

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.2260/Chny/2017

निर्धारण वर्ष / Assessment Year : 2014-15

Smt. Suman Modi,
147, Broadway, George Town,
Chennai - 600 001.

v. The Income Tax Officer,
Non Corporate Ward 12(4),
Chennai - 600 006.

PAN : BKRPS 2263 P

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.2261/Chny/2017

निर्धारण वर्ष / Assessment Year : 2014-15

Shri Anil Modi,
147, Broadway, George Town,
Chennai - 600 001.

v. The Income Tax Officer,
Non Corporate Ward 11(1),
Chennai - 600 006.

PAN : ACOPA 8892 N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellants by : Shri Anandd Babunath, CA

प्रत्यर्थी की ओर से/Respondent by : Shri A. Sasikumar, JCIT

सुनवाई की तारीख/Date of Hearing : 04.07.2018

घोषणा की तारीख/Date of Pronouncement : 24.07.2018

आदेश / O R D E R

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

Both the appeals of the two independent assessees are directed against the respective orders of the Commissioner of Income Tax (Appeals) -13, Chennai, and pertain to assessment year 2014-15.

2. Shri Anandd Babunath, the Ld. representative for the assessees, submitted that the Assessing Officer found a credit of ₹75,29,384/- in the books of account in the case of the assessee Smt Suman Modi and ₹77,41,463 in the case of the assessee Shri Anil Modi. According to the Ld. representative, each assessee has purchased shares of Kailas Auto Finance Ltd. for ₹2 lakhs and the same were sold and the profit was deposited in the account. According to the Ld. representative, the shares were purchased through stock exchange. The assessees have filed cover note and other material to substantiate that the shares were purchased through stock exchange. However, the Assessing Officer concluded that the stocks were not purchased through stock market. The Assessing Officer has not examined the material filed by the assessee. Moreover, according to the Ld. representative, the

statement recorded from various persons including that of Shri Sunil Dokania, was not furnished to the assessee. In the absence of any material, according to the Ld. representative, the Assessing Officer has come to a wrong conclusion that there was unexplained deposit of ₹75,29,384/- and ₹77,41,463/- respectively, which were confirmed by the CIT(Appeals).

3. We heard Shri A. Sasikumar, the Ld. Departmental Representative, also. According to the Ld. D.R., the Assessing Officer found that the transaction was not carried out through any stock exchange. Moreover, bypassing the trading process of stock exchange, the assessee entered into transaction. According to the Ld. D.R., the so-called bills / vouchers filed by the assessee are only internal one. Moreover, the assessee has not declared investment in the shares of Kailas Auto Finance Ltd. According to the Ld. representative, each assessee, in fact, invested ₹2 lakhs in the shares of Kailas Auto Finance Ltd. Ultimately, M/s Kailas Auto Finance Ltd. merged with another company. Shri Sunil Dokania was examined and he admitted that he was providing the accommodation entry in the form of share capital, share premium, etc. The Ld. D.R. further submitted that the assessee never asked

for copies of statement at any point of proceeding. Moreover, the assesseees know very well about the statement of Shri Sunil Dokania with whom the assesseees had transaction. Therefore, according to the Ld. D.R., non-furnishing of statement would not vitiate the proceeding.

4. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the entire assessment was based on the statement recorded from Shri Sunil Dokania and others. It is also not in dispute that copies of such statements were not furnished to the assesseees. The contention of the Revenue appears to be that the assesseees never asked for copies of statement. This Tribunal is of the considered opinion that whether the assesseees asked for copy of statement or not, it is a bounden duty of the Revenue to furnish copy of such statement when it is a basis for making assessment. The assessment proceeding being a judicial proceeding, the assesseees should be put on notice of all the materials against them before passing any order. Since such an exercise was not done by the Revenue, this Tribunal is of the considered opinion that the matter needs to be re-examined. Accordingly, orders of both the

authorities below in the case of both the assesseees are set aside and the entire issue of addition made under Section 68 of the Act is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter after furnishing copies of statement recorded by the Revenue to the assesseees and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assesseees.

5. In the result, both the appeals filed by the assesseees are allowed for statistical purposes.

Order pronounced on 24th July, 2018 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 24th July, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellants
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-13, Chennai
4. Principal CIT-8, Chennai-34
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.