

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.1303 & 1304/Mds/2010

निर्धारण वर्ष / Assessment Years : 2000-01 & 2001-02

The Assistant Commissioner of
Income Tax,
Central Circle – I,
Coimbatore.

:

(अपीलार्थी/Appellant)

v. M/s Senthil Explosives Pvt. Ltd.,
107A, Sengupta Street,
Ram Nagar, Coimbatore – 641 009

PAN : AA ECS 3245 A

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.1305 & 1306/Mds/2010

निर्धारण वर्ष / Assessment Years : 2003-04 & 2006-07

The Assistant Commissioner of
Income Tax,
Central Circle – I,
Coimbatore.

(अपीलार्थी/Appellant)

v. M/s Senthil Fruit Products Pvt. Ltd.
107A, Sengupta Street,
Ram Nagar, Coimbatore – 641 009

PAN : AA ECS 3245 A

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : None

प्रत्यर्थी की ओर से/Respondents by : Shri S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing : 18.08.2016

घोषणा की तारीख/Date of Pronouncement : 18.08.2016

आदेश / O R D E R

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

All the appeals of the Revenue are directed against the respective orders of the Commissioner of Income Tax (Appeals) – II, Coimbatore, for the assessment years 2000-01, 2001-02, 2003-04 and 2006-07.

2. When the appeals were taken up for hearing 17.08.2016, the Ld. Senior Standing Counsel Shri T.R. Senthil Kumar and the Ld.counsel for the assessee Shri S. Sridhar submitted that in all the appeals, the tax effect involved is less than ₹10 lakhs, therefore, the appeals are not maintainable before this Tribunal. However, Shri T.R. Senthil Kumar, the Ld. Senior Standing Counsel for the Department submitted that he wanted to verify whether there was any audit objection in these cases. If there is any audit objection, according to the Ld. Senior Standing Counsel, it would not be within the purview of instructions issued by the CBDT to withdraw the appeals pending before this Tribunal. On the request of Ld. Senior Standing Counsel to verify whether there was any audit objection in these cases, the appeals were posted to 18.08.2016.

3. When the appeals were taken up for hearing on 18.08.2016, the Ld. Senior Standing Counsel for the Revenue was not present. It was represented by Shri Nandakumar, Joint Commissioner of Income Tax. Shri Senthil Kumar, Ld. Senior Standing Counsel has to go to High Court. Moreover, Shri Nandakumar, JCIT submitted that the appeals may be dismissed since the tax effect is admittedly less than ₹10 lakhs by giving liberty to the Revenue for filing Miscellaneous Petition in case there was any audit objection.

4. We have carefully gone through the provisions of Section 153(2) of the Income-tax Act, 1961 (in short 'the Act'). Section 153(2) enables the Principal Commissioner or the Commissioner to direct the Assessing Officer to file appeal against the order of the CIT(Appeals) before this Tribunal. The decision for filing the appeal before the Tribunal has to be taken by the concerned Principal Commissioner or Commissioner on the administrative side. In the process of taking decision to file appeal before this Tribunal, it is open to the Principal Commissioner or Commissioner to consider audit objection, if any, available on record. If the audit objection was not brought to the notice of the Principal Commissioner or Commissioner at the time of taking decision to file appeal before

this Tribunal, then it cannot be said that the appeal was filed because of audit objection. Therefore, the matter needs to be verified in its entirety and find out whether the Principal Commissioner or the Administrative Commissioner was influenced by the audit objection of the Department while taking the decision to file the appeal.

5. A further question may arise whether the decision to file the appeal before this Tribunal has to be taken by the Commissioner or by the audit party? If the audit party arises objection with regard to order of the CIT(Appeals) or Assessing Officer and the Commissioner decides to direct the Assessing Officer to file appeal before this Tribunal, after considering all the material including the audit object, then we may say that the appeal filed by the Revenue was excluded from the purview of CBDT instructions. In the absence of any material on record and the Revenue could not ascertain the audit objection inspite of grant of time to verify, this Tribunal is of the considered opinion that the matter need not be kept pending further. Moreover, the power to decide for filing of appeal was specifically conferred on the Principal Commissioner or the Commissioner as the case may be. Therefore, an issue may

arise whether the audit party of the Department can usurp the power of the Commissioner and what is the limitation and role of the audit party in filing before the Commissioner? These appeals are pending from the year 2010. Even after expiry of six years, the Department could not verify the status, namely, the availability of audit objection. Therefore, instead of keeping the matter pending, all the appeals of the Revenue are dismissed as suggested by the Joint Commissioner of Income Tax since the tax effect involved in these appeals are admittedly less than ₹10 lakhs.

6. However, it is open to the Revenue to file Miscellaneous Petition in case there is any audit objection and the Commissioner decided to file appeals before this Tribunal after considering the audit objections. While filing the Miscellaneous Petition, the Revenue shall bring all the material facts on record and the office note put up before the Principal Commissioner or Commissioner for taking decision to file appeal before this Tribunal.

7. With the above observation, all the appeals of the Revenue are dismissed.

Order pronounced in the open court on 18th August, 2016 at
Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 18th August, 2016.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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