

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' 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 Nos.1082 & 1083/Chny/2024
निर्धारण वर्ष/Assessment Year: 2013-14

Shri Manish Agarwal, Suit No.314, Ram Lakhan Chambers, General Muthiah Mudaly Street, Sowcarpet, Chennai-600 079.	v.	The DCIT, NCC-4(1), Chennai.
[PAN: AFKPM 9253 L]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri M.Karunakaran, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri P. Sajit Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing	:	25.06.2024
घोषणाकीतारीख /Date of Pronouncement	:	10.07.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the assessee against the orders of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "theLd.CIT(A)"), Delhi, both dated 13.03.2024, for the Assessment Year (hereinafter in short "AY") 2013-14 against quantum assessment confirmed and penalty confirmed respectively.

2. At the outset, the Ld.AR of the assessee pointed out that the Ld.CIT(A) has dismissed the appeal merely because an application has not been preferred by the assessee as per the proviso to Sec.249(4)(b) of the



:: 2 ::

Income Tax Act, 1961 (hereinafter in short "the Act"). According to the Ld.AR, the assessee is an individual and for the Assessment Year under consideration i.e. AY 2013-14 his income was below the taxable income, hence, he didn't file any return of income. However, the AO re-opened the assessment u/s.147 of the Act and made an addition of Rs.3,47,29,000/- u/s.69A of the Act by order dated 22.09.2021 u/s.147/144 r.w.s.144B of the Act, which according to the Ld.AR was passed without hearing the assessee and it was a best judgment assessment. According to the assessee, the assessee didn't receive any notice of hearing from the AO which led him passing the ex-parte/best judgment assessment order. The assessee, therefore, preferred an appeal before the Ld.CIT(A) against the quantum assessment, which has been dismissed by the Ld.CIT(A) on the ground that the assessee didn't file an application for exempting him from the operation of the provision of clause (b) of sub-sec 4 of section 249 of the Act. However, according to the Ld.AR, the Ld.CIT(A) erred in giving such a reason to dismiss the appeal when sub-section 4 of sec.249 of the Act, is not applicable in the case of the assessee. Drawing our attention to sub-sec(4) of the sec.249 of the Act, the Ld.AR pointed out that the clause (b) of sub-section (4) of ibid section is applicable when (i) assessee has not filed the return of income and (ii) assessee has paid an amount equal to the amount of advance tax which was payable by him. And if both the conditions are



:: 3 ::

satisfied, then only assessee had to prefer an application as provided under the proviso to sec.249(4) of the Act and not otherwise. However, in the case of the assessee, his stand is that he didn't had any taxable income in the relevant year, therefore, he neither filed the Return of Income nor remitted any advance tax as required u/s.208 of the Act. We find force in the submission of the Ld.AR and note that assessee (individual) didn't file return of income, since according to him, his total income didn't exceed the maximum amount which is not chargeable to tax as per sec.139(1) of the Act and was not required to pay advance tax as per sec.208 of the Act. Therefore, the Ld.CIT(A) erred in law, to hold that clause (b) of sub-section (4) of sec.249 of the Act, is applicable to the case of the assessee and therefore the impugned action of Ld CIT(A) in not admitting the appeal in the absence of application being filed by assessee as per proviso to sec.249(4) of the Act, is un-sustainable in law. Therefore, we set aside the impugned order of the Ld.CIT(A) and taking note that the AO has passed best judgment assessment without hearing the assessee and there are disputed question of facts involved in this case, we relying on the decision of the Hon'ble Supreme Court in the case of TIN Box Company v. CIT reported in [2001] 249 ITR 216 (SC), restore the assessment back to the file of the AO for *de novo* assessment in accordance to law after hearing the assessee.



ITA Nos.1082 & 1083/Chny/2024 (AY 2013-14)
Shri Manish Agarwal

:: 4 ::

3. Coming back to penalty levied u/s.271(1)(c) of the Act, since, the quantum assessment has been set aside (supra), consequently, penalty cannot survive in the light of our action in the quantum appeal supra. Therefore, the AO after framing the assessment order may proceed against the assessee for levy of penalty in accordance to law after hearing the assessee.

4. In the result, appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on the 10th day of July, 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: 10th 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