

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI**

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER, AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.719 to 725/Mds/2017
निर्धारण वर्ष /Assessment Years: 2007-08 to 2013-14

Shri Padham J. Challani,
No.23/1, Habibullah Road,
T.Nagar, Chennai-600 017.

Vs. The Dy. Commissioner of
Income Tax – Central Circle
III(4), Chennai-600 034.

[PAN: AEKPC 1816 N]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.K.Ravi, Adv.

प्रत्यर्थी की ओर से /Respondent by

: Mrs.Ruby George, CIT

सुनवाई की तारीख/Date of Hearing

: 16.08.2017

घोषणा की तारीख /Date of Pronouncement

: 16.08.2017

आदेश / ORDER

PER GEORGE MATHAN, JUDICIAL MEMBER:

ITA Nos.719 to 725/Mds/2017 are appeals filed by the assessee against the Order of Commissioner of Income Tax (Appeals)-19, Chennai, in ITA No.106, 105, 104, 103, 102, 101 & 100/15-16 dated 15.03.2017 for the AYs 2007-08 to 2013-14 .

2. Mrs.Ruby George, CIT represented on behalf of the Revenue and Mr.K.Ravi, Adv. represented on behalf of the assessee.

3. It was submitted by the Ld.AR that there was a search on the premises of the assessee on 19.04.2012. It was a submission that as a result of search, notice u/s.153A came to be issued and the assessments came to be completed u/s.153A r.w.s.143(3) on 17.03.2014 wherein additions had been made. It was a submission that against the assessment, appeals had been filed by the assessee before the Ld.CIT(A). It was a submission that before the Ld.CIT(A), it was argued that no incriminating material having been found in the course of the search and consequently, the assessments u/s.153A r.w.s.143(3) was liable to be cancelled. It was a further submission that the Ld.CIT(A) did not quash the assessment but had proceeded to enhance the assessment by making the disallowance by applying the provisions of Sec.14A r/w Rule 8D of the Act. It was a submission that at the outset, the assessments were liable to be annulled in so far as no incriminating material had been found in the course of the search or used for the purpose of the assessment proceedings. It was also a submission that statements recorded have also not been given to the assessee. It was a further submission that in respect of the disallowance made by invoking the provisions of Sec.14A r/w Rule 8D, one of the primary requirements was the satisfaction was to be recorded by the AO. It was a submission that the satisfaction recorded by the Ld.CIT(A) cannot be considered as satisfaction arrived at by the

AO. It was a submission that provisions of Sec.14A specifically required the satisfaction to be arrived at by the AO. It was a submission that if the assessee's claim of annulment of the assessment on account of non-availability of incriminating material was accepted, then automatically the issue of disallowance u/s.14A would no more survive. It was a submission that alternatively, the addition made by the Ld.CIT(A) by invoking the provisions of Sec.14A r/w Rule 8D was liable to be deleted. The Ld.AR placed reliance upon the decision of the Co-ordinate Bench of this Tribunal in the case of Om Shakthi Agencies (Madras) (P) Ltd. V. DCIT reported in 66 taxmann.com 287 and also the decision of the Hon'ble Bombay High Court in the case of Continental Warehousing Corporation Ltd. Vs. CIT reported in [2015] 58 Taxmann.Com 78 (Bom) and also the decision of the Hon'ble Delhi High Court in the case of Lata Jain v. Pr. CIT [2016] 384 ITR 543 (Del).

4. In reply, the Ld.DR drew our attention to the Assessment Order in Page No.2 Para No.5 to submit that there was no co-operation on the part of the assessee at the time of the assessment and consequently, the AO himself was handicapped. It was a submission that the assessment was liable to be upheld. It was a further submission that the disallowance made by the Ld.CIT(A) by invoking the provisions of Sec.14A r/w Rule 8D was liable to be upheld. She vehemently supported the order of the Ld.CIT(A).

5. We have considered the rival submissions. Admittedly, the Assessment Order does not talk of any incriminating material. But, in the penultimate paragraphs of Page-2 of the Assessment Order, the AO talks of the main source of the income of the assessee being mysterious "other source" which has not been explained with evidence. A perusal of the order of the Ld.CIT(A) in Page Nos.12, Para No.4 talks of statement on oath recorded as well as the business practices discovered during the course of the search which have been the basis on which adverse inferences have been drawn as regards the incomes declared for taxation. We are of the view that the non-cooperation by the assessee in the course of the assessment has hampered the assessment completely. This being so, in the interest of natural justice, the assessment is set-aside and restored to the file of the AO for re-adjudication afresh after granting the assessee adequate opportunity to substantiate his case. All issues are left open before the AO. The AO has to re-do the assessment after bringing on record the incriminating materials, if any, found in the course of the search. The AO is also directed to grant the assessee, the copies of the statements recorded in the course of the search. We are not giving any finding on the issue of the additions made by the Ld.CIT(A) by invoking the provisions of Sec.14A r/w Rule 8D as we have set-aside the assessments and consequently, the order of the Ld.CIT(A) also stands set-aside and the issues are before the AO for re-adjudication after bringing on record the incriminating materials, if any, found in the course of the search.

6. In the result, the appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced in the Open Court on 16th August, 2017, at Chennai.

Sd/-
(ए. मोहन अलंकामणी)
(A. MOHAN ALANKAMONY)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(जॉर्ज माथन)
(GEORGE MATHAN)
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 16th August, 2017.

TLN

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