

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिकसदस्य 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.945/Chny/2017

निर्धारण वर्ष /Assessment Year :2009-10

The Income Tax Officer,  
Company Ward 1(2),  
Chennai - 600 034.

v. Shri Bafna Mahaveer Chand,  
No.299, ThambuChetty Street,  
George Town, Chennai - 600034.

(अपीलार्थी/Appellant)

PAN : AACPB 6411 G  
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri R. Clement Ramesh Kumar, Addl.CIT  
प्रत्यर्थी की ओर से/Respondent by : None

सुनवाईकीतारीख/Date of Hearing : 15.11.2018

घोषणाकीतारीख/Date of Pronouncement : 03.12.2018

### **आदेश /ORDER**

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

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) -19, Chennai, dated 17.01.2017 and pertains to assessment year 2009-10.

2. The notice of hearing was received by the assessee through Department. The Ld. D.R. has produced a copy of

acknowledgement for having served the notice on the assessee. Even though the notice of hearing was served on the assessee, the assessee chose not to appear before this Tribunal. Therefore, we heard the Ld. D.R. and proceed to dispose the appeal on merit.

3. Shri R. Clement Ramesh Kumar, the Ld. Departmental Representative, submitted that the first issue arises for consideration is addition made by the Assessing Officer under Section 68 of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. D.R., in the Savings Bank account maintained by the assessee in Karnataka Bank Ltd., Mint Street Chennai, there are credits both by cash deposit and cheque deposit. According to the Ld. D.R., the assessee claimed before the Assessing Officer that cash withdrawals are the source for cash deposits in the bank account. As far as cheque deposits are concerned, according to the Ld. D.R., the assessee claimed that amounts were received from one Shri Abhay Kumar Jain and Shri Ramesh Kumar Jain. The Assessing Officer found that the names of Shri Abhay Kumar Jain and Shri Ramesh Kumar Jain do not find place in the balance sheet and confirmation letters were also not filed. Therefore, according to the Ld. D.R., the Assessing Officer having not been satisfied with

the explanation furnished by the assessee, made addition. However, the CIT(Appeals) without any material, deleted the addition made by the Assessing Officer. According to the Ld. D.R., the so-called bank ledger extracts said to be filed before the CIT(Appeals) were not filed before the Assessing Officer. Therefore, the Assessing Officer had no occasion to examine the same. When the Assessing Officer says that the loan or amount said to be received from Shri Abhay Kumar Jain and Shri Ramesh Kumar Jain does not reflect in the balance sheet, according to the Ld. D.R., the CIT(Appeals) claims that it reflects in the bank ledger extracts. Therefore, according to the Ld. D.R., there was a factual difference which needs to be verified.

4. The next ground of appeal, according to the Ld. D.R., is addition of ₹38.79 lakhs under Section 68 of the Act. The Revenue is also challenging the order of the CIT(Appeals) with regard to deletion of addition of ₹7.51 lakhs under Section 69 of the Act. For these two additions, according to the Ld. D.R., the assessee had not furnished any material during the course of scrutiny proceeding. Therefore, the material filed by the assessee before the

CIT(Appeals) is the additional evidence. The Assessing Officer had no occasion to verify the same.

5. We have considered the submissions made by the Ld. D.R. and perused the relevant material available on record. The assessee apparently had not produced any material evidence before the Assessing Officer during the course of assessment proceeding. Many materials were filed before the CIT(Appeals). The CIT(Appeals) without examining the correctness of evidence filed by the assessee and also without giving any opportunity to the Assessing Officer, deleted the additions. Therefore, this Tribunal is of the considered opinion that the materials which are said to be filed before the CIT(Appeals), need to be examined by the Assessing Officer since he is the original authority. Accordingly, orders of both the authorities below are set aside and the entire issue 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.

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

Order pronounced in the court on 3<sup>rd</sup> December, 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 3<sup>rd</sup> December, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-19, Chennai-34
4. Principal CIT, Central-1, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.