

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.82/Chny/2024
निर्धारण वर्ष/Assessment Year: 2017-18

Shri Annamalai Gunasekaran, Proprietor, Classic Brower, 391, T.V.K. Road,, Ammapet, Salem. [PAN: AFAPG 1043 C] (अपीलार्थी/Appellant)	v.	The Dy. Commissioner – of Income Tax, Circle-1(1), Salem. (प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri Sri Krishna, CA (Virtual)
प्रत्यर्थी की ओर से /Respondent by	:	Shri P. Sajit Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing	:	14.05.2024
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 16.11.2023 for the Assessment Year (hereinafter 'AY') 2017-18.

2. The main grievance of the assessee is against action of the Ld.CIT(A) dismissing the appeal *ex parte* qua assessee after issuing notices on two occasions (i.e. on 26.02.2021 and 11.09.2023) and finding



:: 2 ::

no responses from the assessee, he was pleased to pass an *ex parte* order dismissing the appeal of the assessee.

3. At the outset, the Ld.AR of the assessee submitted that no response/appearance before the Ld.CIT(A) was not deliberate. According to him, the assessee expired on 02.06.2021 and the legal heirs were not aware of the on-going litigation in respect of business of the late assessee; and therefore, they could not respond/participate in the first appellate proceedings. The assessee has filed the death certificate of the assessee late Annamalai Gunasekaran and also Legal Heirship Certificate. Further, according to the Ld.AR, there are certain relevant evidences which could not be filed before the AO because assessee was not well during that period of time (including assessment proceedings) and he submitted that non-consideration of additional/relevant evidence could result in failure of justice (refer State of Rajasthan v. Aharam JT 2023 (6) SC 314) and therefore, pleaded that assessee may be given an opportunity before either Ld.CIT(A)/AO and accordingly, assessee would be able to file all those relevant documents and written submissions before the AO/Ld.CIT(A).

4. The Ld.DR opposes the plea of the assessee and submitted that assessee had been given proper opportunity before the AO and he cannot be granted one more innings before the AO or even before the Ld.CIT(A).



:: 3 ::

Be that as it may. We note that the impugned order passed by the First Appellate Authority is an *ex parte* order qua assessee, because, assessee did not respond to his notices dated 26.02.2021 & 11.09.2023 and passed impugned order on 16.11.2023. This action of the Ld.CIT(A) cannot be countenanced sub-section 6 of sec.250 of the Act, reads as under:

"the order of the Ld.CIT(A) disposing of the appeal shall be in writing and the decision thereon and the reason for the decision"

5. The Ld.CIT(A) being the First Appellate Authority ought to have granted few reasonable opportunities before passing the impugned order. Since, Ld.CIT(A) is exercising his appellate jurisdiction, he was duty bound to adjudicate the grounds of appeal raised by the assessee as required u/s.250(6) of the Act. Taking into consideration the fact that the assessee has passed away on 02.06.2021 and the legal heirs were in the dark about the ongoing litigation proceedings before the First Appellate Authority, we find reasonable cause for the legal heirs not representing/appearing before the Ld.CIT(A). In such a scenario, we are inclined to set aside the impugned order passed by the Ld.CIT(A) and restore the appeal back to the file of the Ld.CIT(A) for fresh adjudication of the appeal in accordance to law. The assessee is given liberty to file additional evidences as per Rules; and if the assessee files additional/new evidences, the Ld.CIT(A) to act in accordance to Rule 46A of the Income Tax Rules, 1962, and call for Remand Report from the AO and in such an



:: 4 ::

event, assessee may be provided virtual hearing facility before AO if permitted by Rules. The assessee may request for virtual hearing before the Ld.CIT(A); and the Ld.CIT(A) to adjudicate the grounds of appeal in accordance to law. And needless to say that Ld AR to substitute Legal heirs in place of late assessee.

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