

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' (SMC) BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.3412/Mds/2016
निर्धारण वर्ष /Assessment year : 1988-89

Shri. Pradip M.Shah,
No.4, Sydenhams Road,
Chennai 600 112.

Vs. The Income Tax Officer,
Business Ward VII(2)
Chennai.

[**PAN AAKPS 5161Q**]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri. N.K. Mohnot, ITP.

प्रत्यर्थी की ओर से /Respondent by

: Shri. R. Clement Ramesh Kumar,
JCIT.

सुनवाई की तारीख/Date of Hearing

: 02-03-2017

घोषणा की तारीख /Date of Pronouncement

: 29-03-2017

आदेश / ORDER

In this appeal filed by the assessee, it assails an order dated 07.10.2016 of Id. Commissioner of Income Tax (Appeals)-10, Chennai, who rejected the contention of the assessee that the order passed by the Id. Assessing Officer was barred by limitation of time.

2. Facts apropos are that original assessment was completed u/s.143(3) of the Income Tax, Act 1961 (in short 'the Act') on 30.03.1990 wherein among others there was an addition of ₹3,30,841/- u/s. 69A of the Act. There was an appeal filed by the

assessee before Id. Commissioner of Income Tax (Appeals). The Id. Commissioner of Income Tax (Appeals) by its order dated 30.09.1991 had deleted the addition of ₹3,30,841/-. Department had moved upon this Tribunal and this Tribunal had passed an order on 13.12.2000 in ITA no.2619/Mds/1991 where it held as under:-

“4. In so far as the second issue in concerned, the claim of the assessee was that out of ₹3,30,841/-, ₹3,25,000/- represented the cash of four firms – A.R.Brother, A.R. Brothers and Associates, A.R. Ccombines and A.R. Timbers. The assessee claimed that the cash belonged to the four firms and it has been the practice of the assessee to retain the cash considering the safety of the cash. In support of the claim, the assessee filed a copy of the representation that has been made u/s.132(11) of the Act pleading the return of ₹3,25,000/-. The assessee also filed a statement that was made u/s.132(4) of the Act in which the categorical submission was that the cash belonged to the four firms. In the case of one of the relatives of the assessee the issue came up for consideration by the Tribunal for the assessment year 1989-90 and vide the Tribunal dated 21.04.1998 the matter was restored to the file of the Assessing Officer. We restore this issue back to the file of the Assessing Officer for the sole reason that the cash belonged to the four firms was correct or otherwise by referring to the cash books of the four firms. The Assessing Officer is directed to verify the availability of cash of the four firms with reference to their books of account. He shall afford an opportunity to the assessee and decide the issue afresh”.

Ld. Assessing Officer thereafter took upon the matter once again for giving effect to the order of the Tribunal. It seems assessee despite opportunity given did not produce books of accounts of four firms from

which it had claimed to have received money. Giving effect order was finally passed on 05.06.2006.

3. Aggrieved, assessee moved in appeal before Id. Commissioner of Income Tax (Appeals). One of the grounds taken by the assessee assailed the order passed by the Id. Assessing Officer stating that it was out of time. As per assessee u/s.153(2A) of the Act the Id. Assessing Officer was obliged to complete fresh proceedings within the financial year in which appeal order was received by the Id. CIT. As per assessee giving effect order passed on 05.06.2006 was out of time and invalid. Id. Commissioner of Income Tax (Appeals) did not accept this contention. According to him, assessee did not appear before him and did not support its contention with necessary evidence. He confirmed the order of the Id. Assessing Officer.

4. Now before me, Id. Authorised Representative relying on Sec. 153(2A) of the Act, submitted that the order dated 13.12.2000 of this Tribunal was given effect only on 05.06.2006 and this was much beyond time limit prescribed u/s.153(2A) of the Act.

5. Per contra, Id. Departmental Representative strongly supported the orders of the authorities below.

6. I have considered the rival contentions and perused the orders of the authorities below. Before advertng to the merits of the

claim of the assessee it would be appropriate to have a look at Sec. 153(2A) of the Act.

'Notwithstanding anything contained in sub-sections(1) and(2), in relation to the assessment year commencing on the 1st day of April, 1971, and any subsequent assessment year, an order of fresh assessment under section 146 or in pursuance of an order, under section 250, section 254, section 263 or section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of two years from the end of the financial year in which the order under section 146 cancelling the assessment is passed by the Assessing Officer or the order under section 250 or section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Chief Commissioner or Commissioner''.

The time limit specified is one year from the end of the financial year in which the order was received by the Chief Commissioner or Commissioner. It is true that we have no direct record to show when the order dated 13.12.2000 of this Tribunal was received by the Chief Commissioner or Commissioner. However, one paragraph which appear in giving effect order dated 05.06.2006 is very relevant and this is reproduced hereunder:-

'On verifying the records, it is found that the records pertaining to this case are not available. As per the letter dated 12.10.2001 of the ITO V(3), Chennai -6 who was having the jurisdiction over this case it seems that my predecessor had not received the records on change of jurisdiction. As the records were not available in this ward even earlier the effect to the appellant order could not have been passed. Giving effect to the Hon'ble ITAT 's order is now being given on the basis of the copies of the orders produced by the assessee through his representative.

It is clear that as per the letter dated 12.10.2001, of the earlier Assessing Officer who was having jurisdiction over assessee's case, that Tribunal order was not given effect due to non availability of records on change of jurisdiction. In my opinion preponderance of probability is that Commissioner or Chief Commissioner would have received the order of the Tribunal much earlier. Even if we presume that CIT/CCIT had received the order only on 12.10.2001 the giving effect order dated 05.06.2006 was well beyond time limit laid down u/s.153(2A) of the Act. In these circumstances, I am constrained to set aside the order of the Id. Assessing Officer, having being passed beyond time limit u/s.153(2A) of the Act. Such order stands set aside.

7. In the result, the appeal of the assessee stands allowed.

Order pronounced on Wednesday, the 29th day of March, 2017, at Chennai.

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 29th March, 2017

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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