

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' 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.52/Chny/2018

निर्धारण वर्ष / Assessment Year : 2013-14

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

v.

Smt. Nagarajan Tamilselvi,
No.5, Ramapuram Illam,
CHB Colony West,
P. Velur Road,
Tiruchengode – 637 211.

(अपीलार्थी/Appellant)

PAN : ABSPT 2172 K

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri M. Mathivanan, Addl. CIT

प्रत्यर्थी की ओर से/Respondent by : Shri M. Karunakaran, Advocate

सुनवाई की तारीख/Date of Hearing : 28.06.2018

घोषणा की तारीख/Date of Pronouncement : 12.07.2018

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), Salem, dated 31.10.2017 and pertains to assessment year 2013-14.

2. Shri M. Mathivanan, the Ld. Departmental Representative, submitted that the Assessing Officer found a deposit of ₹32,50,000/- in the bank account of the assessee. According to the Ld. D.R., the assessee claimed before the Assessing Officer that these amounts were received from various farmers for providing agricultural services. However, the assessee could not give details of farmers from whom the money was collected. According to the Ld. D.R., the Assessing Officer doubted the transaction in the absence of any material to support the claim of receipt of money from various farmers for providing services and therefore, made an addition of ₹32,50,000/- under Section 68 of the Income-tax Act, 1961 (in short 'the Act').

3. Shri M. Mathivanan, the Ld. Departmental Representative, further submitted that the Assessing Officer has also found that the assessee claimed set off of losses in the trading of equity shares against the income said to be derived from agricultural related services. According to the Ld. D.R., the CIT(Appeals) found that the income assessed under Section 68 of the Act in respect of cash credit has to be set off against the loss suffered in equity share trading. However, the loss was not verified by any of the authorities

below. According to the Ld. D.R., the CIT(Appeals) having power of coterminous that of the Assessing Officer, he himself ought to have examined the genuineness of so-called loss claimed by the assessee. Since such an exercise was not done by the CIT(Appeals), according to the Ld. D.R., the matter may be remitted back to the file of the Assessing Officer to examine the claim of loss in accordance with law.

4. On the contrary, Shri M. Karunakaran, the Ld.counsel for the assessee, submitted that no doubt, the Assessing Officer found credit of ₹32,50,000/- on various days. According to the Ld. counsel, the assessee is providing various services to the farmers, including locating the source of water. The assessee collected fees for providing the services and the same was deposited in the bank account. According to the Ld. counsel, the assessee has collected fees from about 210 farmers. However, the details of farmers could not be filed. Therefore, according to the Ld. counsel, the CIT(Appeals) confirmed the addition made by the Assessing Officer under Section 68 of the Act and no further appeal was filed by the assessee before this Tribunal. According to the Ld.counsel, the assessee has also suffered loss in share trading business.

Therefore, the assessee claimed set off of ₹32,50,000/- the loss suffered in share trading against the income received from services provided to the agriculturists. According to the Ld. counsel, the Assessing Officer disallowed the claim of the assessee. However, the CIT(Appeals) found that the loss suffered by the assessee in trading of shares has to be set off against the income said to be received from agriculturists for providing agricultural services. Therefore, according to the Ld. counsel, no interference is called for.

5. We have considered the rival submissions on either side and perused the relevant material available on record. The Assessing Officer found cash credit of ₹32,50,000/- during the course of assessment in the books of account. The assessee claims that the said money was collected from various farmers for providing agricultural services. However, the assessee could not furnish the details of farmers from whom the money was collected. Therefore, the addition was made under Section 68 of the Act. In fact, the CIT(Appeals) confirmed the order of the Assessing Officer and no appeal was filed by the assessee. Therefore, the issue of addition of ₹32,50,000/- under Section 68 of the Act attained finality.

6. Now, the only issue before this Tribunal is whether the loss suffered by the assessee in share trading business has to be set off against the cash credit under Section 68 of the Act? The CIT(Appeals) by referring to amendment made in Section 115BBE of the Act with effect from 01.04.2017, found that the assessee is eligible for set off. The CIT(Appeals) has not verified the genuineness of the so-called loss in the share trading business. This Tribunal is of the considered opinion that whether the assessee has actually suffered the loss or not needs to be verified and thereafter the application of amendment has to be considered. Since such an exercise was not done by the CIT(Appeals), the matter needs to be re-examined by the Assessing Officer. Accordingly, orders of both the authorities below are set aside and the entire issue of set off of loss suffered in share trading business is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter in the light of the material that may be filed by the assessee and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

7. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on 12th July, 2018 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 12th July, 2018.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

3. आयकर आयुक्त (अपील)/CIT(A), Salem

5. विभागीय प्रतिनिधि/DR

2. प्रत्यर्थी/Respondent

4. Principal CIT, Salem

6. गार्ड फाईल/GF.