

आयकर अपील अधीन, आयपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुवुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
Before Shri A. Mohan Alankamony, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I T.A. No. 3072/Mds/2017

वर्ष/Assessment Year: 2013-14

The Assistant Commissioner of
Income Tax,
Non Corporate Circle 10(1),
121, Mahatma Gandhi Road,
Chennai 600 034.

Smt. V. Mamta,
Vs. # 24/3, Chinna Thambi
Mudali Street, Triplicane,
Chennai 600 005.

[PAN:ADEPV6877B]

(अपीलाथ /Appellant)

(प्रत्यक्ष/Respondent)

अपीलाथ के ओर से / Appellant by : Shri AR. V. Sreenivasan, JCIT
प्रत्यक्ष के ओर से/Respondent by : None
सुनवाई के तारख / Date of hearing : 11.06.2018
घोषणा के तारख /Date of Pronouncement : 22.06.2018

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) 12, Chennai dated 12.10.2017 relevant to the assessment year 2013-14. The only effective ground raised in the appeal of the Revenue is that the Id. CIT(A) has erred in deleting the disallowances made on account of (i) short deduction of TDS at .17,57,680/-, (ii) disallowance incentive payment of .20,75,000/-, (iii)

disallowance of unexplained cash credit of .81,07,821/- and (iv) disallowance of interest under section 36(1)(iii) of the Income Tax Act, 1961 [Act+in short] by admitting fresh evidence in violation of Rule 46A of the Income Tax Rules.

2. Brief facts of the case are that the assessee filed the return of income on 25.10.2013 admitting income of .38,80,120/-. The return filed by the assessee was selected for scrutiny and issued statutory notices. The details called for were filed by the assessee. After verification of details furnished by the assessee, the Assessing completed the assessment under section 143(3) of the Act by determining the total income at .1,74,58,248/- after making various disallowances.

3. The assessee carried the matter in appeal before the Id. CIT(A) and challenged the disallowances made by the Assessing Officer. After considering the submissions of the assessee and verifying the details filed by the assessee, the Id. CIT(A) partly allowed the appeal filed bdy the assessee.

4. On being aggrieved, the Revenue is in appeal before the Tribunal and the Id. DR has mainly argued that by accepting fresh evidence against the disallowances, which were not produced before the Assessing

Officer, the Id. CIT(A) restricted/deleted the disallowances made by the Assessing Officer, is in violation of Rule 46A and pleaded that the entire issues may be remitted to the file of the Assessing Officer for verification of the details filed before the Id. CIT(A) and decide the issue afresh.

5. On the other hand, the Id. Counsel for the assessee has strongly supported the order passed by the Id. CIT(A) and prayed for its confirmation.

6. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. With regard to the disallowance made under section 40(a)(ia) of the Act, since the assessee has not produced any proof for lower deduction, the Assessing Officer disallowed a sum of .17,57,680/-. By considering the lower deduction certificate as well as Form 16 produced, the Id. CIT(A) restricted the disallowance and directed the Assessing Officer to disallow .10,42,710/- under section 40(a)(ia) of the Act.

6.1 With regard to the disallowance of incentive payments, since the assessee could not produce the TDS deducted on incentive payments, the Assessing Officer disallowed a sum of .20,75,000/-. By considering the details of payees produced by the assessee as well as by observing

that out of the incentives of .20,75,000/-, .16,90,888/- was paid through account payee cheque, the Id. CIT(A) confirmed by the disallowance to the extent of .3,77,880/- and balance was deleted since the amount of .3,77,880/- was paid through self cheques and .7032/- was paid in cash.

6.2 With regard to increase in loan creditors,, the Assessing Officer made the disallowance on the ground that the assessee has not produced any evidence of additional loan creditors with confirmation, other bank statement, PAN, IT return copy, etc. After considering the detailed submissions of the assessee, the Id. CIT(A) deleted the addition of .81,70,821/-.

6.3 With regard to the disallowance of interest under section 36(1)(iii) of the Act, the Assessing Officer observed as under:

The assessee claimed interest on bank loan for .34,77,978/- on bank OD of .2,62,02,837/-. The assessee also given an interest free advances to the tune of .1,31,21,898/-. Bank interest @ 12% PA on 1,31,21,898/- works out to .15,74,627/-. This is disallowed out of interest claimed of .34,77,978/- under section 36(1)(iii) of the IT Act and added to total income.+

By considering the detailed submissions of the assessee, the Id. CIT(A) observed that the interest free loans received from the sister concerns of .2,37,14,201/- is much more than the interest free advances given to sister concerns at .1,21,64,683/-, the Id. CIT(A) deleted the disallowance of .15,74,627/- made under section 36(1)(iii) of the Act.

6.4 The main argument advanced by the Id. DR is that without obtaining any remand report from the Assessing Officer, by considering various submissions made by the assessee, the Id. CIT(A) restricted/deleted the disallowances made by the Assessing Officer is in violation of Rule 46A(3) and pleaded that the entire issues may be remitted back to the file of the Assessing Officer for fresh consideration after verifying the details and explanations as was furnished before the Id. CIT(A). We find force in the argument of the Id. DR. Despite service of notice of hearing [AD on record], there was no representation from assessee's side. Considering the submissions made by the Id. DR, and it is admitted that before considering the submissions/evidences, the Id. CIT(A) has not obtained any remand report from the Assessing Officer, we remit the matter back to the Assessing Officer to verify the details and explanations filed before the Id. CIT(A) and decide the issues afresh in

accordance with law after allowing an opportunity of being heard to the assessee.

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

Order pronounced on the 22nd June, 2018 at Chennai.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 22.06.2018

Vm/-

आदेश क० प्रतिलिपि अपेक्षित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. वित्तीय प्रवर्धक/DR & 6. गार्डफाइल/GF.