

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' 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.1627/Chny/2024
निर्धारण वर्ष/Assessment Year: 2015-16

Shri Krishnan Rajesh, 112/15A, Fifty Feet Road, Sellur, Madurai – 625 002.	v.	The ITO, NCW-3(2), Madurai.
[PAN: AMVPR 9348 F]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri Tarun, Adv. For Shri S. Sridhar, Adv.
प्रत्यर्थी की ओर से /Respondent by	:	Shri G. Suresh, JCIT
सुनवाईकीतारीख/Date of Hearing	:	22.07.2024
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 "the Ld.CIT(A)"), Delhi, dated 11.11.2022 for the Assessment Year (hereinafter in short "AY") 2015-16.

2. At the outset, it is noted that there is a delay of '504' days in filing of the appeal. The assessee has filed an affidavit along with petition for condonation of delay in filing of the appeal. The Ld.CIT(A) has passed the



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impugned order on 11.11.2022 and assessee/the Ld.AR was in the dark about the proceedings going on before the Ld.CIT(A) and only came to know about the impugned action of the Ld.CIT(A) when assessee received recovery notice from Department. It was pointed out that the assessee didn't receive any communication from the Ld.CIT(A) because the purported notices sent by the Ld.CIT(A) was neither sent to the e-mail ID given by assessee in the return of income nor e-mail ID mentioned in the Income Tax Portal as that of assessee. And as noted, when assessee came to know about the impugned order [when it received recovery letter from the Department on 26.04.2024 raising a demand of more than Rs.23 lakhs] immediately filed appeal before this Tribunal. Therefore, he pleaded that the delay may be condoned. From perusal of the relevant documents/Affidavit, we note that due to the omission on the part of the Ld.AR of the assessee to regularly monitor his e-mail box, led to the passing of ex parte order by the Ld.CIT(A). Such an omission on the part of the Ld.AR should not be a ground to penalize the assessee. Therefore, we condone the delay in filing of the appeal with a direction to the assessee to pay a sum of Rs.5,000/- as cost to the State Legal Aid Authority, Hon'ble Madras High Court, and produce necessary proof of payment of cost to the said authority.

3. As noted, the Ld.CIT(A) has passed an ex parte order as well as the AO has passed an ex-parte order (best judgment assessment u/s.144 of



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the Income Tax Act, 1961). According to the Ld.AR, the assessee was running a bakery and had filed his return of income admitting total income of Rs.3,59,940/- by filing return of income on 17.02.2016 for AY 2015-16. According to the Ld.AR, later the case was selected for limited scrutiny to examine the cash deposits in the Savings Bank A/c which was more than the turn over shown by assessee. According to the Ld.AR, the Authorized Representative who was entrusted with the case due to reasons beyond his control, couldn't appear before the AO which resulted in him passing the best judgment assessment without hearing the assessee. Therefore, he pleaded that proper opportunity be granted to the assessee before the AO. We find from the perusal of the Assessment Order that the AO had called for the nature & source of the cash deposits in the Savings Bank A/c of the assessee with Indus Bank and Indian Bank; and since, relevant documents were not filed, the AO has made the addition. We note that the assessee had entrusted the matter with the Ld.AR who failed to appear before the AO and therefore, the assessee shouldn't be penalized for the omission on the part of the Ld.AR. Before us, the Ld.AR of the assessee Mr. Tarun, Advocate, undertakes to participate and appear before the AO and file all the relevant documents/written submissions.

4. In the light of the aforesaid undertaking and since, the assessee didn't get proper opportunity before the AO (supra) by relying on the



ITA No.1627/Chny/2024 (AY 2015-16)
Shri Krishnan Rajesh

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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 restore the assessment back to the file of the AO for de novo assessment in accordance to law. The assessee to file the proof of remitting of Rs.5,000/- as cost to the State Legal Aid Authority, Hon'ble Madras High Court before the AO as ordered (supra) and thereafter, the AO to hear the assessee and pass order in accordance to law.

5. 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/-
(अमिताभ शुक्ला)
(AMITABH SHUKLA)
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

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