

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' 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.1456/Mds/2017

&

C.O. No.115/Mds/2017

(in I.T.A. No.1456/Mds/2017)

निर्धारण वर्ष / Assessment Year : 2013-14

The Income Tax Officer,
Ward – 4,
Tirunelveli.

v. Shri Ariyathalaivar Raja,
92/7, Kurukkalpatti,
Sankarankovil, Tirunelveli Dist.

(अपीलार्थी/Appellant)

PAN : AOMPR 8774 G

(Respondent & Cross-objector)

अपीलार्थी की ओर से/Appellant by : Smt. Ruby George, CIT

प्रत्यर्थी की ओर से/Respondent by : None

सुनवाई की तारीख/Date of Hearing : 28.12.2017

घोषणा की तारीख/Date of Pronouncement : 05.01.2018

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, Madurai, dated 29.03.2017 and pertains to assessment year 2013-14. The assessee has filed cross-objection in respect of the same order of the CIT(Appeals).

2. No one appeared for the assessee even though the notice of hearing was received by the assessee by RPAD. Therefore, we heard the Ld. Departmental Representative and proceeded to dispose the appeal on merit.

3. There was a delay of 16 days in filing the cross-objection by the assessee. The assessee has filed a petition for condonation of delay. We have perused the affidavit filed by the assessee. We find that there was sufficient cause for not filing the cross-objection before the stipulated time. Therefore, we condone the delay and admit the cross-objection.

4. The only issue arises for consideration is with regard to reopening of assessment under Section 147 of the Income-tax Act, 1961 (in short 'the Act').

5. Smt. Ruby George, the Ld. Departmental Representative, submitted that the CIT(Appeals) set aside the reopening of assessment on the ground that the time limit for issuing notice under Section 143(2) of the Act has not expired. According to the Ld. D.R., there is no provision in the Income-tax Act which bars the Assessing Officer from issuing notice under Section 147 of the Act

even though the time limit for issuing notice under Section 143(2) of the Act has not expired. Therefore, the CIT(Appeals) is not justified in allowing the claim of the assessee.

6. We have considered the submission of the Ld. D.R. and perused the relevant material available on record. Admittedly, the time limit for issuing notice under Section 143(2) of the Act has not expired. The question arises for consideration is when the time limit for issuing notice under Section 143(2) has not expired, can the Assessing Officer reopen the assessment on the ground that the income otherwise taxable escaped assessment? This Tribunal is of the considered opinion that in case the income has escaped from assessment, the Assessing Officer can very well issue notice under Section 143(2) of the Act and assess the income which escaped assessment. It is not necessary to initiate reassessment proceeding to reopen the assessment. The proceeding under Section 147 of the Act can be reopened only in case the assessment proceeding was completed or terminated by operation of law. In the case before us, the time limit for issuing notice under Section 143(2) of the Act has not expired, therefore, the Assessing Officer exceeded his jurisdiction in issuing notice under Section 147

of the Act. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

7. The cross-objection filed by the assessee is only in support of the order of the CIT(Appeals), therefore, it becomes infructuous.

8. In the result, both the appeal of the Revenue and cross-objection filed by the assessee stand dismissed.

Order pronounced on 5th January, 2018 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 5th January, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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