

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL 'B' BENCH: CHENNAI
श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री अमितभ शुक्ल, लेखासदस्य के समक्ष
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2534/Chny/2024
निर्धारण वर्ष/**Assessment Year: 2020-21**

Shri Pon Manibaskaran,
Plot No.5, Door No.S1,
Solai Krishnan Street, Janaki Nagar,
Valsarvakkam,
Chennai – 600 087.

Vs. The Income Tax Officer,
CHE-W-(105)(1),
Income Tax Department,
Chennai.

[PAN: AGRP B 3969N]

(अपीलकर्ता/Appellant)

(प्रत्यर्थी/Respondent)

अपीलकर्ता की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: None
: Shri Keerthi Narayanan, JCIT

सुनवाई की तिथि/Date of Hearing

: 23.12.2024

घोषणा की तिथि /Date of Pronouncement

: 05.02.2025

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee, against the order of the Ld. Commissioner of Income Tax (Appeals) / NFAC (hereinafter in short "CIT(A)") dated 30.07.2024 for assessment year 2020-21 (hereinafter in short "AY").

2. On perusal of the grounds of appeal, assessee is aggrieved by the *ex-parte* order passed by the Ld.CIT(A)/NFAC.



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3. Brief facts are that the assessee is engaged in transportation business by the name of Sree Gokul Transport and also into the business of bottle cleaning by the name of Star Bottles. The assessee has filed return of income on 12.01.2021 showing total income of Rs.49,07,540/- by declaring business income and claimed loss from house property. The assessee's return of income was selected for limited scrutiny and the reason for selection was (1) large value of loss claimed under the head 'income from house property' and (2) high liabilities as compared to low income / receipts. Accordingly, the AO issued statutory notices to the assessee u/s.143(2) and 142(1) of the Income Tax Act, 1961 [herein after "Act"] and the assessee is noted to have responded explaining the query raised by the AO. However, the AO was of the opinion that the assessee didn't file certain details of unsecured loan of Rs.2,69,72,354/- and also that some notices issued u/s.133(6) of the Act to the parties (from whom unsecured loans were received by the assessee) were not responded to or some parties didn't furnish concrete documents in support of their claims. Being not satisfied, the AO added the unsecured loan to the tune of Rs.2,44,91,454/- u/s.68 of the Act and also disallowed the house property loss amounting to Rs.2,00,000/-.



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4. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A), before whom assessee brought to his notice that he was not given proper opportunity by the AO during the assessment proceedings. In this regard, the assessee also brought to his notice certain incidents like the AO issued inter-alia, a show-cause notice on 24.03.2022 directing response from the assessee on or before 25.03.2022 [i.e., one day time to respond to the proposed addition of Rs.2,85,02,226/-]. Likewise, the assessee brought to the notice of Ld.CIT(A) that the AO after a gap of five months had issued notice to the assessee without asking any specific query and instead asked him to submit the additional details if any, which according to the assessee had been already submitted. He also brought to the notice of the Ld.CIT(A) that the AO thereafter sent notices u/s.133(6) of the Act to all the lenders on 07.09.2022 and gave them only five days which included the weekend to respond with various documents including bank statements. And according to assessee, his information was that almost all the lenders had submitted their responses confirming giving loan to assessee and since, only four days was available [including weekend] to submit the bank statements, ITR and capital accounts of the lender, some of them couldn't produce the same. Thus, according to the assessee, the AO during the assessment proceedings didn't gave proper opportunity to the assessee for filing the relevant documents before the AO. However, it is noted that the



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Ld.CIT(A) finding that the assessee didn't complied to his four notices, passed ex-parte order qua assessee, dismissing the appeal of the assessee. We do not countenance such an action of the Ld.CIT(A) because the assessee had filed before him the written submission explaining the grounds of appeal. Then it was incumbent upon the Ld..CIT(A) to decide the grounds of appeal as mandated under sub-section 6 of section 250 of the Act. And while adjudicating the grounds, if the Ld.CIT(A) was of the opinion that certain clarification / documents need to be filed for deciding the grounds of appeal, then he has inherent power to do so. In any case, we find that the Ld.CIT(A) has not decided the ground of appeal raised by the assessee on merits as contemplated under sub-section 6 of section 250 of the Act. Therefore, we set aside the impugned order of the Ld.CIT(A).

5. Having done so, we also take judicial notice of the fact that the AO has not given any proper opportunity to the assessee while framing the assessment order. In such a situation, we are of the view that as per the Scheme of the Act, the AO is the primary authority who is empowered by the Act, to examine the facts as well as law before determining the correct taxable income of the tax payer. Relying on the decision of Hon'ble Supreme Court in the case of Tin Box Ltd., vs. CIT reported in 249 ITR 216



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(SC), we 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 all relevant documents / detailed written submissions as well as file proof called for by the AO during the first round; and it is made clear that the AO is at liberty to call for any additional documents and frame fresh assessment after hearing the assessee and in accordance with law.

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

Order pronounced on 05th February, 2025 at Chennai.

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 05th February, 2025.

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

आदेश की प्रतिलिपि □ ग्रेषित/Copy to:

1. □ पीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, Chennai
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.