

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.1368/Mds/2017

&

C.O. No.102/Mds/2017

(in ITA No.1368/Mds/2017)

निर्धारण वर्ष / Assessment Year : 2011-12

The Assistant Commissioner of
Income Tax,
Circle – 1,
Salem.

(अपीलार्थी/Appellant)

Shri K. Ponnusamy,
v. No.100, Ammapet Main Road,
Salem – 636 001.

PAN : AEFPP 5814 E

(Respondent & Cross Objector)

आयकर अपील सं./ITA No.1329/Mds/2017

&

C.O. No.101/Mds/2017

(in ITA No.1329/Mds/2017)

निर्धारण वर्ष / Assessment Year : 2011-12

The Income Tax Officer,
Ward – 1(1),
Salem.

(अपीलार्थी/Appellant)

Smt. K. Pavayee,
v. 99/100, Ammapet Main Road,
Salem – 636 001.

PAN : AKXPP 9536 H

(Respondent & Cross Objector)

अपीलार्थी की ओर से/Appellants by : Shri AR.V. Sreenivasan, JCIT

प्रत्यर्थी की ओर से/Respondents by : Shri T. Vasudevan, Advocate

सुनवाई की तारीख/Date of Hearing : 21.12.2017

घोषणा की तारीख/Date of Pronouncement : 28.12.2017

आदेश / O R D E R

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

The Revenue has filed the appeals for assessment year 2011-12 in respect of two independent assessees. Both the assessees have filed cross-objections. Since common issue arises for consideration in the appeals as well as cross-objections, we heard the appeals and cross-objections together and disposing of the same by this common order.

2. Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that the assessees are dealers in grapes. The assessees claim 3% of turnover as profit. According to the Ld. D.R., the Assessing Officer, however, found that National Survey report conducted in Sangli & Nasik published in 2005, it was reported that middle men, namely, commission agents, earn 40% of the sale price. The assessees have also stated that the wholesale commission agents get 10% as commission. Therefore, according to the Ld. D.R., the Assessing Officer fixed the commission at 30% instead of 3% claimed by the assessees. On appeal by the assessees, the CIT(Appeals) restricted the profit at 5% instead of 30% fixed by the Assessing Officer. According to the Ld. D.R., one

Shri K. Lakshmanan was examined under Section 131 of the Income-tax Act, 1961 (in short 'the Act') in the course of assessment proceeding for the assessment year 2009-10 in one of the group case of Shri P. Ramesh. He admitted that the retailer will take 10% of the commission and wholesaler takes 30%. Therefore, according to the Ld. D.R., the assessee being wholesale agents, 30% was fixed by the Assessing Officer, hence, the CIT(Appeals) is not justified in adopting the commission to 5%.

3. On the contrary, Shri T. Vasudevan, the Ld.counsel for the assessee, submitted that in the case of Shri Ramesh, in whose case Shri Lakshmanan was examined by the Assessing Officer and that was the subject matter of the appeal before this Tribunal in I.T.A. No.1189/Mds/2017, this Tribunal by order dated 27.10.2017, fixed the commission at 4% instead of 5% fixed by the CIT(Appeals). According to the Ld. counsel, both the assessee have filed cross-objections to the effect that the commission is only at 3% and not 5% as fixed by the Commissioner. Therefore, he prayed that the commission may be fixed at 3%.

4. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee are dealers in grapes. The assessee claim 3% of turnover as

profit. However, the Assessing Officer fixed the profit at 30%. On appeal by the assesseees, the CIT(Appeals) reduced the same to 5%. On an identical situation, Ld. Single Member of this Tribunal in the case of ITO v. Shri P. Ramesh in I.T.A. No.1189/Mds/2017 found that on identical circumstances, the profit shall be at 4%. Shri P. Ramesh is also one of the assesseees in group case along with the present assesseees. Therefore, this Tribunal is of the considered opinion that since the facts are identical as that of Shri P. Ramesh, the commission can be fixed at 4% instead of 5% by the CIT(Appeals) in the interest of justice. Accordingly, orders of both the authorities below are modified. The Assessing Officer is directed to take 4% as commission income of the assesseees.

5. In the result, both the appeals of the Revenue are dismissed. However, both the cross-objections of the assesseees are partly allowed.

Order pronounced on 28th December, 2017 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 28th December, 2017.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellants
2. प्रत्यर्थी/Respondents
3. आयकर आयुक्त (अपील)/CIT(A), Salem
4. CIT, Salem
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.