

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 Nos.989, 990, 991 & 992/Mds/2016

&

C.O. Nos.95, 96, 97 & 98/Mds/2016

(in ITA Nos.989, 990, 991 & 992/Mds/2016)

निर्धारण वर्ष / Assessment Years : 2006-07 to 2009-10

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

v. M/s Saravana Stores (Tex),
No.45, Ranganathan Street,
T. Nagar, Chennai - 600 017.

(अपीलार्थी/Appellant)

PAN : AAWFS 6761 Q

(Respondent & Cross-objector)

अपीलार्थी की ओर से/Appellant by : Shri S. Bharath, CIT

प्रत्यर्थी की ओर से/Respondent by : Ms. Jharna B. Harilal, CA

सुनवाई की तारीख/Date of Hearing : 23.11.2017

घोषणा की तारीख/Date of Pronouncement : 30.11.2017

आदेश /ORDER

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

All the appeals filed by the Revenue are directed against the common order passed by the Commissioner of Income Tax (Appeals)-18, Chennai, dated 27.01.2016 and pertain to assessment years 2006-07 to 2009-10. The assessee has also filed cross-objections against the very same order of the

CIT(Appeals). Since common issue arises for consideration in all the appeals and cross-objections, we heard all the appeals and cross-objections together and disposing of the same by this common order.

2. There was a delay of 64 days in filing the cross-objections by the assessee. The assessee has filed a petition for condonation of delay. We have heard the Ld. representative and the Ld. D.R. We find that there was sufficient cause for not filing the cross-objections before the stipulated time. Therefore, we condone the delay and admit the appeal.

3. Shri S. Bharath, the Ld. Departmental Representative, submitted that there was a search in the premises of the assessee on 18.08.2011. Notice under Section 153A of the Income-tax Act, 1961 (in short 'the Act') was issued on 14.03.2012. According to the Ld. D.R., the assessee by letter dated 26.11.2012 requested to treat the return originally filed as return in response to the notice under Section 153A of the Act. The Assessing Officer, after considering the issue, made addition to the total income. However, the CIT(Appeals) found that there was no incriminating material found during the course of search operation, hence, there cannot be any

addition. According to the Ld. D.R., initiation of proceeding under Section 153A of the Act was on the basis of search conducted under Section 132 of the Act, therefore, it does not depend upon any incriminating material found during the course of search operation. According to the Ld. D.R., the Assessing Officer shall assess or re-assess the total income in respect of each assessment year falling within six assessment years. On a query from the Bench whether the assessee filed return of income earlier and time limit for issuing notice under Section 143(2) of the Act expired on the date of search? The Ld. D.R. very fairly submitted that the assessee filed return for all the assessment years under consideration and time limit under Section 143(2) of the Act was also expired on the date of search.

4. On the contrary, Ms. Jharna B. Harilal, the Ld. representative for the assessee, submitted that for initiating proceeding under Section 153A of the Act, the pre-condition is that there should be a search. According to the Ld. representative, if an assessment proceeding is pending on the date of search, then the pending proceeding shall abate. The Assessing Officer has to make one composite assessment order for the total income disclosed by the

assessee either before the date of search or after the date of search. In case the assessment proceeding is not pending on the date of search, according to the Ld. representative, the Assessing Officer cannot reopen the concluded assessment and he has to confine himself only to the material found during the course of search for making assessment under Section 153A of the Act. In the case before us, according to the Ld. representative, time limit for assessment under Section 143(2) of the Act expired on the date of search, i.e. on 18.08.2011 for all the years under consideration, therefore, the Assessing Officer cannot disturb the concluded assessment. According to the Ld. representative, the Assessing Officer has to confine himself only to the material found during the course of search operation for completing the assessment under Section 153A of the Act. Admittedly, no material was found by the Revenue authorities during the course of search operation in respect of these assessment years. Therefore, according to the Ld. representative, there cannot be any assessment under Section 153A of the Act, hence, the CIT(Appeals) has rightly deleted the addition.

5. We have considered the rival submissions on either side and perused the relevant material available on record. The only issue arises for consideration is can the Assessing Officer make addition in the proceeding under Section 153A of the Act in the absence of material found during the course of search operation? We have carefully gone through the provisions of Section 153A of the Act. Section 153A of the Act clearly says that in case assessment proceeding was pending on the basis of the return filed earlier on the date of search, the same shall stand abated and the Assessing Officer has to pass an assessment order including the income disclosed in the return filed before the date of search. In case the assessment proceeding was not pending on the basis of the return filed earlier, then the completed assessment will not abate and the Assessing Officer has to make an assessment on the basis of material found during the course of search operation.

6. In the case before us, even though no assessment order was passed, the time limit for issuing notice under Section 143(2) of the Act has expired. Hence, the assessment proceeding initiated on the basis of the return filed before the date of search was terminated by operation of law. In other words, once the time limit for issuing

notice under Section 143(2) of the Act expired, on the basis of return filed earlier, the assessment proceeding is terminated and it cannot be said that it was pending on the date of search. In this case, the assessment proceeding was terminated by operation of law since the time limit for issuing notice under Section 143(2) expired. Therefore, the concluded assessment by operation of law on expiry of time limit for issuing notice under Section 143(2), cannot be reopened. Hence, this Tribunal is of the considered opinion that in the absence of any material found during the course of search operation, there cannot be any assessment for the block period under Section 153A of the Act. Hence, the CIT(Appeals) has rightly deleted the addition made by the Assessing Officer. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

7. Now coming to the cross-objections filed by the assessee. The assessee filed the cross-objections only to support the order of the CIT(Appeals). This Tribunal is of the considered opinion that for supporting the order of the CIT(Appeals), there is no need for filing any cross-objection. Hence the cross-objections filed by the

assessee become infructuous. Accordingly, the same are dismissed.

8. In the result, all the appeals filed by the Revenue and all the cross-objections filed by the assessee stand dismissed.

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)-I, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.