

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER
आयकर अपील सं./ITA No.604/Chny/2024
निर्धारण वर्ष /Assessment Years: 2018-19

Ramani Cars Private Limited
No.54/1, Mettupalayam Road,
Kavundampalayam,
Coimbatore-641030.
[PAN: AAECR2726D]

Deputy Commissioner of Income
Tax,
Corporate Circle-1
Coimbatore.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by

: None

प्रत्यर्थी की ओर से /Revenue by

: Ms. Gouthami Manivasagam, JCIT

सुनवाई की तारीख/Date of Hearing

: 09.10.2024

घोषणा की तारीख /Date of Pronouncement

: 06.12.2024

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

This appeal is filed against the order bearing DIN & Order No.ITBA/NFAC/S/250/2023-24/1060468868(1) dated 03.02.2024 of the Learned Commissioner of Income Tax [herein after "CIT(A), National Faceless Appeal Center[NFAC], Delhi, for the assessment years 2018-19. Through the aforesaid appeal the assessee has challenged order u/s 250 dated 03.02.2024 passed by NFAC, Delhi.

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2.0 The assessee has raised altogether 4 grounds of appeal contesting, inter-alia, addition of Rs.62,85,000/- and of Rs.1,53,20,200/- u/s 37, and of Rs.23,40,259/- u/s 36(1)(va) made by the Ld. AO and which is confirmed by the Ld.CIT(A).

3.0 We have noted that in this case order u/s 143(3) dated 19.03.2021 was passed by the Ld.AO after making addition of Rs.62,85,000/- by treating certain expenses as being capital in nature, of Rs. 2,03,20,200/- as expenses not related to purposes of business of Rs.2,81,344/- on expenses being penal in nature etc. The Ld. AO had noted that the assessee was engaged in business of sales and service of Volkswagen motor car. The Ld.AO noted that the assessee had claimed substantial expenses and that but for the abrupt increase in expenses, the profits of the assessee would have been more. The Ld. CIT(A) partly allowed the appeal of the assessee by deleting additions made qua addition of Rs.2,81,344/- on account of penal expenses, Rs.3000/- on account of ROC fees Rs.50,00,000/- (out of total addition of Rs.2,03,20,200/-) on account of expenses not related to purposes of business.

4.0 The Ld. DR argued in favour of the order of Ld.CIT(A) submitting that the appellate authority has given all necessary relief to the assessee and that no further relief is permissible.

5.0 We have noted that no appearance was made from the assessee's side on the date of hearing. Thus, a presumption qua assessee not interested in prosecuting its case can be drawn leading to dismissal of appeal in limine. We have however noted that the assessee in this case had filed a written submissions dated 29.08.2024 and we deem it appropriate to consider the same for adjudication of this appeal. Perusal of the impugned written submissions indicate that the assessee has, inter-alia, primarily contested violation of principles of natural justice in its case. It has been contended that opportunity of being heard which lies at the base of any judicial proceeding, has not been provided. The assessee has contended that it had requested for grant of video conferencing during assessment proceedings, following the due technical process, but the same was not provided. The assessee had contended this issue before the Ld.CIT(A) also who also ignored the same on the premise that the assessee could have asked for the same before Ld.CIT(A).

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6.0 We have heard rival submissions in the light of material available on records. We have noted that the Ld.AO at para 17 on page 7 / 8 of his order recorded that “...*In her letter submitted on 18.03.2021 through e-proceedings, the assessee company has asked for personal hearing through video conferencing facility. However, the same is not presently available in ITBA due to technical reasons, and hence the request of the assessee cannot be entertained at this end....*”. The action of the AO has been found to be totally violative of law of natural justice in which opportunity of being heard lies as its basic constituent. The Assessing Officer cannot take shelter behind technical deficiencies or insufficiency of the department to deny the basic right which every litigant possess in his case. We have also noted that the limitation date in this case was 31.03.2021. The assessee had applied for video conferencing on 18.03.2021 and the assessing officer with a clear intention of denying the right of personal hearing to the assessee, proceeded to conclude the assessment on 19.03.2021. Assuming that there was some contemporaneous systemic deficiencies, the Ld. AO could have waited for few more days for their resolution and then concluded assessment after providing the opportunity. Thus, the Ld. AO cannot shield his misconduct behind technical deficiency of the department.

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7.0 Equally appalling is the conduct of the Ld.First Appellate Authority. The assessee had submitted before him that his rights of natural justice were violated by the denial of requested personal hearing through video conferencing. Instead of deciding as to the whether contentions were assessee were correct or not he proceeded on a different tangent, stating that “....*In these circumstances, as the powers of CIT(A) are coterminous with the assessing officer, the assessee could have availed the opportunity of personal hearing before me. However, no such opportunity was sought by the assessee...*”. The observations of responsible senior appellate authority of the revenue are uncalled for and unacceptable. Contemporaneous Statute clearly stipulates that opportunity of being heard, if demanded by personal hearing through video conferencing, has to be accorded to the taxpayer.

8.0 Observing on the importance of principles of natural justice Lord Hewart of bury has held that “...*essential to the proper administration of justice is that every party should have an opportunity of being heard, so that he may put forward his own views and support them by arguments and answer the views put forward by his opponents...*”. In the case of Charan Lal Sahu Vs Union of India, Hon’ble Apex Court observed that justice, it ought to be noted, is a psychological yearning in which men acceptance of their view points before the forum or authority enjoined or

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obliged to take a decision before effecting their right. The appellant in the present case has relied upon a catena of judgements delivered by Hon'ble High Courts stipulating that grant of personal hearing through video conferencing is an inalienable right vested with the litigant which cannot be violated by a public authority. Thus, reliance has placed upon the case of Chanjai Aggarwal 2021 (6) TMI 336, Umkal health care private limited 2021, 131 taxmann.com 325, Bharath Aluminium Company Limited 2022, 134 taxmann.com 127 of Hon'ble Delhi High Court. The appellant has also relied upon the decision of Hon'ble Jurisdictional High Court in the case of Vee See Bee Trust in WP No.11910 of 2024 and WMP No.13006, 13008 and 13009 of 2024. We have noted that in the impugned decision their Lordships have concluded that denial of personal hearing if demanded through video conferencing by the litigant, renders the consequent order null and void. For clarity the order of Hon'ble High Court is reproduced as under:-

“...An assessment order dated 22.03.2024 is challenged on the <https://www.mhc.tn.gov.in/judis> ground that a personal hearing through video conferencing or other mode was not provided to the petitioner in spite of an express request for the same. Pursuant to the petitioner filing the return of income for assessment year 2022-23, notices were issued to the petitioner under [Section 142\(1\)](#) and [143\(2\)](#) of the Income Tax Act, 1961 (the [I-T Act](#)). Such notices were replied to by the petitioner. This was followed by show cause notice dated 30.01.2024. By such show cause notice, the petitioner was called upon to show cause as to why the proposed variations should not be made. The petitioner replied to such show cause notice and requested for personal hearing through video conferencing. Such request was made on 03.02.2024. The impugned assessment

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order was issued in these facts and circumstances on 22.03.2024 without granting a personal hearing.

2. Learned counsel for the petitioner referred to the show cause notice, the petitioner's reply and the specific request for a personal hearing in the manner prescribed and submitted that the impugned <https://www.mhc.tn.gov.in/judis> order is vitiated for non compliance with the mandatory prescription under [Section 144B](#) of the I-T Act. In support of this contention, he relied upon an earlier order of this Court dated 26.04.2024 in W.P.No.11098 of 2024.

3. Mrs.S.Premalatha, learned junior standing counsel, accepts notice for the respondents. By turning to the impugned order, learned counsel pointed out that the petitioner received notices under [Section 143\(2\)](#) and [Section 142\(1\)](#) and replied thereto. Likewise, she pointed out that the petitioner replied in full to the show cause notice. She contended that principles of natural justice were complied with by providing opportunities to the petitioner to reply to the notices and the show cause notice. In such context, she contends that the non provision of a personal hearing by video conferencing does not vitiate the order. She points out that this Court interfered in order dated 26.02.2024 in W.P.No.32560 of 2023 because an issue not raised earlier was included in the impugned <https://www.mhc.tn.gov.in/judis> draft assessment order in that case. She also submits that the fact situation in [Bharat Aluminium Company Limited v. Union of India](#) (2022)134 taxmann.com 187 is distinguishable.

4. The case turns on an interpretation of clause (viii) of sub- section (6) of [Section 144B](#) of the I-T Act. In W.P.No.11098 of 2024, I had extracted the said provision and concluded that the statutory prescription is intended to be mandatory for reasons set out therein. The petitioner has placed on record evidence that a request for personal hearing was made not only in the reply dated 03.02.2024 to the show cause notice but also by adopting the method prescribed in such regard. In those circumstances, the impugned order cannot be sustained by reason of breach of the mandatory requirement of [Section 144B](#).

5. For reasons set out above, impugned assessment order dated 22.03.2024 is set aside and the matter is remanded. The first <https://www.mhc.tn.gov.in/judis> respondent is directed to provide a reasonable opportunity to the petitioner, including by way of a personal hearing through video conferencing, and thereafter issue a fresh assessment order. This exercise shall be completed within three months from the date of receipt of a copy of this order....”

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9.0 Thus, as the denial of personal hearing through video conferencing in this case is an established fact of this case, we are of the view that, in respectful compliance to the decision of Hon'ble Jurisdictional High Court, the matter deserves to be set aside to the file of the Ld.AO for re adjudication. We are of the view that ends of justice would be met if the assessee is given another opportunity to present its case and filed supporting evidences before the Ld.AO. The decision to remit it back to the Ld. AO is taken in view of the fact that an Assessing Officer is the fulcrum of assessment proceedings. He possess the first right and responsibilities to examine facts of a case before arriving at his decision qua determination of taxable income in a particular case. We have noted with respectful deference the decision of Hon'ble Apex Court in the case of TIN box 249 ITR 216 on the subject matter. Accordingly, the matter stands remitted back to the Ld. AO for fresh adjudication de novo by passing a speaking order. To the extent the order of lower authorities on this issue stands set aside. The Ld. AO shall give opportunities of being heard to the assessee including a personal hearing if demanded through video conferencing and it shall be bounden upon the assessee to comply with the notices issued by the Ld. AO. Any non-compliance on the part of the assessee can be adversely viewed. The assessee is at liberty to produce all the evidences filed through its paper

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book before us including any other evidences deemed relevant in support of its claims before the Ld. AO during the readjudication proceedings. Accordingly, all the grounds of appeal raised by the assessee are therefore allowed for statistical purposes.

10.0 In the result, the appeal of the assessee is allowed statistical purposes.

Order pronounced on 6th, December-2024 at Chennai.

Sd/-

(यस यस विश्वनेत्र रवि)

(SS Viswanethra Ravi)

न्यायिक सदस्य / Judicial Member

Sd/-

(श्री अमिताभ शुक्ला)

(Amitabh Shukla)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 6th, December-2024.

KB/-

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT - Coimbatore
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF