

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' 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.2484/Mds/2017

निर्धारण वर्ष / Assessment Year : 2011-12

M/s TVH Energy Resources Pvt.

Ltd.,
No.16/17, 3rd Cross Street,
TVH Novella, R.A. Puram,
Chennai - 600 028.

v. The Deputy Commissioner of
Income Tax,
Central Circle 1(2),
Chennai - 600 034.

PAN : AACCT 8802 G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri G. Gopalan, Retd. JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri Sriram Bharath, CIT

सुनवाई की तारीख/Date of Hearing : 22.11.2017

घोषणा की तारीख/Date of Pronouncement : 30.11.2017

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) -18, Chennai, dated 08.08.2017 and pertains to assessment year 2011-12.

2. Shri G. Gopalan, the Ld. representative for the assessee, submitted that in the first round of litigation, this Tribunal found that

the Assessing Officer has not applied his mind and reason for conclusion reached was not reflected in the assessment order and, accordingly, this Tribunal confirmed the order passed by the Principal Commissioner in exercise of his power under Section 263 of the Income-tax Act, 1961 (in short 'the Act'). A copy of the order of this Tribunal in I.T.A. No.2466/Mds/2014 dated 06.08.2015 is available at page 44 of the paper-book. According to the Ld. representative, inspite of the direction of this Tribunal, the Assessing Officer has not examined the issues independently and there was no discussion in the assessment order. Without any discussion, the Assessing Officer in the computation of income made addition in the order passed under Section 143(3) of the Act dated 26.03.2014. Accordingly, according to the Ld. representative, the order dated 26.03.2014 was set aside by the Principal Commissioner which was confirmed by this Tribunal also. Therefore, according to the Ld. representative, the order of the Assessing Officer dated 26.03.2014 is not in existence.

3. The Ld. representative for the assessee further submitted that when this Tribunal confirmed the order of the Principal Commissioner wherein the order of the Assessing Officer dated

26.03.2014 was set aside, the Assessing Officer was directed to re-examine the issue and pass a speaking order. According to the Ld. representative, the Assessing Officer has not complied with the direction of this Tribunal, therefore, the CIT(Appeals) is not justified in discussing the matter on merit and disallow the claim of the assessee. Referring to the order of the CIT(Appeals), the Ld. representative submitted that the CIT(Appeals) mainly placed reliance on the statement recorded under Section 131 of the Act. According to the Ld. representative, the Assessing Officer has no authority to administer oath during the course of survey operation. Therefore, according to the Ld. representative, the statement recorded under Section 131 of the Act during the course of survey proceeding cannot be a basis for making addition. Therefore, the CIT(Appeals) is not justified in confirming the order of the Assessing Officer.

4. We heard Shri Sriram Bharath, the Ld. Departmental Representative also. It is not in dispute that this Tribunal directed the Assessing Officer to re-examine the matter afresh and pass a speaking order. This Tribunal specifically observed that it is incumbent upon the Assessing Officer to discuss the reason in the

assessment order while allowing or disallowing the claim of the assessee. In spite of the specific direction of the Tribunal, the Assessing Officer has simply referred the issue in the assessment order which was set aside by the Principal Commissioner and confirmed by this Tribunal and made addition. Therefore, as rightly submitted by the Ld. representative for the assessee, the Assessing Officer has not complied with the direction of the Tribunal. The Assessing Officer is bound to comply with the direction of the Tribunal. If at all the Assessing Officer feels that he is aggrieved by the order of this Tribunal, it is open to him to take up the matter in appeal before the High Court. In this case, admittedly, no appeal was filed before the High Court. The Department allowed the order of this Tribunal to attain finality, therefore, the Assessing Officer is not justified in making addition on the basis of the order dated 24.03.2014, which was not in existence at all. Therefore, the CIT(Appeals) is also not correct in disposing of the matter on merit.

5. In view of the above, we are unable to uphold the order of the lower authority. Accordingly, the orders of both the authorities below are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine

the matter as directed by this Tribunal in the order dated 06.08.2015, bring on record all the facts and material and pass a speaking order by recording reasons for the conclusion reached therein.

6. It is made clear that the Assessing Officer cannot ignore the observation and direction issued by this Tribunal. The disobedience or non-compliance of observation and direction of this Tribunal will be viewed seriously and appropriate remedial proceeding will be initiated in future.

7. With the above observation, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 30th November, 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 30th November, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-18, Chennai-34
4. Principal CIT, Central-1, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.