

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' 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.1916/Chny/2024  
निर्धारण वर्ष/Assessment Year: 2017-18

Mr.Selvaraj Sampath, No.244/11, Thirumal Nagar, Krishnapuram, Somanur, Coimbatore-641 668.	v.	The ITO, NCW-4(1), Coimbatore
[PAN: CYMPS 1122 B]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.K. Muthukumar, CA
प्रत्यर्थी की ओर से /Respondent by	:	Ms. Gowthami Manivasagam, JCIT
सुनवाईकीतारीख/Date of Hearing	:	24.09.2024
घोषणाकीतारीख /Date of Pronouncement	:	04.12.2024

**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 03.01.2024 for the Assessment Year (hereinafter in short "AY") 2017-18.

2. At the outset, it is noted that appeal has been filed after delay of '135' days and the assessee had filed an affidavit explaining the cause for



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the delay. Having perused the contents of the affidavit, we find that there is sufficient cause for the delay and therefore, we condone the delay and proceed to adjudicate the grounds of appeal raised by the assessee.

**3.** Ground Nos.2 & 3 are against the action of the Ld.CIT(A) dismissing the appeal without hearing the assessee. In this regard, the Ld.AR pointed out that the Ld.CIT(A) has dismissed the appeal only on the ground that the assessee didn't respond to his 2 (two) notices on 28.01.2021 and 08.12.2023 and that he didn't go into the merits of the grounds while passing the ex parte order qua assessee. The Ld.AR also brought to our notice that the AO has also passed an ex parte best judgment assessment u/s.144 of the Income Tax Act, 1961, because assessee couldn't appear before the AO due to reasons beyond his control and which prevented him from adducing evidence regarding nature and source of cash deposits during demonetization. Be that as it may, we notes that the Ld.CIT(A) as well as the AO has passed ex parte order qua assessee without hearing him. The Ld.AR undertakes to appear before both the authorities provided an opportunity is given.

**4.** Per contra, the Ld.DR doesn't want us to give one more innings to the assessee.



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**5.** We find from perusal of the records that assessee didn't get proper opportunity before the AO as well as the Ld.CIT(A) which fact is discernable from the affidavit filed before us. Since at the stage of assessment itself assessee didn't get proper opportunity of hearing, we 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), are inclined to 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 de novo assess the income of the assessee. The assessee is directed to file written submissions/relevant documents to substantiate its Return of Income and other issues raised by AO in the first round of assessment wherein, it is noted that assessee appeared once before the AO on 04.11.2019 and undertook to produce evidence to substantiate the nature and source of cash deposited during demonetization period. However, it was brought to our notice that assessee was prevented due to reasons beyond his control from appearing again before the AO, which led to the addition u/s.69 of the Act. Therefore, we give one more opportunity the assessee to appear before the AO, but since there is negligence on the part of the assessee, cost of Rs.5,000/- is imposed, which the assessee should remit to the State Legal Aid Authority, Hon'ble Madras High Court, and produce necessary proof of depositing of the same before the AO and thereafter,



ITA No.1916/Chny/2024 (AY 2017-18)  
Mr.Selvaraj Sampath

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the AO to frame the de novo assessment after hearing the assessee in accordance to law.

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

Order pronounced on the 04<sup>th</sup> day of December, 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: 04<sup>th</sup> December, 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