

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.648/Chny/2024
निर्धारण वर्ष/Assessment Year: 2017-18

Smt. Malini Balasubramanian, No.61, East Car Street, Chidambaram-608 002.	v.	The Income Tax Officer, Ward-3, Cuddalore.
[PAN: AIQPB 5459 C]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Ms.Lekha, CA
प्रत्यर्थी की ओर से /Respondent by	:	Shri P. Sajit Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing	:	20.05.2024
घोषणाकीतारीख /Date of Pronouncement	:	29.05.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

At the outset, the Ld.AR of the assessee submitted that the impugned order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter 'the Ld.CIT(A)'), Delhi, dated 16.01.2024 for the Assessment Year (hereinafter 'AY') 2017-18 is an *ex parte* order. He further pointed out that even the AO has framed the Assessment Order u/s.144 of the Act, though erroneously AO has stated in the caption of the order as passed u/s.143(3) of the Act; and drew our attention to Page No.3 of the Assessment Order, wherein, the AO has admitted that



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he has framed the assessment u/s.144 of the Act, which we find to be correct. The Ld.AR explained the circumstances for AO to have passed an ex-parte order. According to him, assessee had entrusted filing of assessee's Income Tax Return (ITR) to an Income-Tax Practitioner (ITP); and the said ITP had given his e-mail, mobile number in the assessee's return; and therefore, the notices/messages of listing of hearing had obviously gone to him, and the ITP neither appeared before AO nor informed the assessee about the notices and hearing of the assessment proceedings, which resulted in the passing of ex-parte order. Therefore, according to assessee, the assessee should not be penalized for the omission on the part of ITP; and hence, pleaded that assessee may be given an opportunity before the AO and for such a proposition 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), wherein, the Hon'ble Supreme Court has held that if the assessee did not get proper opportunity before the AO, then the assessment need to be restored back to the file of the AO for *de novo* assessment. It would be gainful to take note of the Hon'ble Supreme Court order which reads as under:

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



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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 assessee.

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.

2. Per contra, the Ld.DR does not want us to give one more innings to the assessee.

3. We have heard both the parties and perused the material available on record. We note that the impugned order of the Ld.CIT(A) is an *ex parte* order qua assessee; and the AO has also framed best judgment assessment u/s.144 of the Act; and the assessee has brought to our notice that the Ld.AR/ITP [of the assessee] had given his e-mail and Mobile number in the assessee's return of income; and that ITP neither attended nor furnished any documents/answered to the questions raised by the AO, which resulted in AO passing *ex-parte* order. In such a scenario, the assessee was in the dark about the proceedings going on before both the authorities. Since, there is a reasonable cause for



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Smt. Malini Balasubramanian

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assessee not responding to notices of AO/Ld.CIT(A), we set aside the impugned order of the Ld.CIT(A) and restore the assessment back to the file of the AO as held by the Hon'ble Supreme Court in the case of TIN Box Company (supra). Needless to say that assessee must be diligent and should file written submissions/relevant documents before the AO and the AO to frame de-novo assessment in accordance to law after hearing the assessee.

4. 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/-
(अमिताभ शुक्ला)
(AMITABH SHUKLA)
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, Chennai / Madurai / Salem / Coimbatore.
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF