

आयकर अपीलिय अधिकरण, 'सी' न्यक्षपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL 'C' BENCH: CHENNAI**  
श्री एबी टी. वर्की, न्यक्षिक सदस्य एवं श्री जगदीश, लेखकसदस्य के समक्ष  
**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND**  
**SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.2582/Chny/2024  
निर्धारण वर्ष/**Assessment Year: 2019-20**

Shri Rajaram Krishnamurthy, No.38, Jai Nagar, Kavundampalayam, Coimbatore – 641 030. <b>[PAN: ADCPR 2211H]</b>	Vs.	The DCIT, Non-Corporate Circle 2, Coimbatore.
(अपीलकर्ता/Appellant)		(प्रत्यर्था/Respondent)
अपीलकर्ता की ओर से/ Appellant by	:	Shri Vishva Padmanabhan, CA
प्रत्यर्था की ओर से /Respondent by	:	Ms. R. Anita, Addl.CIT
सुनवाईकीतारीख/Date of Hearing	:	16.01.2025
घोषणाकीतारीख /Date of Pronouncement	:	05.03.2025

**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, Delhi (hereinafter in short 'the Ld.CIT(A)'), dated 12.08.2024 for the Assessment Year (hereinafter in short 'AY') 2019-20.

**2.** At the outset, the Ld.AR of the assessee submitted that the impugned order of the Ld.CIT(A) is an *ex parte* without hearing the assessee. The Ld.AR pointed out that the Ld.CIT(A) dismissed the appeal by refusing to admit *additional evidences* filed by the assessee during the first appellate proceedings. According to the Ld.AR, the impugned action



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of the Ld.CIT(A) is unjust and erroneous and is in gross violation of natural justice. Thereafter, the Ld.AR drew our attention to the assessment order passed by the AO dated 24.09.2021 which was a best judgment assessment u/s.144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') [ex parte order of the AO] and pointed out that it was passed in the midst of Covid-19 pandemic, so assessee couldn't participate in the assessment proceedings.

**3.** According to the Ld.AR, the assessee had filed RoI for AY 2019-20 on 24.08.2019 declaring total income at Rs.76,37,640/- which was selected for scrutiny and the AO issued three (3) notices which were delivered to the 'spam' and therefore, assessee was in the dark about the queries raised by the AO and therefore, couldn't reply/file relevant documents which led the AO to make several additions and computed taxable income to the tune of Rs.2,31,39,680/- in place of declared income of Rs.76,37,640/-. According to the assessee, he had come to India during the Covid-19 pandemic to look after his aged parents because they were unwell. And while he had been taking care of the parents, the notices got delivered in the 'spam', he couldn't respond to the notices, because of which, huge addition has been made in his hands by the AO and therefore, prayed for one more opportunity to be granted before the AO, by citing the decision of the Hon'ble Supreme Court in the



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case of TIN Box Company v. CIT reported in [2001] 249 ITR 216 (SC).

The Hon'ble Supreme Court in the case of TIN Box (supra) 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 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.** We find from perusal of the impugned order that assessee had filed additional evidences before the Ld.CIT(A) which was refused to be admitted by him on the specious plea that there was no sufficient cause which prevented the assessee from filing the same before the AO. Such a reasoning of the Ld.CIT(A) can't be countenanced especially when the



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assessment happened during Covid-19 pandemic. And as noted since, the notices of the AO got delivered in the 'spam' and not in the e-mail ID of the assessee, he was unaware of the proceedings happening before the AO, which led to the passing of the assessment order ex parte qua assessee. Therefore, since assessee didn't get proper opportunity before the AO, we deem it fit 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. Having said so, we direct the assessee to be diligent and file written submissions/relevant documents before the AO without seeking any adjournment unless there is just cause.

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

Order pronounced on 05<sup>th</sup> March, 2025 at Chennai.

**Sd/-**  
(जगदीश)  
**(JAGADISH)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 05<sup>th</sup> March, 2025.

TLN

आदेश की प्रतिलिपि □ ग्रेषित/Copy to:

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

**Sd/-**  
(एबी टी. वर्की)  
**(ABY T. VARKEY)**

न्यायिक सदस्य/**JUDICIAL MEMBER**