

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.1564/Chny/2023
निर्धारण वर्ष/Assessment Year: 2016-17

M/s.A.S.Carriers Pvt. Ltd., New No.173, Old No.103, 9 th Floor, B-Block, Navins Presidium, Nelson Manickam Road, Aminjikai, Chennai-600 029.	v.	The Asst. Commissioner- of Income Tax, Corporate Circle-1(1), Chennai.
[PAN: AAACC 3136 G]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri N.Quadir Hoseyn, Advocate & Dr.L.Natarajan, CA
प्रत्यर्थी की ओर से /Respondent by	:	Shri V. Nandakumar, CIT
सुनवाईकीतारीख/Date of Hearing	:	09.05.2024
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 28.10.2023 for the Assessment Year (hereinafter 'AY') 2016-17.

2. At the outset, the Ld.AR of the assessee submitted that the impugned order of the Ld.CIT(A) is an *ex parte* order passed without



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hearing the assessee on the legal issue as well as on merits of the addition. According to the Ld.AR, impugned action of the Ld.CIT(A) is in violation of natural justice and therefore, bad in law. Further, according to him, even the AO did not give him proper opportunity to present the facts of the case meaning the AO sought information regarding cost of acquisition of warehouse on 20th/21st March, 2022, [*meaning only two days time was given to assessee for furnishing information*] and by the time assessee collected the information called for by AO, the online portal of the department got closed at 23:59 hrs. on 23.03.2022 and consequently, the assessee was prevented from uploading/furnishing the details sought by AO. According to the Ld.AR, therefore assessee uploaded the information in the online portal of the Grievance Cell of the department on 24.03.2022; However, the AO passed the Assessment Order on 28.03.2022 for AY 2016-17 making addition of Rs.12,02,38,910/- on account of LTCG without giving any adjustment of construction/development/improvement made in the property mainly on the reason that assessee failed to furnish/substantiate the index cost of acquisition/improvement as claimed by the assessee. Therefore, according to the Ld.AR, the assessee should be given an opportunity before the AO to effectively place on record the relevant documents to substantiate their claim; and moreover, according to the Ld.AR, the action of the AO is unsustainable for the high pitched assessment, since the AO denied the



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indexation benefit on cost of construction of warehouse and pleaded for one more opportunity before AO and cited the decision of the Hon'ble Supreme Court in the case of TIN Box Company v. CIT reported in [2001] 249 ITR 216 (SC).

3. Per contra, the Ld.DR defending the action of the Ld.CIT(A) dismissing the appeal filed by the assessee submitted that against the assessment order passed by the AO on 28.03.2022, the assessee filed appeal on 16.04.2022 and requested for withdrawal of the appeal on 02.12.2022. Thereafter, the assessee moved another application again before the Ld.CIT(A) on 14.12.2022 (within 12 days) requesting restoration of appeal filed on 16.04.2022. Thereafter, notice u/s.250 of the Act, was issued by the NFAC/CIT (A) on 05.09.2023 and assessee participated in the proceedings before the NFAC by letter dated 06.09.2023. However, the Ld.CIT(A) noted that the assessee had preferred a request for withdrawing the appeal on 02.12.2022 (supra) and therefore, he dismissed the appeal of the assessee which action of the Ld.CIT(A) has been challenged by the assessee before us. In this regard, the Ld.DR draw our attention to the fact that assessee after requesting Ld.CIT(A) to allow it to withdraw its appeal (by letter dated 02.12.2023), the assessee simultaneously had filed a revision petition u/s.264 of the Act on 02.12.2022 before the Ld CCIT, Chennai, which was



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entrusted/received in the office of the Ld.PCIT on 19.01.2024 and the Ld.PCIT *inter alia* noted that the assessee had filed a letter dated 22.02.2024 withdrawing the revision petition u/s.264 of the Act. Therefore, the Ld.PCIT had treated the revision petition filed by the assessee as withdrawn. Therefore, according to the Ld.DR, the assessee could not have come before this Tribunal after having filed revision petition before the Ld.PCIT u/s.264 of the Act. Therefore, he does not want us to interfere in the order of the Ld.PCIT dismissing the appeal of the assessee. In his rejoinder, the Ld.AR submitted that though assessee had initially withdrawn the statutory appeal preferred before Ld.CIT(A) by letter dated 02.12.2022, it had withdrawn that request (*for withdrawing appeal u/s.246A of the Act i.e. before Ld.CIT(A) within 12 days on 24.12.20122*); And participated before the Ld.CIT(A), who even called for remand report from AO, thereafter, assessee didn't participate in the revisional proceedings before Ld.PCIT u/s.264 of the Act, and was allowed to be withdrawn. Therefore, Ld.AR pleads that assessee has pursued only the statutory appeal before the Ld.CIT(A) and it is only challenging the impugned order of Ld.CIT(A).

4. We have heard both the parties and perused the material available on record. We note that the assessee had filed return of income for AY 2016-17 on 17.10.2016 declaring of total income of Rs.3,08,84,770/-.



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The AO noted that the assessee company had entered into sale transaction of immovable property valuing more than Rs.30 lakhs. Therefore, he issued notice u/s.148 of the Act, on 30.03.2021 and pursuant to that assessee furnished requisite documents called for by AO including the capital gain working chart of land & building sold at two places in Bangalore (details given at Para No.3 of the Assessment Order); and assessee objected to re-opening of assessment resorted to by AO u/s.147 of the Act on various legal grounds. The AO noted in the assessment order that the assessee had sold two properties for Rs.63,47,03,981/- and Rs.18,25,00,000/- respectively and also furnished computation of capital gains in which it claimed "index cost" as acquisition cost considering the cost inflation index of the properties and the assessee has also claimed cost of constructions, development/improvement on said lands in different years and accordingly, worked out the acquisition index cost considering the cost inflation index according to the year of construction/development/improvement of the concerned year. The AO therefore asked assessee for some more details along with supporting documents. The AO acknowledges that the assessee filed reply including relevant documents viz copy of Purchase Deed/sale deed of lands which was sold. However, according to AO, assessee has not furnished any details for claiming construction/development/improvement made in the



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immovable property. The AO after verifying the Sale Deed dated 08th / 10th December, 2023 & 25.06.2007, noticed that transferred property had some construction of industrial sheds, etc., so he accepted that the assessee had made construction/development/improvement on the said lands, but in the absence of any evidence, the period of construction/development/improvement, according to the AO, cannot be ascertained for the purpose of computing the cost of inflation of index for computing the acquisition cost. In such circumstances, AO concluded that the cost inflation index, acquisition cost as claimed by the assessee cannot be allowed; and the actual cost of construction/development/improvement as shown/claimed by the assessee was considered by him as acquisition cost along with the cost of lands after considering the cost inflation index (as the same was acquired in the FY 2003-04), as appeared in the Sale Deed, and thereafter, AO worked out the Long Term Capital Gains (LTCG) earned and computed it at Rs.12,02,38,910/-; Aggrieved by the action of the AO, the assessee first preferred an appeal before the Ld.CIT(A) on 16.04.2022 (hereinafter the first appeal before the Ld.CIT(A)) which the assessee had withdrawn by letter dated 02.12.2022 and simultaneously filed an application before the Ld.CCIT/PCIT invoking their revisional jurisdiction u/s.264 of the Act on 02.12.2022 which the Ld.PCIT finally treated as withdrawn u/s.264 of the Act by order dated 22.02.2024. Meanwhile, the assessee by letter



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dated 14.12.2022 (within 12 days of withdrawing the appeal on 02.12.2022) found placed at Page Nos.9 of the Paper Book requested Ld.CIT(A) praying restoration of statutory appeal and therefore, Ld.CIT(A) has passed the impugned order on 28.10.2023, which is subject of challenge before us. From the aforesaid discussion, we note that firstly assessee had filed statutory appeal before the Ld.CIT(A) which was requested to be withdrawn by letter dated 02.12.2022 (*but no order was passed on such request till assessee sought restoration of statutory appeal within 12 days i.e. 14.12.2022*) and thereafter, wanted to pursue revisional jurisdiction before the Ld.PCIT u/s.264 of the Act, but again abandoned the same; and pursuant to assessee's request for restoration of appeal dated 14.12.2022, the Ld.CIT(A)/NFAC after acknowledging receipt of restoration application found placed at Page No.09 of Paper Book, had issued notice to assessee on 05.09.2023 calling for information from assessee before 12.09.2023; and pursuant to it, assessee uploaded details called for on 06.09.2023 (found placed at Page No.23-25 of Paper Book along with details of uploaded information about issues/grounds raised in appeal). So, it is implied that Ld CIT(A) has restored the assessee's appeal and in such a back-drop, the First Appellate Authority who is a quasi judicial authority, ought not to have dismissed the statutory appeal of assessee [by resurrecting the stale request of assessee to withdraw dated 02.12.2022], which impugned action of Ld



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CIT(A) cannot be countenanced. Further, as noted (supra), the assessee has brought to our notice that it did not get proper opportunity before the AO during the course of assessment proceedings and in order to buttress its submissions has filed an affidavit, wherein, it has been shown that the AO had asked information regarding cost of acquisition on 20th / 21st March, 2022 giving time only up to 23.03.2022 (only two days) and by the time assessee collected the information sought by AO, the online portal of the department was closed at 23:59 hrs. on 23.03.2022, [and therefore assessee uploaded the information in the online portal of the Grievance Cell of the department on 24.03.2022]. Thus, it is noted that AO couldn't consider relevant information sought by him; and non-consideration of additional/relevant evidence could result in failure of justice (refer State of Rajasthan v. Aharam JT 2023 (6) SC 314); and resultantly, assessee did not get proper opportunity before the AO during the course of assessment proceedings, therefore, relying on the decision of the Hon'ble Supreme Court in the case of TIN Box Company (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* assessment and the AO is directed to give proper opportunity to the assessee regarding issue of LTCG on sale of two properties mentioned in the Assessment Order dated 28.03.2022. The assessee is at liberty to file relevant documents to



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substantiate its claim and the AO to frame assessment in accordance to law after hearing the assessee.

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. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्डफाईल/GF