

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1550/Chny/2023  
निर्धारण वर्ष/Assessment Year: 2017-18

Shri Ravuthu Meera – Ravuthar Abdul Razack, 5, Kamarajar Stree, Alangudi, Pudukkottai-622 301.	v.	The Income Tax Officer, Ward-1, Pudukkottai.
<b>[PAN: AHLPA 6315 Q]</b>		
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी/Respondent)</b>
अपीलार्थी की ओर से/ Appellant by	:	Shri Y. Sridhar, FCA
प्रत्यर्थी की ओर से /Respondent by	:	Dr. D. Praveen, 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, (hereinafter 'the Ld.CIT(A)'), Delhi, dated 25.10.2023 for the Assessment Year (hereinafter 'AY') 2017-18.

2. The main grievance of the assessee is against the action of the ex-parte action of Ld.CIT(A) confirming the action of the AO by taking note that though notices had been issued to assessee on four occasions, the



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assessee has not bother to respond. So, he dismissed the appeal of the assessee. Further, the Ld.AR of the assessee also pointed out that in their case even the AO has also passed an *ex parte* order u/s.144 of the Income Tax Act, 1961 (hereinafter "the Act"). Therefore, in the interest of justice, he prays that the appeal of the assessee may be restored back to the file of the AO for *de novo* assessment. The Ld.AR brought to our notice that assessee is a super senior citizen and is suffering from many ailments [loss of memory, hard of hearing and other ailments]. Therefore, he was handicapped from properly running the business which caused loss from his proprietorship concern and therefore, did not file return of income in the relevant AY. But, it was pointed out that he was regularly filing the VAT return. And since, in the relevant year under consideration, assessee had deposited Rs.50,91,600/- as cash during demonetization period, the AO took up the case for scrutiny and passed an *ex parte* order adding, *inter alia*, the entire sum (Rs.50,91,600/-) u/s.69 of the Act, as unexplained investment; and treated balance amount in bank account of Rs.2,93,51,283/- as the turnover of the assessee and estimated 5% as income of the assessee from undisclosed business income. According to the assessee, the credit in the bank account was regular trading receipts which is evident from perusal of the VAT returns. According to the Ld.AR, due to the ailments, etc., the assessee could not properly place on record relevant documents to prove the trading receipts



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including the cash deposits (nature and source of cash deposits); and failure to consider the relevant documents by the AO during assessment proceedings has resulted in failure of justice; therefore, he pleads that one more opportunity be granted before AO, since assessee did not get proper opportunity during assessment proceedings.

**3.** Per contra, the Ld.DR opposes the plea of the assessee and submits that the assessee should not be granted one more innings before the AO.

**4.** We have heard both the parties and perused the material available on record. We are not repeating the aforesaid facts again for the sake of brevity; and we find that the assessee is a super senior citizen (above age of 80 years) undergoing treatment for several ailments and has frequent memory loss and hard to hear. During the year under consideration, assessee who is a proprietor of M/s.KRA Distributor's claims to have suffered net loss of Rs.47,783/- from the business of distribution of edible oil. According to the assessee, he was regularly filing VAT returns, but did not file the return of income due to *bona fide* belief that since he had incurred loss, he need not file the return of income u/s.139(1) of the Act. However, the AO issued notice u/s.143(2) taking note of the cash deposits made during the demonetization period to the tune of Rs.50,91,600/-; and taking note of other credit entries in his bank account, and being not satisfied with the reply of the assessee



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that the credits/cash deposits are trading receipts, had made an addition of Rs.50,91,600/- u/s.69 of the Act, [as unexplained investment]; and the balance credit entries in the bank account to the tune of Rs.2,93,51,283/- was treated as the turnover of the assessee from undisclosed business and estimated 5% as income from such business i.e. Rs.14,67,564/-. On appeal, the Ld.CIT(A) dismissed the appeal finding no response from the assessee. According to the assessee, the assessee was not provided proper opportunity before the AO which prompted the AO to pass order u/s.144 of the Act (best judgment assessment). The AO noted that despite several notices issued to the assessee he responded only in November & December, 2019 and furnished some documents online. However, AO was of the opinion that assessee didn't succeed in explaining the source of deposit of cash of Rs.50,91,600/- which was deposited during the demonetization period; and therefore, he passed assessment order on 29.12.2019 u/s.144 of the Act. The assessee's only plea is that he didn't get proper opportunity before AO, so he couldn't place relevant documents before the AO to substantiate the nature and source of the deposit in the bank account i.e. from the trading receipts of the assessee's business. We note that assessee is a super senior citizen with the several ailments and could not place on record relevant documents before AO. Therefore, taking into consideration the peculiar facts and circumstances of the case, we are inclined to set aside the



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impugned order of the Ld.CIT(A) and restore the assessment back to the file of the AO with a direction to frame *de novo* assessment after hearing the assessee. The Ld.AR undertakes to file all relevant documents/written submissions before the AO. The AO to give proper opportunity to the assessee and frame the assessment in accordance to law as held by the Hon'ble Supreme Court in the case of TIN Box Company v. CIT reported in [2001] 249 ITR 216 (SC).

**5.** 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/-**  
**(मनोज कुमार अग्रवाल)**  
**(MANOJ KUMAR AGGARWAL)**  
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