

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.252/Chny/2024
निर्धारण वर्ष/Assessment Year: 2017-18

M/s.Florida Shoe, (since dissolved on 31.03.2015), No.77, M.C.Road, Madanur, Vellore-635 804.	v.	The ITO, Ward-2, Vellore.
[PAN: AABFF 6775 C]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri S. Anandh, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri P. Sajit Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing	:	27.06.2024
घोषणाकीतारीख /Date of Pronouncement	:	21.08.2024

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 "theLd.CIT(A)"), Delhi, dated 30.11.2023 for the Assessment Year (hereinafter in short "AY") 2017-18.



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2. At the outset, the Ld.AR of the assessee pointed out that the AO as well as the Ld.CIT(A) has not appreciated the peculiar facts of the case. According to him, the **assessee-Firm** was originally constituted w.e.f.01.03.2007 and its PAN was **AABFF6775C**; and w.e.f. 02.04.2009 was running business of manufacturing and sales of foot wears, shoe uppers, leather garments, etc., in the name and style of M/s. Florida Shoes, with two partners namely Shri S. Janarthanam & Shri J. Srinivasan, **which firm got dissolved on 31.03.2015** and is the assessee in this case [herein after the First Firm/assesse].

3. Then, a new partnership firm (hereinafter in short "Second firm") was constituted w.e.f. 01.04.2015 in the same name of M/s.Florida Shoe, but with two partners namely Shri V. Madhanmohan & Shri G. Devan, and their PAN was **AADFF8751G**, which transferred the business from the first firm to second firm w.e.f. 01.04.2015 [*after dissolution of the First firm/assessee in this case on 31.03.2015*]. According to the Ld.AR, a perusal of the fixed assets schedule of the new/second partnership firm (also in the name and style of M/s. Florida Shoes) for the year ended on 31.03.2016 and more specifically opening balance as on 01.04.2015 and the closing balance of the assessee as on 31.03.2015 would show that the assets were completely transferred by the assessee Firm to the new partnership as on 01.04.2015 and that the whole confusion happened,



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because, the assessee's bank accounts were continued to be operated by the new/second firm.

S.No.	IFS Code	Name of the Bank	Account Number	Account Type
1	IDIB000A016	Indian Bank	797077656	Current
2	HDFC0001245	HDFC Bank	12452000002460	Current
3	SBIN0005636	State Bank of India	11431867289	Current

4. Because the new firm operated with the aforesaid bank accounts and the AO taking note of the transactions in the bank account, had issued notice u/s.148 of the Income Tax Act, 1961 (hereinafter in short 'the Act') dated 25.03.2021 for AY 2017-18 to the assessee-Firm, [*which got dissolved on 31.03.2015*] and issued notices which obviously couldn't be served upon the assessee, because, as noted it was dissolved. And finding no response, the AO passed the best judgment assessment u/s.144 of the Act adding an income of Rs.24,87,230/- u/s.69A/69C of the Act and taxed u/s.115BBE of the Act.

5. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who took note of the fact of the formation of second firm on 01.04.2015. But he has taken a view that the second firm was functioning along with the first firm/assessee from 01.04.2014. According to the Ld.CIT(A), Shri J. Srinivasan (partner of assessee), continued after 31.03.2015, and managed the business of the assessee's firm which fact according to the Ld.AR is per-se erroneous, since the assessee's firm i.e. the first firm got



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dissolved and is non-est in eyes of law; and the new firm/second firm partners were Shri V. Madhanmohan & Shri G. Devan; and it was asserted by the Ld.AR that Shri J. Srinivasan was not a partner in the new firm/second firm, [*which took over the business of the dissolved firm and continued operating the bank account opened by the erstwhile assessee*]. According to the Ld.AR, such an erroneous assumption of fact is perverse. In the aforesaid background, according to the Ld.AR, it can be seen that neither the AO nor the Ld.CIT(A) appreciated the facts of the case and their view are perverse; and further, he pointed out that since assessee got dissolved on 31.03.2015, the notice issued by u/s 148 of the Act, couldn't be served upon the assessee and therefore, assessee obviously couldn't place relevant facts before the AO and consequently, the AO passed best judgment assessment u/s.144 of the Act. Therefore, the Ld.AR prayed that since assessee didn't get proper opportunity before the AO, 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), he prayed that the matter be remitted back to the file of the AO for fresh assessment. We find force in the submissions of the Ld.AR and note that the AO has passed an ex parte order; and the Ld.CIT(A) has discussed facts as noted supra, but there are certain assertions made by him in the impugned order which are contrary to the facts as noted by him at Para Nos.5.2.1 to 5.3 vis a vis his findings at Para No.5.14.1. Since relevant facts are not



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clear and finding of facts are necessary in this case; and as noted [supra] assessee didn't get proper opportunity before the AO, we set aside the impugned order of the Ld.CIT(A) and remand the assessment back to the file of the AO with a direction to *de novo* assess the income of the assessee in accordance to law; and the assessee is at liberty to raise legal issue as well as on merit and file written submissions/relevant documents to substantiate its case and the AO to frame fresh assessment in accordance to law after hearing the assessee.

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

Order pronounced on the 21st day of August, 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: 21.08.2024.
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