

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.23/Chny/2024
निर्धारण वर्ष/Assessment Year: 2015-16

Sarveswaran Deepa, No.18, Annanagar, Parvathy Nagar, Alamelu Street, Old Perungalathur, Tambaram Taluk Kanchipuram District-600 063.	v.	The ITO, Non-Corporate Ward-22(6), Tambaram.
[PAN: AXWPD 3112 B]		
(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	:	22.05.2024
घोषणाकीतारीख /Date of Pronouncement	:	05.07.2024

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 in short 'the Ld.CIT(A)'), Delhi, dated 24.11.2023 for the Assessment Year (hereinafter in short 'AY') 2015-16.

2. Before we considering the appeal, the Ld.DR has raised a preliminary objection regarding filing of Form 36. According to him, on perusal of the same reveals that the assessee had not filled up any of the



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columns in Form 36. Therefore, it has to be dismissed or assessee should withdraw the same and file a new Form 36.

3. Per contra, the Ld.AR submitted that the appeal/Form 36 was e-filed on 04.01.2024 by the assessee herself who was a retired person, (now a house wife) who didn't know the intricacies or had the requisite knowledge to file Form 36. However, he pointed out that the Registry raised defect notice, pursuant to which, the Ld.AR inspected the file and found the omission on the part of the assessee not filing up Form 36 and cured it by filling up the relevant details and further brought to our notice that assessee had wrongly remitted the fee of Rs.10,000/- under the "minor head 500" which was paid for tax. Therefore, the assessee again remitted Rs.10,000/- and correctly paid it under the head "Others" on 14.05.2024 vide challan No.25239 (thus assessee had remitted Rs.20,000/- instead of Rs.10,000/-) and thereafter, assessee also filed revised Form 36 on 15.05.2024, and then the appeal was posted for hearing. According to the Ld.AR, since the defects pointed out has been rectified, the same may be heard on merits and disposed off or in the alternate, the revised Form 36 be taken on records as on the date of filing the appeal and the delay be condoned.

4. We have heard both the parties and perused the material available on record. We find that the assessee had filed Form 36 through electronic



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mode and had omitted to fill-up Form 36, which led the Registry issuing defect notice and Ld.AR had rectified the defects. It is also noted that due to assessee's inexperience she had remitted Rs.10,000/- under wrong head and therefore had to cough up additional amount of Rs.10,000/- as noted supra. Since the defects have been cured/rectified, we proceed to hear the appeal on merits.

5. At the outset, Ld.AR of the assessee pointed out that assessee is a retired employee and assessee's return of income was re-opened, since there was a mismatch between the returned income *vis-a vis* statement reflected in Form 26AS. According to the Ld.AR, since the assessee couldn't appear before the AO (*due to change of address, assessee didn't receive notice*), the AO passed *ex parte* assessment order. On appeal, it was brought to our notice that the assessee had filed additional evidences before the Ld.CIT(A), however, in the absence of application u/r.46A & B of the Income Tax Rules, 1962 (hereinafter in short "the Rules") and the Ld CIT(A) declined to consider the additional evidences and therefore, he dismissed the appeal of the assessee. According to the Ld.AR, even the AO has passed an order u/s.144 of the Act (*best judgment assessment*) and since, the assessee didn't get proper opportunity before the AO, he cited the decision of the Hon'ble Supreme Court in the case of TIN Box Co. v. CIT reported in [2001] 249 ITR 216 (SC), and pleaded that one more opportunity may be granted before the AO.



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6. Per contra, the Ld.DR opposed the plea of the assessee and submitted that the assessee didn't cooperate before the AO and therefore, the AO passed the best judgment assessment and therefore, assessee shouldn't be given another innings before the AO; and he supported the action of the Ld.CIT(A) and doesn't want us to interfere with the impugned order of the Ld.CIT(A).

7. We have heard both the parties and perused the material available on record. We note that the assessee was an employee of M/s.Nokia India Pvt. Ltd., and she filed her return of income for AY 2015-16 on 01.08.2015 declaring income from salary of Rs.4,67,853/- and claimed deduction u/s.24(b) of the Act of Rs.1.50 lakhs and u/s.80C of Rs.55,000/- and thus, claimed refund of Rs.1,61,590/-. The return was processed u/s.143(1) of the Act and refund along with interest was issued to the assessee on 12.02.2016. Due to alleged mismatch in the Form 26AS and the salary returned by the assessee, the AO issued notice of reopening u/s.148 of the Act on 31.03.2021 and taking note that the assessee didn't comply with his notices, he passed ex-parte re-assessment order dated 22.03.2022 making an addition of Rs.6,53,583/-.

8. On appeal, the Ld.CIT(A) taking note that the assessee had filed additional evidences without filing application under Rule 46A was pleased to decline admission of additional evidences; and was pleased to dismiss



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the appeal of the assessee. We do not countenance the impugned action of the Ld.CIT(A) for the simple reason that the Ld.CIT(A) being the First Appellate Authority while considering the statutory appeal preferred by the assessee, was duty bound to dispose of appeal in accordance with sub-sec.6 of sec.250 of the Act, which he has not done. Therefore, the impugned order of the Ld.CIT(A) is vitiated. Further, we note that the AO has passed an ex parte order, since the assessee didn't receive the notice of hearing due to change in address after her marriage. Since proper opportunity has not been given to the assessee during the assessment proceedings, we rely on the decision of the Hon'ble Supreme Court in the case of TIN Box Co. (supra), and set aside the impugned order of the Ld.CIT(A) and restore the assessment back to the file of the AO with a direction to grant proper opportunity to the assessee and thereafter, frame the assessment in accordance to law. The assessee is directed to be diligent and file relevant documents/written submissions to substantiate her claim.

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

Order pronounced on the 05th day of July, 2024, in Chennai.

Sd/-
(अमिताभ शुक्ला)
(AMITABH SHUKLA)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)
न्यायिक सदस्य/JUDICIAL MEMBER



ITA No.23/Chny/2024 (AY 2015-16)
Sarveswaran Deepa

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चेन्नई/Chennai,
दिनांक/Dated: 05th July, 2024.

TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित /Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF