

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 Nos.1100, 1101, 1102 & 1103/Chny/2018

निर्धारण वर्ष / Assessment Years : 2009-10, 2011-12, 2013-14 & 2014-15

The Deputy Commissioner of  
Income Tax,  
The Assistant Commissioner of  
Income Tax,  
Central Circle – 2(2),  
Chennai - 600 034.

v. Shri R.P. Darrmalingam,  
No.1379, "Golden Villa", 1<sup>st</sup> Block,  
6<sup>th</sup> Street, 18<sup>th</sup> Main Road,  
Vallalar Kudiyeruppu,  
Anna Nagar (W),  
Chennai - 600 040.

(अपीलार्थी/Appellant)

PAN : AEAPD 7363 R  
(प्रत्यर्थी/Respondent)

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

प्रत्यर्थी की ओर से/Respondent by : Shri K.M. Mohandass, CA

सुनवाई की तारीख/Date of Hearing : 12.09.2018

घोषणा की तारीख/Date of Pronouncement : 05.10.2018

### **आदेश /O R D E R**

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

All the four appeals of the Revenue are directed against the respective orders of the Commissioner of Income Tax (Appeals)-18, Chennai, dated 29.12.2017 and pertaining to assessment years 2009-10, 2011-12, 2013-14 and 2014-15. Since common issues

arise for consideration in these appeals, we heard all these appeals together and disposing of the same by this common order.

2. Let's first take Revenue's appeals for assessment years 2013-14 and 2014-15.

3. Admittedly, in both these appeals, the tax effect involved is less than ₹20 lakhs. Therefore, in view of the latest circular issued by the CBDT in Circular No.3/2018 dated 11.07.2018 fixing monetary limit for filing the appeals by the Revenue before the Tribunal at ₹20 lakhs, these appeals are not maintainable. Accordingly, the appeals of the Revenue for assessment years 2013-14 and 2014-15 in I.T.A. Nos.1102 & 1103/Chny/2018 are dismissed.

4. Now coming to assessment years 2009-10 and 2011-12 in I.T.A. Nos.1100 & 1101/Chny/2018.

5. Smt. Ruby George, the Ld. Departmental Representative, submitted that the CIT(Appeals) without going into the merit of the appeals, allowed the claim of the assessee by placing reliance on the decision of Special Bench of this Tribunal in All Cargo Global Logistics Ltd. v. DCIT (2012) 137 ITD 287. The Ld. D.R. submitted

that even though no material was found during the course of search operation, when there was a search, the Assessing Officer was expected to complete the assessment under Section 153A of the Income-tax Act, 1961 (in short 'the Act'). The Ld. D.R. placed her reliance on the judgment of Kerala High Court in CIT v. St. Francis Clay Décor Tiles (2016) 70 taxmann.com 234 and also on the judgment of Karnataka High Court in Canara Housing Development Co. v. DCIT (2014) 49 taxmann.com 98. Therefore, according to the Ld. D.R., the CIT(Appeals) is not justified in allowing the claim of the assessee on the ground that no material was found during the course of search operation. According to the Ld. D.R., even though there was no search material, admittedly, there was search operation under Section 132 of the Act, therefore, the Assessing Officer is expected to complete the assessment under Section 153A of the Act. On a query from the Bench, the Ld. D.R. submitted that the assessee filed return of income in the regular course before the date of search, i.e. on 20.11.2009, and the search was admittedly on 03.09.2013 and the time limit for issuing notice under Section 143(2) of the Act had expired.

6. We heard Shri K.M. Mohandass, the Ld. representative for the assessee, also. The Ld. representative placed his reliance on the judgment of Apex Court in PCIT v. Meeta Gutgutia (2018) 96 taxmann.com 468 and submitted that the assessment was completed on the basis of the return filed by the assessee before the date of search. Therefore, according to the Ld. representative, the concluded assessment of earlier years cannot be reopened in the absence of any incriminating material found during the course of search operation. Therefore, according to the Ld. representative, the CIT(Appeals) has rightly allowed the claim of the assessee.

7. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, for the assessment years 2009-10 and 2011-12 under consideration, the assessee filed the return of income on 20.11.2009 and 05.11.2011 and the return was processed under Section 143(1) of the Act and no assessment order was passed under Section 143(3) of the Act. In the meantime, there was search under Section 132 of the Act on 03.09.2013. On the date of search, the time limit for issuing notice under Section 143(2) of the Act had expired. Therefore, it is obvious that the return filed by the assessee before

the date of search was terminated by operation of law. In other words, no assessment proceeding was pending on 03.09.2013 being the date of search. Therefore, this Tribunal is of the considered opinion that when the assessment proceeding is not pending on the date of search, the Assessing Officer can assess or re-assess the income only on the basis of material found during the course of search operation. In this case, admittedly, there was no material found during the course of search operation, therefore, this Tribunal is of the considered opinion that in view of the judgment of Apex Court in Meeta Gutgutia (supra), the Assessing Officer cannot initiate proceeding under Section 153A of the Act.

8. In view of the judgment of Apex Court in Meeta Gutgutia (supra), the judgment of Kerala High Court in St. Francis Clay Décor Tiles (supra) and the judgment of Karnataka High Court in Canara Housing Development Co. (supra) referred by the Ld. D.R. are not applicable to the facts of the case. In view of this, this Tribunal do not find any reason to interfere with the orders of the lower authority for assessment years 2009-10 and 2011-12 and accordingly the same are confirmed.

9. In the result, all the four appeals filed by the Revenue are dismissed.

Order pronounced in the court on 5<sup>th</sup> October, 2018 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 5<sup>th</sup> October, 2018.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-18, Chennai-34
4. Principal CIT, Central-2, Chennai.
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.