

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' 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. 148/Mds/2017
निर्धारण वर्ष / Assessment Year : 2013-14

The Asstt. Commissioner of
Income Tax,
Non-Corporate Circle-15,
Chennai.

(अपीलार्थी/Appellant)

v. Shri Pradeep Selvam,
E-159, Usaha Nivas, 7th Avenue,
Besant Nagar, Chennai – 600 090.

PAN: AALPR8961Q

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri Sasi Kumar, JCIT
: Shri Y. Sridhar, CA

सुनवाई की तारीख/Date of Hearing : 19.04.2017
घोषणा की तारीख/Date of Pronouncement : 31.05.2017

आदेश / O R D E R

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

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-15, Chennai dated 22.09.2016 and pertains to the assessment year 2013-14.

2. There was a delay of 36 days in filing this appeal by the Revenue. The Revenue has filed a petition for condonation of delay. We have heard the Ld. representative for the assessee and the Ld. Departmental

Representative. We find that there was sufficient cause for not filing the appeal before the stipulated time. Therefore, we condone the delay and admit the appeal.

3. Shri Sasikumar, the Ld. Departmental Representative submitted that the CIT(Appeals) prima facie found that the assessee is eligible for deduction U/s.54F of the Income Tax Act, 1961 (in short 'the Act'). However without deciding the issue by himself he found that that the assessee has filed certain material evidence which was not filed before the Assessing Officer, therefore he directed the AO to examine the same afresh and grant deduction U/s.54F of the Act. Referring to Section 251(1) of the Act, the Ld. DR submitted that the CIT(Appeals) has no power to set aside the order of assessment. At the best, the CIT(Appeals) may confirm the order of the AO or reduce or enhance or annul the assessment. In this case, the CIT(Appeals) exceeded his jurisdiction in setting aside the order of assessment.

4. Referring to Rule 46A of Income Tax Rules, 1961, the Ld. DR submitted that the assessee has filed new material evidence to him. He ought to have given an opportunity to the AO to examine the same with regard to contents of subject material evidence. In this case, no such opportunity was also given to the AO. Therefore there is a clear violation of Rule 46A of the Income Tax Rules.

5. On the contrary, Shri Sridhar, the Ld. representative for the assessee submitted that the assessee has filed certain fresh material to support the claim of deduction U/s.54F of the Act. Therefore the CIT(Appeals) found that the assessee is eligible for deduction U/s.54F of the Act. However since the evidence filed by the assessee is not available before the AO, he directed the AO to verify the material evidence filed by the assessee and grant deduction U/s.54F of the Act.

6. We have considered the rival submissions on either side and perused the material available on record. The assessee claimed deduction U/s.54F of the Act which was denied by the AO. On appeal by the assessee, the CIT(Appeals) on the basis of fresh material filed before him, found that the assessee is eligible for deduction U/s.54F of the Act. However he directed the AO to verify the material evidence filed before him for the first time and grant deduction. We carefully gone through the provisions of Sec. 251(1) of the Act. The power to set aside the order of assessment was not available with CIT(Appeals). As rightly submitted by the Ld.DR, CIT(Appeals) at the best, may confirm or reduce or enhance the assessment. The CIT(Appeals) on the basis of the material evidence filed by the assessee may call for a remand report from the AO and he can decide the claim of deduction U/s.54F of the Act on merit. Unfortunately, the CIT(Appeals) has not done so. The CIT(Appeals) has directed the AO to examine the fresh material filed by the assessee and

thereafter give deduction U/s.54F of the Act. In view of the above, this Tribunal is of the considered opinion that the order of CIT(Appeals) in directing the AO to verify the claim and grant deduction U/s.54F of the Act is not justified. However, the new material filed by the assessee needs to be examined by the AO. Accordingly while setting aside the order of the CIT(Appeals), the entire issue is remitted back to the file of the AO. The AO shall re-examine the material afresh in the light of the material evidence filed before the CIT(Appeals) and thereafter decide the claim of deduction U/s.54F of the Act in accordance with law, after giving reasonable opportunity to the assessee.

7. In the result, the appeal of the Revenue is allowed for statistical purpose.

Order pronounced on 31st May, 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 May, 2017.

JR.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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