

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य 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.98/Mds/2016

निर्धारण वर्ष / Assessment Year : 2008-09

Shri Benjamin Marcus,
Shri T.N. Seetharaman, Advocate,
#384 (Old No.196), Lloyds Road,
Chennai - 600 086.

v. The Assistant Commissioner of
Income Tax, Circle XI
(Now ACIT, NCC-5),
Chennai.

PAN : AAFPM 6883 L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri T.N. Seetharaman, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri B. Sahadevan, JCIT

सुनवाई की तारीख/Date of Hearing : 04.01.2017

घोषणा की तारीख/Date of Pronouncement : 31.01.2017

आदेश /O R D E R

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

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) – 5, Chennai, dated 29.12.2015 and pertains to assessment year 2008-09.

2. The only issue arises for consideration is addition of ₹22,25,550/- under Section 68 of the Income-tax Act, 1961 (in short 'the Act').

3. Shri T.N. Seetharaman, the Ld.counsel for the assessee, submitted that the assessee is a small time trader and he deposited sale proceeds in M/s Kotak Mahendra Bank Ltd. The Assessing Officer, on the basis of the so-called Annual Information Report said to be filed by M/s Kotak Mahendra Bank Ltd., made an addition of ₹20,72,500/-. The Assessing Officer made the addition only on the ground that the statement in the bank passbook does not tally with Annual Information Report received by him. According to the Ld. counsel, a copy of the Annual Information Report was not furnished to the assessee, therefore, the assessee was not able to explain how the same does not tally with bank statement. Therefore, the Ld.counsel prayed that an opportunity may be given to the assessee to explain the bank deposit before the Assessing Officer.

4. On the contrary, Shri B. Sahadevan, the Ld. Departmental Representative, submitted that the Assessing Officer found that there was a cash deposit of ₹20,72,500/- in M/s Kotak Mahendra Bank Ltd. The assessee has also returned an income of

₹1,53,050/-. After addition of ₹20,72,500/-, the total income of the assessee was computed at ₹22,25,550/-. Since the CIT(Appeals) found that the assessee could not explain the identity of the creditor, capacity of the creditor to advance the money and genuineness of the transaction, he confirmed the addition made by the Assessing Officer.

5. We have considered the rival submissions on either side and perused the relevant material available on record. The Assessing Officer on the basis of the Annual Information Report said to be received from M/s Kotak Mahendra Bank Ltd., made an addition of ₹20,72,500/- under Section 68 of the Act. The Assessing Officer observed in the assessment order that the bank statement does not tally with the Annual Information Report. Therefore, this Tribunal is of the considered opinion that an opportunity should be given to the assessee to explain the difference, if any, after furnishing a copy of the Annual Information Report received by the Assessing Officer from M/s Kotak Mahendra Bank Ltd. Since admittedly a copy of the Annual Information Report was not furnished to the assessee, this Tribunal is of the considered opinion that the matter needs to be reconsidered. Accordingly, the orders of the lower authorities are

set aside and the entire issue is remitted back to the order of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh after furnishing a copy of the Annual Information Report said to be received in respect of the assessee and thereafter decide the same, in accordance with law, after giving a reasonable opportunity to the assessee.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 31st January, 2017 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 31st January, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-5, Chennai
4. Principal CIT-9, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.