

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.1914 & 1915/Chny/2024
निर्धारण वर्ष/Assessment Years: 2010-11 & 2012-13

M/s. Prakasan Associates, B1, 1 st Floor, 79/171, VM Street, Mylapore, Chennai-600 004.	v.	The ITO, NCW-1(6), Chennai.
[PAN: AAJFP 2404 Q]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr. B. Venkat Ramanan, CA
प्रत्यर्थी की ओर से /Respondent by	:	Ms. R. Anitha, Addl.CIT
सुनवाईकीतारीख/Date of Hearing	:	04.11.2024
घोषणाकीतारीख /Date of Pronouncement	:	13.12.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "the Ld.CIT(A)"), Delhi, both dated 15.05.2024 for the Assessment Year (hereinafter in short "AY") 2010-11 & 2012-13.

2. At the outset, the Ld.AR of the assessee drawing our attention to Ground No.1, wherein, he assails the action of the Ld.CIT(A) on the ground that there was violation of principles of natural justice and also brought to our notice that the AO has passed an order u/s.144 (best



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judgment assessment) of the Income Tax Act, 1961 (hereinafter in short 'the Act') *ex parte* qua assessee. In respect of the aforesaid submission, the Ld.AR brought to our notice that the assessee is a partnership firm, engaged in the business of trading in commodity derivatives through a concern "M/s.Karvy Comtrade Ltd.' [M/s.KCL]. And that the assessee-Firm was established in Chennai by two siblings who are also partners namely Shri A.P. Prakasan and Smt. P. Rekha. According to the assessee for the purpose of trading in commodity derivatives, the assessee sourced funds from various investors [i.e. took several loans from several persons promising return of 40-50%]. And initially, the assessee was able to earn good profits; and out of such profits earned, the assessee could fulfill its promise viz give investors returns on their investment. However, due to the volatile nature of commodity market, the assessee incurred huge losses from commodity trading and therefore, couldn't give the investors the agreed interest on the investments, which prompted them to take coercive action against the assessee i.e. criminal cases/FIR's were lodged/filed against partners. Pursuant to which, assessee's partner Shri A.P. Prakasan was under judicial custody from October, 2013 to July, 2014 and granted bail only during July, 2014. And the other partner was granted anticipatory bail. And pursuant to the police action, laptop, mobile phone, books of accounts and all relevant documents maintained in their Office [at Mylailam, New No.171, Old No.79, V.M. Street,



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Mylapore, Chennai-600 004], were seized and retained by the City Crime Branch. According to the assessee, due to the unfortunate turnings of events, the partners were under tremendous mental pressure/tension/depression; and due to which, they shifted their residence from the existing address, and couldn't effectively carry out the business from the FY 2012-13 onwards. And that the assessee-Firm filed its RoI on 03.03.2012 for AY 2010-11, and due to the aforesaid unfortunate turn of events/incidents, the assessee couldn't furnish the RoI for AY 2012-13.

3. The AO based on the tax payer information statement (ITS statement) re-opened the assessment for AY 2012-13 and issued notices to the address available as per the RoI for AY 2010-11 which mentioned the Mylapore address which was vacated by the assessee (supra) and therefore, notices couldn't be served upon it, which resulted in the AO passing the *ex parte* Assessment order dated 29.12.2017 for AY 2010- & 2012-13 [against the assessee] making certain additions.

4. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who was pleased to dismiss the same. According to the Ld.AR, since the relevant documents were in the custody of the City Crime Branch, assessee couldn't produce the relevant documents and could only produce few documents which was not sufficient to the convince the Ld.CIT(A)



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which led to the dismissal of the appeals. Therefore, it was prayed that one more opportunity be given to assessee, taking note of the helplessness of the partners, whose relevant documents were seized and kept in the custody of Crime Branch as stated supra. Thus, it was asserted by Ld AR before us that the non-participation in the assessment/appellate proceedings and failure to produce the relevant documents was due to the unfortunate incidents, which led the AO from framing the assessment ex parte qua assessee and therefore, 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), pleaded that assessee-Firm be granted one more opportunity before the AO.

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

6. We have heard both the parties and perused the material available on record. We note that the assessee-Firm was formed by two siblings and has filed RoI for AY 2010-11, but couldn't file RoI for AY 2012-13, since one of the partners Shri A.P. Prakasan was taken into custody by the Crime Branch in October, 2013 and released from judicial custody only in July, 2014. And it has been brought to our notice that the City Crime Branch has taken into custody the laptop, mobile phone, books, relevant documents etc., maintained by the assessee in the course of its



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business. Due to the fact that several persons had invested money on the promise of assessee that high returns would be given to them on their investment, and since assessee couldn't fulfill its promise it made to them, they put pressure on assessee, pursuant to which, the assessee had to change their address [which was shown in the RoI for AY 2010-11] And since the notices were issued by the AO in the address shown in the RoI for AY 2010-11, it couldn't be served upon the assessee which resulted in the AO passing ex parte order qua assessee; and before the Ld.CIT(A), the assessee could only file few documents and couldn't file the relevant documents to substantiate its grounds of appeal before the Ld.CIT(A), since the relevant documents were in the custody of crime branch. Therefore, the Ld.CIT(A) has confirmed the action of the AO. The main plea of the assessee is that since the assessee didn't get proper opportunity before the AO, the assessee needs to be given proper opportunity before the AO. Having perused the records and taking note of the peculiar facts of the case, we note that the assessee didn't get proper opportunity before the AO, due to reasons which were beyond its control. So, we are inclined to set aside the impugned order of the Ld.CIT(A) and restore the appeals back to the file of the AO with a direction to frame de novo assessment after hearing the assessee.



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7. Needless to say that assessee to be diligent and to file written submissions/relevant documents before the AO and the AO to frame assessment in accordance to law after hearing the assessee.

8. In the result, appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on the 13th day of December, 2024, in Chennai.

Sd/-

(एस. आर. रघुनाथा)
(S.R.RAGHUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(एबी टी. वर्की)
(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 13th 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