

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्रीएन.आर.एस. गणेशन, न्यायिकसदस्य एवं श्री एस. जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.1055 & 1054/Chny/2018

निर्धारण वर्ष /Assessment Years : 2009-10 & 2011-12

&

C.O. Nos.89 & 90/Chny/2018

(in I.T.A. Nos.1054 & 1055/Chny/2018)

The Assistant Commissioner of
Income Tax,
Central Circle – 1(4),
Chennai - 600 034.

v. Shri M. Kiran Kumar,
No.123, Usman Road,
T. Nagar, Chennai - 600 017.

PAN : ACHPM 2247 E

(अपीलार्थी/Appellant)

(Respondent & Cross Objector)

अपीलार्थी की ओर से / Appellant by : Shri S. Bharath, CIT

प्रत्यर्थी की ओर से / Respondent by : Sh. T. Banusekar, CA

सुनवाई की तारीख / Date of Hearing : 20.11.2018

घोषणा की तारीख / Date of Pronouncement : 19.12.2018

आदेश /O R D E R

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

Both the appeals of the Revenue are directed against the common order passed by the Commissioner of Income Tax (Appeals)-18, Chennai, dated 28.12.2017 and pertain to assessment years 2009-10 and 2011-12. The assessee has filed cross-objections for both the assessment years. Since common

issue arises for consideration in both the appeals and cross-objections, we heard the appeals of the Revenue and the cross-objections of the assessee together and disposing of the same by this common order.

2. We heard Shri S. Bharath, the Ld. Departmental Representative and Sh. T. Banusekar, the Ld. representative for the assessee. Admittedly, there was no material found during the course of search operation. The Revenue filed the appeals on the basis of judgment of Kerala High Court in CIT v. M/s St. Francis Clay Décor Tiles (2016) 385 ITR 624. The assessee has now produced a copy of judgment of Apex Court in Principal CIT v. Meeta Gutgutia (2018) 96 taxmann.com 468. The Special Leave Petition arose out of the judgment of Delhi High Court which has taken a contrary view as that of Kerala High Court. Now, admittedly, there are two High Court judgments, one is in favour of Revenue and another one is in favour of assessee. The Special Leave Petition filed by the Revenue against the judgment of Delhi High Court was dismissed. Even though the order on the Special Leave Petition may not lay down any law, however, *prima facie* the Apex Court approved the judgment of Delhi High Court.

Moreover, when there are two conflicting views, this Tribunal is of the considered opinion that the view in favour of assessee has to be followed. Therefore, in the absence of material found in the course of search operation, there cannot be any addition under Section 153A of the Income-tax Act, 1961 (in short 'the Act'). Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

3. The cross-objections filed by the assessee become infructuous, therefore, stand dismissed.

4. In the result, both the appeals of the revenue and both the cross-objections of the assessee are dismissed.

Order pronounced in the court on 19th December, 2018 at Chennai.

sd/-

(एस. जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 19th December, 2018.

Kri.

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-1, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.