

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' 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 No.2723/Mds/2016

निर्धारण वर्ष / Assessment Year : 2013-14

Smt. S. Venkateswari,  
Prop: Sri Balamurugan Agencies,  
No.18, New Bus Stand complex,  
Kovai Main Road,  
Perundurai – 638 052.

v. The Assistant Commissioner of  
Income Tax,  
Circle -2,  
No.15, Gandhiji Road,  
Erode – 638 001.

PAN : AEBPV 2163 E

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.3144/Mds/2016

निर्धारण वर्ष / Assessment Year : 2013-14

The Assistant Commissioner of  
Income Tax,  
Circle -2,  
No.15, Gandhiji Road,  
Erode – 638 001.

(अपीलार्थी/Appellant)

v. Smt. S. Venkateswari,  
Prop: Sri Balamurugan Agencies,  
No.18, New Bus Stand complex,  
Kovai Main Road,  
Perundurai – 638 052.

(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by : Shri S. Sridhar, Advocate

राजस्व की ओर से /Revenue by : Shri Gopikrishna, JCIT

सुनवाई की तारीख/Date of Hearing : 04.05.2017

घोषणा की तारीख/Date of Pronouncement : 27.07.2017

**आदेश / O R D E R**

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

Both the appeals of the assessee and Revenue are directed against the very same order of the Commissioner of Income Tax (Appeals)-3, Coimbatore, dated 31.08.2016 and pertain to assessment year 2013-14. Therefore, we heard both the appeals together and disposing of the same by this common order.

2. Let's first take assessee's appeal in I.T.A. No.2723/Mds/2016.

3. The only issue raised by the assessee before this Tribunal is that the addition of ₹5,05,000/- being the gift said to be received from her mother.

4. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that during the year under consideration, the assessee received gift from her mother to the extent of ₹5,05,000/-. According to the Ld. counsel, the assessee filed an affidavit before the Assessing Officer wherein the assessee's mother confirmed the fact of giving gift to the assessee. However, the Assessing Officer disallowed the claim of the assessee. The CIT(Appeals) also confirmed the addition

made by the Assessing Officer. According to the Ld. counsel, the identity of the assessee's mother is not in dispute. The assessee's mother confirmed the transaction by filing an affidavit, therefore, the genuineness of transaction and capacity of the assessee's mother to gift ₹5,05,000/- cannot be doubted. Hence, according to the Ld. counsel, the CIT(Appeals) is not justified in confirming the addition made by the Assessing Officer.

5. On the contrary, Shri Gopikrishna, the Ld. Departmental Representative, submitted that no doubt an affidavit was filed from the assessee's mother before the Assessing Officer. The affidavit states that the gift was given out of her old savings. The assessee's mother did not have any independent source of income. Therefore, according to the Ld. D.R., the Assessing Officer found that she has no capacity to give a gift. The assessee's mother is not assessed to tax. Therefore, the Assessing Officer came to a conclusion that the assessee has introduced herself unaccounted money in the guise of gift from her mother. Hence, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the addition made by the Assessing Officer.

6. We have considered the rival submissions on either side and perused the relevant material available on record. For the purpose of proving a cash credit, the assessee has to necessarily establish the identity, creditworthiness of creditors and genuineness of transaction. In this case, the identity of the creditor is not in dispute. The genuineness of transaction was also established by filing an affidavit from the donor, namely, the assessee's mother. At the best, the Assessing Officer can doubt the creditworthiness of creditor. The assessee's mother claims that gift was given from her past savings. The Assessing Officer disbelieved the gift because she has no independent source of income and she was not assessed to tax.

7. The assessee's mother appears to be housewife. She has to take care of household expenses. Whenever received money from husband or son for household expenses, Indian ladies use to save part of the money and whenever the husband or son urgently needs some money, the ladies use to give the same out of their savings. This saving habit of housewives in this country, more particularly, in southern part of country, cannot be ignored by the Assessing Officer. When the assessee's mother claims that she

saved money given for household expenses and filed an affidavit before the Assessing Officer, this Tribunal is of the considered opinion that the claim of the assessee's mother cannot be brushed aside so lightly without examining it. The assessment year under consideration is 2013-14. Even a mason or construction worker is receiving salary of ₹400 to 500 per day. In this economic situation, there is no reason to doubt the capacity of the assessee's mother to give ₹5,05,000/- to the assessee. Therefore, this Tribunal is of the considered opinion that all the ingredients which are necessary for proving the gift were established by the assessee. Therefore, the CIT(Appeals) is not justified in confirming the addition. Accordingly, the orders of the lower authorities are set aside and the addition of ₹5,05,000/- made by the Assessing Officer is deleted.

8. Now coming to Revenue's appeal in I.T.A. No.3144/Mds/2016, the first ground of appeal is disallowance of freight charges paid to the contractors.

9. Shri Gopikrishna, the Ld. Departmental Representative, submitted that the Assessing Officer made addition of ₹3,26,15,735/- towards freight charges since the required details were not filed by the assessee. No evidence for payment of freight

charges was filed before the Assessing Officer. The Permanent Account Numbers of the contractors were also not available on record. Therefore, according to the Ld. D.R., the Assessing Officer came to a conclusion that the genuineness of liability and its payment is not proved. Hence, the sum of ₹3,26,15,735/- was disallowed. According to the Ld. D.R., on appeal by the assessee, the CIT(Appeals) restricted the disallowance to ₹44,30,887/- on the ground that the payment made by the assessee is not liable for deduction of tax, therefore, there cannot be disallowance under Section 40(a)(ia) of the Act. The payment made to the transport contractors towards freight charges was quantified as ₹44,30,887/-. Accordingly, the CIT(Appeals) restricted the disallowance to the extent of ₹44,30,887/-. According to the Ld. D.R., hire charges are liable for deduction of tax at the time of payment or credit, therefore, the CIT(Appeals) is not justified in restricting the claim to ₹44,30,887/-.

10. On the contrary, Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the assessee has not hired any lorry. In fact, the assessee purchased iron ore, which was to be supplied to Chettinad Cement Corporation Ltd. In fact, the iron ore was

purchased from Kamachi Sponge & Power Corporation Ltd. The supply of iron ore included payment of freight charges. According to the Ld. counsel, since the payment is composite one for purchase of iron ore and transportation to Chettinad Cement Corporation Ltd., the same cannot be construed as hire charges, therefore, not liable for deduction of tax either under Section 194C of the Income-tax Act, 1961 (in short 'the Act') or under Section 194H of the Act. Some of the transporters through whom the transport was made, have no Permanent Account Number, but many of transporters had Permanent Account Number. According to the Ld. counsel, no tax was deducted in the case of the transporters who have Permanent Account Number in view of Section 194C(6) of the Act. In respect of those persons who have no Permanent Account Number, the payment was made to the extent of ₹44,30,887/- which was disallowed by the CIT(Appeals). Therefore, according to the Ld. counsel, the CIT(Appeals) has rightly restricted the disallowance to ₹44,30,887/-.

11. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee contends that the payment was a composite one for purchase of

iron ore and transportation, therefore, not liable for deduction of tax. The assessee also claims that in view of Section 194C(6) of the Act, in the case of those transporters who have Permanent Account Number, tax need not be deducted. In respect of others, who have no Permanent Account Number, the payment was made to the extent of ₹44,30,887/-, which was disallowed by the CIT(Appeals). The fact remains that the Permanent Account Number was furnished by the assessee except in respect of payment made to the extent of ₹44,30,887/-. Moreover, it is not in dispute that the payment made by the assessee is composite one for iron ore and transport of the same. Therefore, the CIT(Appeals) has rightly restricted the disallowance at ₹44,30,887/-. Hence, the same is confirmed.

12. The next issue arises for consideration is addition made on account of closing stock to the extent of ₹32,63,677/-.

13. Shri Gopikrishna, the Ld. Departmental Representative, submitted that the Assessing Officer made addition to the closing stock to the extent of ₹32,63,677/-. However, the CIT(Appeals) allowed the claim of the assessee by entertaining an additional evidence without giving an opportunity to the Assessing Officer.

Therefore, according to the Ld. D.R., there is a clear violation of Rule 46A of the Income-tax Rules, 1962.

14. We have heard Shri S. Sridhar, the Ld.counsel for the assessee also. The assessee has furnished an alternate working before the CIT(Appeals), which was taken into consideration by the CIT(Appeals) while giving the relief. Therefore, according to the Ld. counsel, the CIT(Appeals) has rightly allowed the claim of the assessee.

15. We have considered the rival submissions on either side and perused the relevant material available on record. The CIT(Appeals) found that the purchase and sales made during financial year have to be reflected as closing stock on the last day of the financial year. The assessee admittedly filed an alternate working before the CIT(Appeals). The CIT(Appeals) after considering the alternate working filed by the assessee, allowed the claim without giving any opportunity to the Assessing Officer. Rule 46A of the Income-tax Rules, 1962 clearly says that whenever additional evidence is filed by the assessee, an opportunity shall be given to the Assessing Officer to contradict the same. Since such an opportunity was not given, this Tribunal is of the considered

opinion that the Assessing Officer has to reconsider the entire issue. Accordingly, the orders of the lower authorities are set aside and the issue of closing stock is remitted back to the file of the Assessing Officer. The Assessing Officer shall reconsider the issue in the light of the material that may be filed by the assessee before him, in accordance with law, after giving a reasonable opportunity to the assessee.

16. The next ground of appeal is with regard to addition of ₹5 lakhs.

17. Shri Gopikrishna, the Ld. Departmental Representative, submitted that the Assessing Officer made an addition of ₹5 lakhs. The assessee traded in Multi Commodity Exchange. The assessee invested in Multi Commodity Exchange, which was not reflected in the financial statement filed by the assessee. According to the Ld. D.R., the assessee claims before the Assessing Officer that she is not trading, but someone might have used her Permanent Account Number. The Assessing Officer has found that exact amount of investment was not ascertained as the transactions were squared off on the same day or within few days. Therefore, the Assessing Officer added the sum of ₹5 lakhs being the investment made in

Multi Commodity Exchange. The CIT(Appeals) deleted the addition without any material. Therefore, according to the Ld. D.R., the order of the CIT(Appeals) is not justified.

18. On the contrary, Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the PAN of the assessee was used by someone and no investment was made by the assessee. Therefore, according to the Ld. counsel, the CIT(Appeals) has rightly deleted the addition.

19. We have considered the rival submissions on either side and perused the relevant material available on record. When the transaction was not ascertainable in Multi Commodity Exchange by citing Permanent Account Number, it is not known how the assessee claims that someone has used her Permanent Account Number. If really PAN was misused by someone, then we have to examine who has invested the money in Multi Commodity Exchange and who enjoyed the profit of the transaction made. Therefore, the CIT(Appeals) is not justified in deleting the addition on the ground that the addition was made on surmise. Hence, the matter needs to be reconsidered. Accordingly, the orders of the lower authorities are set aside and the addition of ₹5 lakhs is

remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the issue in the light of the material that may be filed by the assessee and thereafter decide the same in accordance with law, after giving a reasonable opportunity to the assessee.

20. In the result, the assessee's appeal in I.T.A. No.2723/Mds/2016 is allowed, whereas, the Revenue's appeal in I.T.A. No.3144/Mds/2016 is partly allowed for statistical purposes.

Order pronounced on 27<sup>th</sup> July, 2017 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 27<sup>th</sup> July, 2017.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती / Assessee
2. Assessing Officer
3. आयकर आयुक्त (अपील)/CIT(A)-3, Coimbatore
4. Principal CIT-2, Coimbatore
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.