

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्रीएन.आर.एस. गणेशन, न्यायिकसदस्य 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.2072/Mds/2016

निर्धारण वर्ष /Assessment Year : 2011-12

The Deputy Commissioner of
Income Tax,
Central Circle -2(1),
Investigation Wing,
46, Nungambakkam High Road,
Chennai – 600 035.

v. M/s.Hemalatha Enterprises
Pvt.Ltd.,
No.12, Cavin Ville,
Cenotaph Road, Teynampet,
Chennai – 600 018.

PAN: AAACD 2714 R

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri B.Sahadevan, JCIT
प्रत्यर्थीकीओरसे/Respondent by : Ms.S.Deepa, C.A.

सुनवाईकीतारीख/Date of Hearing : 27.09.2016

घोषणाकीतारीख/Date of Pronouncement : 28.10.2016

आदेश / O R D E R

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

This appeal of the revenue is directed against the order of
CIT(A)-6, Chennai dated 22.04.2016 and pertains to assessment year
2011-12.

2. Shri B.Sahadevan, the learned department representative submitted that the CIT(A) dismissed the appeal as withdrawn by an order dated 30.11.2015. Subsequently, the assessee filed a miscellaneous petition under Section 154 of the Act and the CIT(A) found that there was a reference about the sale to the extent of 2,06,33,000/- in the financial statement filed by the assessee. The CIT(A) without giving any opportunity to the assessing officer has allowed the claim of the assessee. No verification also was made. Therefore, the learned department representative submitted that the matter may be remitted back to the file of the assessing officer.

3. On the contrary, Ms.S.Deepa, the learned representative for the assessee submitted that the assessing officer found that the assessee has not declared Rs.2,06,33,000/- being the difference of sale made to sister concern namely M/s.Cavinkare Private Limited as unaccounted sales in the hands of the assessee and the same was added to the total income. The assessee filed appeal before the CIT(A). During the pendency of the assessee's appeal before CIT(A), the assessing officer passed an order under Section 154 of the Act. The assessee felt that the assessing officer granted relief to the assessee in the proceeding under

Section 154. Accordingly, the appeal of the assessee before CIT(A) was withdrawn. Subsequently, the assessee found that the disallowance made by the assessing officer to the extent of Rs.2,06,33,000/- as undisclosed sales is not correct and the assessee has filed the financial statement of the assessee company before the CIT(A) in proceeding under Section 154. The CIT(A) after considering the financial statement filed by the assessee allowed the claim of the assessee. On a query from the bench, whether CIT(A) has power to grant permission to withdraw the appeal filed by the assessee, the learned representative for the assessee submitted that the CIT(A) has no power to grant permission to withdraw the appeal and the CIT(A) ought to have disposed off the appeal on merit. Since the CIT(A) has not disposed off the appeal on merit, the learned representative submitted that the matter may be remitted back to the file of the Assessing Officer for re-consideration.

4. We have considered the rival submissions on either side and also perused the material available on record. Admittedly, the assessee challenged the addition made by the assessing officer to the extent of Rs.2,06,33,000/- before the CIT(A). The appeal filed by the assessee was withdrawn. As rightly submitted by the representative for the assessee, the CIT(A) has no power to dismiss the appeal as withdrawn. When the assessee filed the appeal, it is for the CIT(A) to examine the

same on merit and dispose of the same in accordance with law. When the parliament specifically conferred power to enhance the assessment on the CIT(A), this Tribunal is of the considered opinion that the CIT(A) cannot allow the assessee to withdraw the appeal. Therefore, the claim of the assessee to the extent of Rs.2,06,33,000/- being the undisclosed sales has to be disposed off on merit. The CIT(A) allowed the claim of the assessee under Section 154 of the Act, without giving any opportunity to the assessing officer. This Tribunal is of the considered opinion that the proceeding under Section 154 is to rectify a prima facie error which is apparent on the face of the record. Since the CIT(A) has not considered the appeal itself on merit and dismiss the same as withdrawn, this Tribunal is of the considered opinion that the matter needs to be re-considered. Accordingly, addition of Rs.2,06,33,000/- towards undisclosed sales has to be re-considered by the assessing officer on the basis of the financial statement said to be filed before CIT(A). Accordingly, the orders of the lower authorities are set aside. The disallowance of Rs.2,06,33,000/- is remitted back to the file of the assessing officer. The assessing officer shall re-examine the issue afresh in accordance with law and in the light of the financial statement filed by the assessee and thereafter decide the same after giving reasonable opportunity to the assessee.

5. In the result, appeal of the revenue is Allowed for Statistical Purposes.

Order pronounced on 28th October, 2016 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 28th October, 2016.

sp.

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.