

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2769/Mds/2016

&

C.O. No.183/Mds/2016

(in I.T.A. No.2769/Mds/2016)

निर्धारण वर्ष / Assessment Year : 2012-13

The Deputy Commissioner of
Income Tax,
Corporate Circle – 5(2),
Chennai - 600 034.

v. M/s PCC Logistics Pvt. Ltd.,
No.1, Appu Maistry Street,
Chennai - 600 001.

PAN : AAACP 4260 A

(अपीलार्थी/Appellant)

(Respondent & Cross-objector)

अपीलार्थी की ओर से/Appellant by : Shri Asish Tripathy, JCIT

प्रत्यर्थी की ओर से/Respondent by : Sh. N. Devanathan, Advocate

सुनवाई की तारीख/Date of Hearing : 12.09.2017

घोषणा की तारीख/Date of Pronouncement : 14.09.2017

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) -3, Chennai, dated 30.06.2016, pertaining to assessment year 2012-13. The assessee has also filed cross-objection against the very same order of the

CIT(Appeals). Therefore, we heard the appeal and the cross-objection together and disposing of the same by this common order.

2. Shri Asish Tripathy, the Ld. Departmental Representative, submitted that the Assessing Officer rejected the books of account maintained by the assessee in the course of business and estimated the profit at 4%. According to the Ld. D.R., the assessee has shown the net profit at 2.43%. The payment of hire charges was not substantiated by the assessee, therefore, the Assessing Officer has rightly rejected the books of account and estimated the net profit at 4% of the turnover. On appeal by the assessee, according to the Ld. D.R., the CIT(Appeals), however, restricted the profit at 3% instead of 4% of the turnover estimated by the Assessing Officer. According to the Ld. D.R., the CIT(Appeals) ought not to have restricted the net profit at 3% in the absence of any material evidence.

3. On the contrary, Sh. N. Devanathan, the Ld.counsel for the assessee, submitted that the notice under Section 143(2) of the Income-tax Act, 1961 (in short 'the Act') was issued by the officer at Mumbai. According to the Ld. counsel, the assessment records were transferred from Mumbai to Chennai in the year 2012.

However, in the year 2013, the Mumbai officer issued notice under Section 143(2) of the Act asking the assessee to appear. According to the Ld. counsel, the Mumbai officer had no jurisdiction in the year 2013 since the assessment records were already transferred to Chennai jurisdiction. Therefore, according to the Ld. counsel, the notice issued by the Mumbai officer under Section 143(2) of the Act is without jurisdiction, hence, the consequential order passed by the Assessing Officer cannot stand in the eye of law. According to the Ld. counsel, a notice was issued by Chennai officer in the year 2015. However, this was beyond the period of 12 months as prescribed under Section 143(2) of the Act. Hence, according to the Ld. counsel, the assessment cannot stand in the eye of law.

4. We have considered the rival submissions on either side and perused the relevant material available on record. The issue on merit is estimation of profit. The Assessing Officer estimated the profit at 4%. However, the CIT(Appeals) restricted the same to 3%. Admittedly, the assessment records of the assessee were transferred from Mumbai to Chennai in the year 2012. Therefore, the notice issued by the Assessing Officer at Mumbai in the year 2013 cannot stand in the eye of law. In other words, the officer at

Mumbai had no jurisdiction in the year 2013 to issue notice under Section 143(2) of the Act. Therefore, as rightly submitted by the Ld.counsel for the assessee, the consequential assessment order passed by the Assessing Officer cannot stand in the eye of law.

5. When the officer at Mumbai has no jurisdiction under Section 143(2) of the Act, the consequential order cannot be passed by the officer at Chennai. Moreover, the notice issued by the Chennai officer was after expiry of period prescribed under proviso to Section 143(2) of the Act. Therefore, this Tribunal is of the considered opinion that the assessment order passed by the Assessing Officer cannot stand in the eye of law. Accordingly, the same is quashed.

6. In the result, the appeal filed by the Revenue is dismissed and the cross-objection filed by the assessee is allowed.

Order pronounced on 14th September, 2017 at Chennai.

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 14th September, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-3, Chennai-34
4. Principal CIT, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.