

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

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

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

आयकर अपील सं./ITA Nos.913 & 915/Chny/2024
निर्धारणवर्ष/Assessment Year: 2012-13

Makkal Kattral Maiyam, MavattaMagamai-E Service Centre, Jaibeen Nagar, Vengikaal, Thiruvannamalai-606 603.	v.	The ITO (Exemptions), Ward-3, Chennai.
[PAN: AACTM 5036 E]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri N. Arjun Raj, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri P. Sajit Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing	:	11.07.2024
घोषणाकीतारीख /Date of Pronouncement	:	21.08.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "theLd.CIT(A)"), Delhi, dated 17.06.2022 & 14.02.2024 for the Assessment Year (hereinafter in short "AY") 2012-13 against dismissing the regular appeal emanating from assessment order; and the other appeal is against his dismissal of the rectification application filed by assessee u/s.154 of the Income Tax Act, 1961 (hereinafter in short "the Act") respectively.



2. At the outset, both the parties agreed that the issues permeating in both the appeals are the same. Therefore, we take up the regular appeal (ITA No.913/Chny/2024) as the lead case and the result of which will be followed in appeal No.915/Chny/2024.

3. The main grievance of the assessee is against the action of the Ld.CIT(A) dismissing the appeal of the assessee only on the ground that the assessee failed to prove before him that there was sufficient cause for not presenting the appeal within the statutory limitation period (i.e. failure to file condonation application for delay of 160 days in filing appeal before him). Therefore, he refused to condone the delay and without discussing the grounds of appeal on merits, he has dismissed the appeal of the assessee. We don't countenance the impugned action of the Ld.CIT(A) for the reason that if an assessee is aggrieved by the action of the AO (assessment order/rectification), then, he has a statutory right of appeal against the action of the AO before the First Appellate Authority i.e. Ld.CIT(A); and the Ld.CIT(A) is duty bound to decide the grounds of appeal of the assessee in terms of sub-section 6 of sec.250 of the Act; and instead if the Ld.CIT(A) dismisses the appeal without calling for the reasons for delay in filing of appeal, the statutory right of assessee would be meaningless/futile, and in the normal course, we would have remitted it back to the Ld.CIT(A) for adjudication of the grounds of appeal. But, it has been brought to our notice that the AO has passed the order without



:: 3 ::

giving proper opportunity to the assessee and prayed that the assessment maybe restored back to the file of the AO by 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). According to the Ld.AR, even though, the assessee was enjoying registration u/s.12AA of the Act from AY 2013-14, but the AO while computing the total income of the assessee has not allowed the claim of expenditure which he is bound to grant even applying the normal commercial principles to compute the income of an assessee who even doesn't enjoy registration u/s.12 of the Act. We note that there is no discussion in the assessment order as to the claim of expenditure made by the assessee. Therefore, it is a non-speaking order. It is well settled that "the reasons are heart-beat of any judicial/quasi judicial order". In absence of reasons assigned, the order is vitiated in law. The claim of expenditure of the assessee has not been dealt with by the AO and therefore, we find force in the submission of the Ld.AR and set aside the impugned order of the Ld.CIT(A) and restore the assessment back to the file of the AO for *de novo* assessment. The assessee is directed to diligently file relevant documents/written submissions to substantiate its claim for claiming expenditure and the AO to adjudicate the claim in accordance to law after hearing the assessee. And the observations made by us, if any, should not influence the AO while framing the fresh assessment.



:: 4 ::

4. In the light of the aforesaid action of ours emanating from the regular assessment u/s.143(3) of the Act dated 27.02.2015 passed u/s.143(3) of the Act, which culminated in the Ld.CIT(A) passing the appellate order on 17.06.2022 for AY 2012-13 which we have disposed off (supra) and note that the appeal emanating from the rectification order passed by the Ld.CIT(A) dated 14.02.2024 which led to filing of the appeal before us, numbered as ITA No.915/Chny/2024 has become infructuous; and we observe further that the AO should not be influenced by the Ld.CIT(A)'s order passed u/s.154 of the Act dated 14.02.2024. And the AO to pass fresh assessment order in accordance to law after hearing the assessee without being influenced by the rectification order passed by the Ld.CIT(A) as noted supra.

5. In the result, appeal filed by the assessee in ITA No.913/Chny/2024 is allowed for statistical purposes; and appeal filed by the assessee in ITA No.915/Chny/2024 stands dismissed being infructuous.

Order pronounced on the 21st day of August, 2024, in Chennai.

Sd/-
(जगदीश)
(JAGADISH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 21st August, 2024.

TLN, Sr.PS



ITA Nos.913 & 915/Chny/2024 (AY 2012-13)
Makkal Kattral Maiyam

:: 5 ::

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