

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

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

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

आयकर अपील सं./ITA No.1800/Mds/2016
निर्धारण वर्ष /Assessment Year: 2008-09

M/s.Thulasi Transport,
18, Komutti Street,
Walajapet – 632 513.

Vs. The Dy. Commissioner of
Income Tax,
Circle-I, Vellore

[PAN: AAGFM 5983 N]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.A.S.Sriraman, Adv.

प्रत्यर्थी की ओर से /Respondent by

: Mr.V.Nandakumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 28.12.2016

घोषणा की तारीख /Date of Pronouncement

: 13.01.2017

आदेश / O R D E R

PER D.S.SUNDER SINGH, ACCOUNTANT MEMBER:

1.0 This is an appeal filed by the assessee against an Order dated 02.03.2016 of Commissioner of Income Tax (Appeals)-13, Chennai, in ITA No.163/CIT(A)-13/2008-09 for the AY 2008-09.

2.0 Ground Nos.2 & 3 are related to the issue of common notice u/s.147 of Income Tax Act. The Ld.AR of the assessee has not made any argument on issue of notice. In this case, the assessment was completed

u/s.143 (1) and the notice u/s.147 was issued on 26.08.2011 within the four years from the end of the relevant AY. The Ld.CIT(A) in his order upheld the validity of notice. Therefore, we hold that notice issued u/s.147 is valid and hence, Ground Nos. 2 & 3 are **dismissed**.

3.0 The remaining grounds of appeal are related to the addition of Rs.34,25,675/- representing the outstanding sundry creditors balance. During the assessment proceedings, the Assessing Officer (hereinafter referred to as 'AO') called for confirmation from the assessee for the outstanding sundry creditors and the assessee failed to furnish any evidence or confirmations regarding the outstanding sundry creditors. During the assessment, the Ld.AR of the assessee and the partner of the firm have agreed for the addition of outstanding sundry creditors balances and the AO made addition.

4.0 Aggrieved by the order of the AO, the assessee went on appeal before the Ld.CIT(A) and the Ld.CIT(A) confirmed the addition made by the AO. Therefore, the assessee filed appeal before this Tribunal.

5.0 During the appeal, the Ld.AR argued that during the pendency of appeal, the Ld.CIT(A) has called for the Remand Report from the AO and the assessee has produced the outstanding sundry creditors before the AO but the AO could not examine the outstanding sundry creditors due to lack of time. Therefore, he invited our attention and the chronology of the events during the pendency of appeal proceedings and production of

outstanding sundry creditors before the AO which was discussed in page No.7 of CIT(A)'s Order is as under:

"The appellant firm has obtained confirmation letters from the sundry creditors from all the sundry creditors except the Reliance Petro Marketing P Ltd, and submitted the same before the Commissioner of the Income Tax Appeals-XI on 29.4.2013. The CIT appeals has referred the matter back to ACIT to produce the sundry creditors for verifying genuineness of the creditors. Accordingly, the appellant firm has been asked to produce the sundry creditors before the ACIT on 10. 10.2013 at 11.00 am. The appellant firm a also appeared along with creditors on the appointed day and the creditors have been asked to wait as the ACIT is busy with his scrutiny assessments up till 7.30.pm and after 7.30.pm the creditors have been asked to produce the copies PAN card, Ration card, Voter Id, RC book, etc., and appear on 17,10.2013. Some of the creditors appeared on 17.10.13 along with documents called for before the ACIT, Vellore and they have been asked to come after a week as the Income Tax Inspector has been busy with some other duty the creditors appeared being single lorry owners could not appear within a week as they have been driving their own lorries for long distances. The appellant once again brought the creditors on 21.11.2013; on that day the ACIT asked for books of accounts for which the creditors being single lorry owners stated that they are offering income u/s.44AE for the reason that they are not maintaining books of accounts and on that day also the ACIT has not heard anything but asked again to come after a week after than it was not possible for the appellant to bring any creditors to submit statement as they have gone on north of India for their long transport operation. The creditors are single lorry owners/drivers who have been working in the Mumbai/North India area and they were not able to appear during the 1 ½ months for the continuous freight carrier-works. In all the 3 days when the creditors appeared no record of their presence have been made in the office of the ACIT. Further hearings have been impeded by the sudden death of authorised Representative's mother on 31.10.13 and the subsequent obsequies that were performed by him.

All the creditors have been carrying on the business in North India and have been prevented from appearing before the ACIT for the reason of their present contracts. Finally, the ACIT allowed one more hearing on 6.2.14 to produce the creditors but the creditors appearance on 6.2.14 before the ACIT has been declined stating that the report stating non-appearance of the creditors has been reported to the CIT (Appeals)-VII, Chennai."

Further, the Ld.AR requested for one more opportunity to produce the outstanding sundry creditors before the AO and to prove genuineness of outstanding. On the other hand, the Ld.DR did not object for giving

one more opportunity to the assessee in the back ground of the chronology of events discussed in Ld.CIT(A)'s Order.

6.0 We heard the rival submissions and perused the material placed on record.

The AO stated in the Assessment Order that the assessee has agreed for the addition. The assessee went on appeal before the Ld.CIT(A) stating that the addition was agreed under the influence of the AO. As per the discussions made in the CIT(A)'s Order, it appears that the assessee has produced the outstanding sundry creditors on 10.10.2013, 17.10.2013 and 21.11.2013 but could not produce subsequently, because of the circumstances beyond the control of the assessee and the Ld.AR of the assessee explained that all the outstanding sundry creditors' balances are genuine, identifiable and credit worthy, given the opportunity, the assessee will be establishing the genuineness of outstanding sundry creditors' balances. Therefore, we are of the considered opinion that in the interest of the justice, the case should be remitted back to the file of AO to re-examine the genuineness, creditworthiness and identification of the outstanding sundry creditors. Therefore, we set-aside the orders of the lower authorities and remit the matter back to the file of the AO with a direction to re-examine the outstanding sundry creditors and decide the issue afresh on merits.

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

Order pronounced in the Open Court on 13th January, 2017, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S.SUNDER SINGH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 13th January, 2017.

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

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