

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.1541/Chny/2024
निर्धारण वर्ष/Assessment Year: 2012-13

St. Marys Matriculation – Hr. Sec. School, (The Educational Institute of the Sisters of St. Joseph of Cluny), Old Hospital Road, Sorkalpet, Cuddalore – 607 001.	v.	The ITO (Exemptions), Ward-2, Chennai.
[PAN: AACAS 7855 E]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri Tarun, Advocate For Shri S. Sridhar, Advocate
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 15.06.2023 for the Assessment Year (hereinafter in short "AY") 2012-13.



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2. There is a delay of more than '282' days in filing of the appeal before the Tribunal. The assessee has filed an affidavit, which is signed by the Secretary/Managing Trustee of the Educational Institute. On perusal of the same reveals that the assessee is imparting education in the districts of Cuddalore since 1973 and filed return of income for AY 2012-13 on 18.09.2012 admitting an income of Rs.NIL, since it was a public Charitable Trust and claimed exemption u/s.11 of the Income Tax Act, 1961 (hereinafter in short "the Act"). Later, the return was selected for scrutiny and the AO framed the assessment determining the income at Rs.1,01,06,776/- by order dated 30.03.2015. The assessee immediately filed appeal before the Ld.CIT(A) which appeal was transferred to the National Faceless Assessment Centre (NFAC) and the notices were issued to the e-mail of the Ld.AR, Mr.Daniel Selvaraj, CA, who was not well-versed with the electronic devices and was not aware of issuance of notices which resulted in the Ld.CIT(A)/NFAC passing an ex parte order dated 15.06.2023; and since, the Ld.AR was in the dark about the disposal off the appeal and came to know about the impugned order only in May, 2024, the assessee immediately thereafter, filed the appeal on 18.05.2024 before this Tribunal which resulted in delay of '282' days; and therefore, pleaded for condoning the delay. In this regard, we note



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that in this case, there was a change in the appellate proceedings from the physical mode to virtual/faceless regime, and the Ld.AR of the assessee was not well-versed with the computers/internet, and since he was not aware of the proceedings going on against the assessee before NFAC [listing and calling for details by the Ld.CIT(A)] which ultimately resulted in the Ld.CIT(A) passing the impugned ex parte order. In such a scenario and after perusal of the contents of the Affidavit, we are of the opinion that due to the omission on the part of the Ld.AR of the assessee, the assessee should not be penalized. And since, there was sufficient cause which expression according to us, should be given liberal construction so as to advance the cause of justice, we condone the delay and proceed to adjudicate the grounds of appeal on merits.

3. 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 qua assessee; and he also pointed out that the AO had passed the order in haste/hurried manner; and even though, it was pleaded [in the grounds/written submission] before the Ld.CIT(A) that assessee didn't get proper opportunity before the AO, the Ld.CIT(A) brushed the same aside and passed the impugned order. In this regard, we find that the AO had called for certain relevant details and asked the assessee to file



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reconciliation etc., vide notice dated 20.03.2015 and the assessee duly filed reply on 25.03.2015 and the AO rejected the explanation given by the assessee and framed hurriedly the assessment on 30.03.2015. According to the Ld.AR, it can be seen that the assessee didn't get proper opportunity before the AO. In such circumstances, he pleaded that the assessee may be given proper opportunity before the AO so that relevant documents can be filed before him. Having gone through the Assessment Order and the impugned order of the Ld.CIT(A) we find that the impugned order of the Ld.CIT(A) is an ex parte order and the AO has also passed the order hurriedly on 20.03.2015 before the time barring date after calling for relevant documents. It is noted that the assessee is a charitable society imparting education in the district of Cuddalore and claimed exemption u/s.11 of the Act. According to the Ld.AR, the AO has not considered the relevant evidences filed by the assessee and arbitrarily made additions in a hurried manner. According to us, it was incumbent upon the AO to have given the assessee "*right to be heard*" which should have been meaningful, and since, the 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), 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. The assessee is at liberty to file all relevant documents and written



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submissions and participate in the assessment proceedings and the AO to frame *de novo* assessment in accordance to law.

4. 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