

आयकर अपीलीय 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 No.1013/Chny/2024
निर्धारणवर्ष/Assessment Year: 2018-19

M/s.Chhotagovindpur & Bagbera- Drinking Water – Supply Project Ltd., New No.136, G.R.Tower 4 th Floor, Nelson Manickam Road, Aminjikarai, Chennai-600 029.	v.	The ITO, Corporate Ward-1(3), Chennai.
[PAN: AAGCC 0433 L]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri R. Viswanathan, FCA
प्रत्यर्थी की ओर से /Respondent by	:	Shri R. Clement Ramesh Kumar, CIT
सुनवाईकीतारीख/Date of Hearing	:	19.07.2024
घोषणाकीतारीख /Date of Pronouncement	:	04.09.2024

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 14.02.2024 for the Assessment Year (hereinafter in short "AY") 2018-19.

2. The main grievance of the assessee is against the action of the Ld.CIT(A) dismissing the appeal on the ground that the assessee didn't



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file application for admission of additional evidences during the course of appellate proceedings before the Ld.CIT(A), without explaining 'as to why' the additional evidences should be admitted under Rule 46A the Income Tax Rules, 1962 and therefore, the Ld.CIT(A) didn't admit the additional evidences filed by the assessee along with written submissions and thereafter, the Ld.CIT(A) has merely reiterated the AO's order and dismissed the appeal of the assessee. The Ld.AR assailing the impugned action of the Ld.CIT(A) contented that the action of the Ld.CIT(A) is bad in law for violation of natural justice; and also brought to our notice the reason for AO passing ex-parte order because assessee didn't file the relevant evidences during the course of assessment proceedings. According to Ld AR the reason for assessee not able to file relevant evidence during assessment proceedings was because assessment happened in the midst of pandemic Covid-19 and the AO passed the Assessment Order u/s.144 of the Income Tax Act, 1961 (hereinafter in short "the Act") (best judgment assessment) vide order dated 08.09.2021 by computing total income at Rs.22,43,12,797/- in place of returned income of Rs.1,49,55,022/-; And even though, the assessee brought to the notice of the Ld.CIT(A) that due to pandemic, assessee was unable to collect the relevant evidences and therefore has filed the same before him, but the Ld.CIT(A) has brushed aside the reason for non-filing of



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relevant evidences before the AO and arbitrarily dismissed the appeal on hyper-technical grounds that assessee failed to file application for admission of additional evidences. Moreover, we note that the AO has passed best judgment assessment u/s.144 of the Act and has made the addition/disallowance as under:

- i) Difference in turnover as per the 26AS statement of the assessee and turnover disclosed by the assessee in ITR of Rs.20,46,23,562/- which the assessee could not reconcile.
- ii) An addition/disallowance of Rs.47,34,213/- u/s. 43B of the Act.
- iii) An amount of Rs.2,31,510/-u/s.36(1) (va) of the Act.
- iv) Deduction u/s 801A of the Act of Rs. 1,49,55,022/-

3. It is noted that assessee before the Ld.CIT(A) had raised Ground No.2, wherein, it was pointed out that AO didn't provide proper opportunity during assessment proceedings and pleaded that the AO ought to have proper opportunity/given time as Income Tax portal was not functioning between May to August, 2021; and that the AO hurriedly passed the Assessment Order, even though, there was sufficient time for framing of the Assessment Order. The Ld.AR also brought to our notice that since the assessee found it difficulty to upload the required details, (as IT portal wasn't working from May to August, 2021), assessee filed a query with the Grievance Cell on 13.06.2021 explaining the difficulty in filing the details; and in response to the same, the CPC on 24.09.2021 responded by stating that the problems have been resolved. However, by



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the time, the AO has passed Assessment Order on 08.09.2021 without looking into the relevant material. And even though, as noted, the assessee raised Ground No.2 (supra) before the Ld.CIT(A) pointing out that the AO failed to provide proper opportunity during the assessment proceedings, the Ld.CIT(A) brushed it aside on the reason that adequate opportunity had been granted to the assessee. We don't countenance this action of the Ld.CIT(A). We find that AO failed to give proper opportunity to the assessee during assessment proceedings since there were technical glitches in the IT portal between May to August, 2021. Therefore, relying the decision of the Hon'ble Supreme Court in the case of TIN Box Co. v. CIT reported in [2001] 249 ITR 216 (SC) wherein, it was held as under:

1. It is unnecessary to go into great detail in these matters for there is a statement in the order of the Tribunal, the fact-finding authority, that reads thus :

"We will straightaway agree with the assessee's submission that the Income-tax Officer had not given to the assessee proper opportunity of being heard."

2. That the assessee could have placed evidence before the first appellate authority or before the Tribunal is really of no consequence for it is the assessment order that counts. That order must be made after the assessee has been given a reasonable opportunity of selling out his case. We, therefore, do not agree with the Tribunal and the High Court that it was not necessary to set aside the order of assessment and remand the matter to the assessing authority for fresh assessment after giving to the assessee a proper opportunity of being heard.

3. Two questions were placed before the High Court, of which the second question is not pressed.

The first question reads thus:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not setting aside the assessment order in spite of a finding



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arrived at by it that the Income-tax Officer had not given a proper opportunity of hearing to the assessee?"

4. In our opinion, there can only be one answer to this question which is inherent in the question itself: in the negative and in favour of the assessee.

5. The appeals are allowed. The order under challenge is set aside. The assessment order, that of the Commissioner (Appeals) and of the Tribunal are also set aside. The matter shall now be remanded to the assessing authority for fresh consideration, as aforesaid. No order as to costs.

4. Respectfully following the decision of the Hon'ble Supreme Court in the case of TIN Box Co. (supra), and in the light of the fact that the assessee didn't get proper opportunity before the AO, we set aside the impugned order of the Ld.CIT(A) and restore the assessment back to the file of the AO with a direction to frame de novo assessment. The assessee is at liberty to file all the relevant documents before the AO and the AO to frame fresh assessment in accordance to law after hearing the assessee.

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

Order pronounced on the 04th day of September, 2024, in Chennai.

Sd/-
(जगदीश)
(JAGADISH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 04th September, 2024.

TLN, Sr.PS

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**



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आदेश की प्रतिलिपि अग्रेषित / **Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF