

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
' D' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलकामणी, लेखा सदस्य के समक्ष ।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A.No.996/Mds/2015
निर्धारण वर्ष /Assessment year : 2008-09

Shri M.K.Kotirathnam
New No.16, Old No.12
Gandhi Avenue
Purasawalkam
Chennai 600 084
[PAN AAQPK 5883 P]
(अपीलार्थी/Appellant)

Vs. The Income Tax Officer
Non-corporate Ward 10(2)
Chennai
[Previously ITO BW XIII(3)]
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri N. Devanathan, Advocate
प्रत्यर्थी की ओर से /Respondent by : Dr. B. Nishal, JCIT
सुनवाई की तारीख/Date of Hearing : 14-03-2016
घोषणा की तारीख /Date of Pronouncement : 12-05-2016

आदेश / ORDER

PER N.R.S.GANESAN, JUDICIAL MEMBER

This appeal of the assessee is directed against the order of the Commissioner of Income-tax (Appeals)-12, Chennai, dated 13.2.2015 and pertains to assessment year 2008-09.

2. This appeal of the assessee was dismissed for non-prosecution by an order dated 20.7.2015. The assessee filed the miscellaneous petition praying for recall of the order of this Tribunal

dated 20.7.2015. This Tribunal, after hearing both parties, by an order dated 27.11.2015 recalled its order dated 20.7.2015 and restored the appeal on file. Accordingly, the appeal was posted for final disposal.

3. Shri. N. Devanathan, Id. Counsel for the assessee submitted that the CIT(A) rejected the appeal of the assessee on the ground that the assessee failed to attend before him on the specified date. According to the Id. Counsel, the CIT(A), being the first appellate authority, is expected to dispose of the appeal on merit. Therefore, rejection of the appeal for non-appearance of the assessee is not justified.

4. On the contrary, Dr. B.Nischal, Id. Departmental Representative submitted that several opportunities were provided by the CIT(A). However, the assessee has not availed any of the opportunities. No material was filed before the CIT(A) to substantiate the grounds of appeal. Therefore, the CIT(A) found that the assessee is not interested in prosecuting the appeal and accordingly, the same was dismissed.

5. We have considered the rival submissions on either side and also perused the material available on record. The CIT(A) dismissed the appeal of the assessee by placing his reliance on the decision of the Delhi Bench of this Tribunal in the case of CIT vs Multiplan (India) Pvt. Ltd., 38 ITD 320. We have gone through the decision of the Delhi Bench of this Tribunal in Multiplan (India) Pvt. Ltd (supra). The

Tribunal found that there was a defect in the appeal and the assessee has not rectified the defect, therefore, the appeal was dismissed as not admitted. In the case before us, it is nobody's case that the appeal has any defect. No defect memo was issued by the CIT(A). In those circumstances, this Tribunal is of the considered opinion that the decision in the case of Multiplan (India) Pvt. Ltd (supra) is not applicable to the facts of the case. Moreover, the powers of the CIT(A) are coterminous with that of the Assessing Officer. The CIT(A) is empowered to assess all the income even though some of which was omitted to be considered by the Assessing Officer. The CIT(A) is specifically empowered to enhance the assessment made by the Assessing Officer. Therefore, the CIT(A) has an onerous responsibility to perform under the scheme of the Income-tax Act, 1961. By rejecting the appeal of the assessee for non-prosecution, the CIT(A) is disowning his responsibility in considering the source of income which was omitted to be considered by the Assessing Officer and enhance the assessment which is specifically conferred on him under the scheme of the Income-tax Act, 1961. Since the power to enhance the assessment is conferred on the CIT(A), this Tribunal is of the considered opinion that the CIT(A) cannot ignore the responsibilities by simply dismissing the appeal for non-prosecution. The CIT(A) being the senior most officer of the Department, is expected to call for the

records from the Assessing Officer irrespective of the fact whether the assessee appeared before him or not and dispose of the appeal on merit. In other words, this Tribunal is of the considered opinion that the CIT(A) has no power to dismiss the appeal for non-prosecution especially when the legislature conferred on him the power to enhance the assessment. In those circumstances, this Tribunal is of the considered opinion that the CIT(A) is expected to dispose of the appeal on merit. Accordingly, the order of the CIT(A) is set aside and the entire issue raised by the assessee is remitted back to his file. The CIT(A) shall dispose of the appeal on merit after giving a reasonable opportunity to the assessee. It is made clear that if the assessee fails to appear before the CIT(A) on the appointed date, it is open to the CIT(A) to call for the records from the Assessing Officer and dispose of the grounds raised by the assessee on merit.

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

Order pronounced in the open court on 12th May, 2016, at Chennai.

Sd/-

(ए. मोहन अलंकामणी)

(A. MOHAN ALANKAMONY)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 12th May, 2016

RD

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