

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.51/Mds/2015

निर्धारण वर्ष / Assessment Year : 2011-12

Shri S. Saravanan,
No.2, Mariamman Koil Street,
Kadirkamam,
Pondicherry – 605 009.

v. The Assistant Commissioner of
Income Tax,
Circle – I,
Pondicherry.

PAN : APGPS 7103 B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri Shiva Srinivas, JCIT

सुनवाई की तारीख/Date of Hearing : 02.02.2017

घोषणा की तारीख/Date of Pronouncement : 23.03.2017

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) – VI, Chennai, dated 30.10.2014 and pertains to assessment year 2011-12.

2. Shri S. Sridhar, the Ld. counsel for the assessee, submitted that the Assessing Officer made addition in respect of cash

deposits made by the assessee in the bank under Section 68 of the Income-tax Act, 1961 (in short "the Act"). In fact, the Assessing Officer made addition of ₹63,80,000/-. The assessee explained before the CIT(Appeals) that the peak credit in the Pondicherry State Co-operative Bank comes to ₹36,77,477/- as on 16.07.2010. The assessee further explained that the source for ₹36,00,000/- was from his father who earned the money from agricultural activities. According to the Ld. counsel, confirmation letter from Shri Shanmugham, the assessee's father was also filed apart from a certificate from Village Administrative Officer. However, this was not accepted by the Assessing Officer. The fact remains that Shri Shanmugham was cultivating the land and gave money to the assessee to the extent of ₹36,00,000/-. This confirmation letter was not examined by the Assessing Officer. The assessee being the recipient of the money, could produce only confirmation letter and nothing else. Therefore, according to the Ld. counsel, the CIT(Appeals) is not justified in confirming the order of the Assessing Officer.

3. On the contrary, Shri Shiva Srinivas, the Ld. Departmental Representative, submitted that the Assessing Officer found that

there was deposit of ₹49,07,000/- in Pondicherry State Co-operative Bank Ltd. and another sum of ₹14,73,000/- in IDBI Bank Ltd. The Assessing Officer found that there was no source to the assessee to make the deposit. On appeal by the assessee, according to the Ld. D.R., the CIT(Appeals) found that a deposit to the extent of ₹49,00,000/- remains to be unexplained. Accordingly, he restricted the addition to ₹49,00,000/- as against the addition made by the Assessing Officer ₹63,80,000/-. The Ld. D.R. clarified that the Department has not filed appeal against the relief granted by the CIT(Appeals). In the absence of any explanation, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the addition to the extent of ₹49,00,000/-. The confirmation letter cannot establish the claim of the assessee. Therefore, the CIT(Appeals) has rightly confirmed the addition to the extent of ₹49,00,000/-.

4. We have considered the rival submissions on either side and perused the relevant material available on record. The Assessing Officer made addition of ₹63,80,000/- under Section 68 of the Act. The assessee appears to have deposited a sum of ₹49,07,000/- in Pondicherry State Co-operative Bank Ltd. and another sum of ₹14,73,000/- in IDBI Bank Ltd. On appeal by the assessee, the

CIT(Appeals) found that the assessee could not explain satisfactorily the deposit of ₹49,00,000/-, therefore, the same was confirmed by the CIT(Appeals). However, the balance was deleted by the CIT(Appeals). The assessee now filed appeal in respect of addition confirmed by the CIT(Appeals) to the extent of ₹49,00,000/- The assessee claims that ₹36,00,000/- was received from his father and a confirmation letter was also filed from Shri Shanmugham apart from a certificate from Village Administrative Officer. This documentary evidence filed by the assessee was not examined by the CIT(Appeals). This Tribunal is of the considered opinion that when the assessee filed documentary evidence, the CIT(Appeals) having co-terminus power with that of the Assessing Officer, ought to have examined the same and found whether the assessee has actually received money from Shri Shanmugham. Since such an exercise was not done by the CIT(Appeals), this Tribunal is of the considered opinion that the matter needs to be re-examined by the Assessing Officer. Accordingly, the orders of the lower authorities were set aside in respect of ₹49,00,000/-, which was confirmed by the CIT(Appeals) and remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the issue in the light of the confirmation letter filed by the assessee from his father

and the certificate issued by the Village Administrative Officer and other material that may be filed by the assessee and thereafter decide the issue in accordance with law with regard to the addition of ₹49,00,000/- afresh, after giving a reasonable opportunity to the assessee. Since no Department appeal was filed in respect of addition deleted by the CIT(Appeals), this Tribunal is of the considered opinion that cannot be disturbed at this stage. It is made clear that the issue is remitted only to the extent of addition made by the CIT(Appeals) at ₹49,00,000/-. The addition deleted by the CIT(Appeals) cannot be re-examined by the Assessing Officer.

5. With the above observation, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 23rd March, 2017 at Chennai.

sd/-

(डि.एस. सुन्दर सिंह)

(D.S. Sunder Singh)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 23rd March, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-VI, Chennai-34
4. आयकर आयुक्त/CIT, Pondicherry
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.