

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष
BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.2953 & 2954/Chny/2018
निर्धारण वर्ष /Assessment Years: 2010-11 & 2011-12

Shri Santhosh Kumar,
Flat- F, 1st Floor, RMR Habitat,
5A, Thiruvalluvar Street,
Gurusamy Nagar Extension,
Porur, Chennai – 600 116.

Vs. Income Tax Officer,
Ward-3, 2nd Floor, Kanniah,
Business Centre,
Block No.14, D. No.380,
M.G. Road,
Pondicherry – 605 001.

[PAN: BQQPS 4668M]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri S. Anand, CA for Shri K.
Ravi Kumar, Advocate
प्रत्यर्थी की ओर से /Respondent by : Shri B. Sagadevan, JCIT
सुनवाई की तारीख/Date of Hearing : 16.01.2019
घोषणा की तारीख /Date of pronouncement : 26.02.2019

आदेश / O R D E R

PER INTURI RAMA RAO, ACCOUNTANT MEMBER:

These two appeals filed by the Assessee directed against the common Order of the Learned Commissioner of Income Tax (Appeals), Puducherry (hereinafter called as 'CIT(A)') dated 31.07.2018 for the Assessment Years (AYs) 2010-11 & 2011-12.

2. Since, the identical facts and issue are involved in these appeals, we proceed to dispose the same vide this common order.

3. For the sake of convenience and clarity the facts relevant for the AY 2010-11 in ITA No.2953/Chny/2018 are stated herein.

4. The Assessee raised the following grounds of appeal in ITA No.2953/Chny/2018 for AY 2010-11:

"1. The order of the learned CIT(A) is arbitrary, contradictory to the facts and circumstances of the case and In any case violative of the principles of equity and natural justice.

2. The assessing officer has not recorded reasons for re-opening the assessment. Even In the assessment order u/s.144 r.w.s. 147 dated 20/03/20 15, the assessing officer has neither stated what was the reason recorded for re-opening the assessment nor stated the justification for reopening the assessment.

3. The Assessing Officer erred in making best judgement assessment u/s. 144 of the Income Tax Act, 1961 when the conditions for making such an assessment were not satisfied.

4. Without prejudice to ground no.3, the Assessing officer erred in making best judgement assessment of a part of income and not making best judgement of the total income as required under section 144.

5. The Assessing officer erred in adopting the total income as Rs.2,50,000/- as against Rs. 1.50,000 admitted by the appellant.

6. The CIT(A) erred in not appreciating that the receipts in the bank account were duly offered In the hands of the partnership firm.

7. For these and such other grounds that may be raised at the time of hearing."

5. The brief facts of the case are as under:

The appellant is an individual and deriving income from the share of profit from the partnership firm. The return of income for the AY 2010-11 was filed admitting a total income of Rs. 1,50,000/-. During the course of assessment proceedings, the Assessing Officer (AO) found that the appellant made cash deposits of Rs. 30,12,000/- in saving bank

account with IDBI Bank. The explanation offered in support of the sources for the cash deposits was that the cash deposits were related to the firm M/s. Spacio Infrastructure, where the appellant is one of the partners. However, the appellant had not filed copy of the bank account of the firm and therefore, the AO concluded that the cash deposits belongs to the appellant and made addition as unaccounted cash deposit, treated the same as unaccounted contract receipts and estimated the income @ 8% and brought to tax by invoking the provisions of s. 144 of the Income Tax Act, 1961 (in short 'the Act').

6. Being aggrieved, an appeal was preferred before Id. CIT(A), who vide impugned order confirmed the assessment. Even before the Id. CIT(A), the appellant could not cause appearance despite several opportunities. Therefore, the Id. CIT(A) dismissed the appeal exparty. Being aggrieved, the appellant is in appeal before us in the present appeal.

7. The Id. Counsel for the appellant stated that the appearance before the Id. CIT(A) could not be caused on account of factors, which are beyond the control of the appellant and he submitted that the matters be remanded back to the file of AO for *denovo* assessment. At the outset, there is a delay of six days in filing the present appeals. The appellant filed an affidavit praying for condonation of delay on the ground that the

delay need occurred in engaging the counsel to represent the case before the Tribunal. Considering the averments made in the affidavit, we condone the delay and the appeals are admitted.

8. Considering the submissions made on behalf of the assessee, we set aside the order of lower authorities, and remanded the matter to the AO for *denovo* assessment after giving an opportunity being heard to the appellant.

9. Hence, the appeal filed by the assessee is partly allowed for statistical purpose.

ITA No.2954/Chny/2018 for AY 2011-12:

10. Since, the facts in ITA No.2954/Chny/2018 for AY 2011-12 are identical to the facts in ITA No.2953/Chny/2018 for AY 2010-11 in the reasons mentioned therein, we set aside the order of lower authorities, and remand the matter to the AO. Hence, the above captioned appeals filed by the assessee is partly allowed for statistical purpose.

11. In the result, both the appeals filed by the assessee are partly allowed for statistical purpose.

Order pronounced on the 26th day of February, 2019 in Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai, दिनांक/Dated: 26th February, 2019.

EDN, Sr. P.S

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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