

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 No.1094/Chny/2024
निर्धारण वर्ष/Assessment Year: 2015-16

Shri Arunjunairaj Nadarajan, Old No.1487/New No.6211, Velavan Street, Medavakkam, Kanchipuram, Chennai-600 100.	v.	The ITO, NCW-22(1), Tambaram-600 045.
[PAN: AFOPA 8480 K]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri D. Anand, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri P. Sajit Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing	:	25.06.2024
घोषणाकीतारीख /Date of Pronouncement	:	26.07.2024

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 21.02.2024 for the Assessment Year (hereinafter in short "AY") 2015-16.

2. At the outset, the Ld.AR of the assessee pointed out that the impugned order of the Ld.CIT(A) is an ex-parte order. He also pointed out that assessee was running a grocery shop along with his brother who



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passed away (expired) which led him to sell the inventory before closing it down; and after giving the share of his deceased brother [to his family] deposited, the balance amount in his bank. Further, according to the Ld.AR, since the assessee didn't had any taxable income in the relevant year under consideration, he didn't file any return of income (RoI). Later, the AO re-opened the assessment by issuing notice u/s.148 of the Income Tax Act, 1961 (hereinafter in short 'the Act') on 31.03.2022 and passed best judgment assessment on 22.03.2023 u/s.144 of the Act by adding the entire cash deposits to the tune of Rs.56,57,988/- u/s.69 of the Act. According to the Ld.AR, the assessee challenged the action before the Ld.CIT(A) who without admitting the appeal, on the failure to remit advance tax, dismissed the appeal. Assailing the action of the Ld.CIT(A), the Ld.AR pointed out that the Ld.CIT(A) misdirected himself by taking such a view, because, in this case, since assessee didn't had any income chargeable to tax, didn't file any return of income and therefore, according to him, question of remitting advance tax doesn't arise as per sec.208 of the Act. Therefore, the Ld.AR submitted that the reason given by the Ld.CIT(A) to hold the statutory appeal as not maintainable, is erroneous and unsustainable in law. We find force in the contentions of the Ld.AR and note that it is not the case of the Ld.CIT(A) that assessee had filed return of income and failed to pay tax on the returned income. And since, the conditions required for paying advance tax doesn't arise in



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the facts and circumstances of the case, we find that the Ld.CIT(A) erred in finding fault regarding non-payment of advance tax and consequently, holding the appeal before him as not maintainable is unsustainable in law.

3. Having said so, we note that the AO has passed an ex-parte order qua assessee which omission according to the Ld.AR was because assessee was never served with any notice which resulted in the AO passing best judgment assessment adding the entire deposits in the bank which action according to the Ld.AR is arbitrary exercise of power. According to the Ld.AR, the amount deposited is nothing but sale proceeds from the inventory of the grocery shop before finally closing down the business due to death of his brother (supra). Be that as it may, we are not expressing any opinion on the merits of the impugned action of the AO. But we note that the main grievance of the assessee is that no proper opportunity has been granted to the assessee during the course of assessment proceedings. Therefore, relying on the decision of the Hon'ble Supreme Court in the case of TIN Box Co. v. CIT reported in [2001] 249 ITR 216 (SC), we set aside the impugned order of the Ld.CIT(A) and remit it back to the file of the AO with a direction to de-novo assess the income of the assessee after hearing the assessee; and the assessee is at liberty to raise legal issues as well as additions/disallowance on merits; and the assessee is directed to be diligent and file written submissions/relevant documents before the AO



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Shri Arunjunairaj Nadarajan

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and the AO to frame 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 26th 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: 26th 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