

आयकर अपीलिय अधिकरण,सी / एस एम सी न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' SMCBENCH, CHENNAI

श्रीएन.आर.एस. गणेशन,न्यायिकसदस्यकेसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER

आयकर अपील सं./ITA No.1183/Chny/2017

निर्धारण वर्ष / Assessment Year : 1996-97

Shri G. Selvaraj,
TherkuVirudhangaNallur Post,
T. Nedunjeri (Via),
Chidambaram Taluk.

v. The Income Tax Officer,
Ward 1(3),
Cuddalore.

PAN : AMDPS 1271 Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. N. Devanathan, Advocate

प्रत्यर्थीकीओरसे/Respondent by :Shri B. Sagadevan, JCIT

सुनवाईकीतारीख/Date of Hearing : 15.10.2018

घोषणाकीतारीख/Date of Pronouncement : 12.11.2018

आदेश /O R D E R

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Puducherry, dated 15.02.2017 and pertains to assessment year 1996-97.

2. There was a delay of 11days in filing this appeal by the assessee. The assessee has filed a petition for condonation of delay. I have heard the Ld.counsel for the assessee and the Ld.

D.R. I find that there was sufficient cause for not filing the appeal before the stipulated time. Therefore, I condone the delay and admit the appeal.

3. Sh. N. Devanathan, the Ld.counsel for the assessee, submitted that the Assessing Officer made addition of ₹1,25,000/- being a credit in the name of Shri S. Jayaprakash and another sum of ₹1,25,000/- in the name of Shri B. Vasanthan. According to the Ld. counsel, the summon issued to Shri Jayaprakash by the Assessing Officer under Section 131 of the Income-tax Act, 1961 (in short 'the Act') which was returned unserved since the creditor expired. According to the Ld. counsel, the Assessing Officer placing reliance on the earlier statement said to be recorded from Shri Jayaprakash, found that the said Shri Jayaprakash had no sufficient income to advance ₹1,25,000/- to the assessee. Therefore, according to the Ld. counsel, he made addition in the hands of the assessee. According to the Ld. counsel, Shri Jayaprakash was receiving ₹50,000/- to ₹60,000/- per annum from agriculture. Apart from this, he was also earning on tractor. Therefore, according to the Ld. counsel, possibility of earning of income by Shri Jayaprakash cannot be ruled out without any evidence.

4. On the contrary, Shri B. Sagadevan, the Ld. Departmental Representative, submitted that as per the statement recorded, Shri Jayaprakash was earning ₹5000/- per month on an average basis. This amount may not be sufficient even for his domestic expenses. Therefore, according to the Ld. D.R., he might not have had any savings so as to advance money to the assessee to the extent of ₹1,25,000/-.

5. I have considered the rival submissions on either side and perused the relevant material available on record. The assessment year under consideration is 1996-97. Admittedly, Shri Jayaprakash was earning ₹50,000/- to ₹60,000/- from agricultural activities per annum. The Assessing Officer admitted that the said Shri Jayaprakash was earning an average of ₹5000/- per month. The said Shri Jayaprakash was an agriculturist. Therefore, his domestic need would be met from the agricultural activities. In other words, food and other expenses would be met from the agricultural produce which was cultivated by him. Besides that, Shri Jayaprakash had also purchased a tractor. That means he had enough savings. Taking into consideration of the agricultural activity for the assessment year 1996-97 and the cost of living during the year 1996, this Tribunal is of the considered opinion that

the said Shri Jayaprakash would have saved ₹1,25,000/- which was advanced to the assessee.

6. Agriculture labour is unorganized in this country. Therefore, earning of income of ₹200 to ₹300/- per day from agricultural activities cannot be ruled out. Therefore, this Tribunal is of the considered opinion that there is no reason for the Assessing Officer to doubt the genuineness of transaction. Hence, this Tribunal is unable to uphold the order of the Assessing Officer in respect of Shri Jayaprakash. Accordingly, the order of the Assessing Officer as confirmed by the CIT(Appeals) is set aside and the addition of ₹1,25,000/- is deleted.

7. Now coming to the addition made in respect of Shri B. Vasanthan, in response to the summon issued under Section 131 of the Act to Shri B. Vasanthan, he requested for adjournment. However, he has not appeared subsequently. Referring to the statement recorded from Shri B. Vasanthan, the Ld. D.R. submitted that he denied having advanced a sum of ₹1,25,000/- to the assessee. However, the said Shri B. Vasanthan was not made available to the assessee for cross-examination. The Assessing Officer found that the assessee could not produce the said Shri

Vasanthan for cross examination. When the Assessing Officer summoned Shri Vasanthan and he could not enforce the attendance of Shri Vasanthan, it is not known how he can blame the assessee for not producing for cross-examination? When the Assessing Officer is placing reliance on the statement of Shri Vasanthan, it is for the Assessing Officer to summon him and make him available for cross-examination by the assessee. Since the said Shri Vasanthan was not made available for cross-examination by the assessee, this Tribunal is of the considered opinion that the statement said to be recorded from Shri Vasanthan has no relevance. In other words, the said statement had no evidentiary value, therefore, the same cannot be a basis for any addition. Therefore, this Tribunal is unable to uphold the order of the Assessing Officer as confirmed by the CIT(Appeals). Accordingly, the orders of both the authorities below are set aside and the addition made in the hands of the assessee in respect of ₹1,25,000/- said to be received from Shri B. Vasanthan is also deleted.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the court on 12th November, 2018 at Chennai.

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 12th November, 2018

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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