO issued notice to re-open the assessment for AY 2018-19 by notice dated 26.03.2022. Pursuant to which assessee filed return of income on 30.04.2022 and paid tax of Rs.22,575/- on 02.05.2022. The AO taking note of the return of income filed by assessee, proceeded to assess total income of the assessee at Rs.1,13,55,000/- in place of returned income of Rs.4,90,000/- by order dated 25.03.2023. On appeal, the Ld.CIT(A) did not entertain the appeal and held it to be infructuous/not maintainable mainly because, assessee had mistakenly shown in Form No.35 [filed before him] that assessee neither filed the return nor remitted the tax. However, before us, the assessee has demonstrated that it has filed return of income pursuant to the notice u/s.148 of the Act, as well as remitted tax on the returned income. However, while filing the appeal in Form No.35, the assessee has made an inadvertent mistake as noted (supra), since, the mistake is *bona fide*, we are of the view that the assessee should be granted one more opportunity before the Ld.CIT(A) for assailing the additions made by the AO. Therefore, we set aside the



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impugned order of the Ld.CIT(A) and restore the appeal back to the file of the Ld.CIT(A) with a direction to decide the appeal on merits after hearing the assessee. The assessee is also directed to file proof of remittance of tax on the return of income filed by assessee by furnishing details as sought at S.No.8.1 (a) to (c) of Form 35; and when the appeal is heard by Ld.CIT(A), assessee to be diligent and file relevant documents/written submissions before the Ld.CIT(A) and the Ld.CIT(A) is directed to decide the issue raised by assessee as per sub-section (6) of sec.250 of the Act.

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

Order pronounced on the 29th 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: 29th May, 2024.

TLN, Sr.PS

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

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकरआयुक्त (अपील)/CIT(A)



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Rajabather Sampath

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4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF