

आयकर अपीलीय अधिकरण, 'सी' / एस एम सी न्यायपीठ, चेन्नई

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

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य केसमक्ष

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

आयकर अपील सं./ITA No.808/Chny/2019

निर्धारण वर्ष / Assessment Year : 2013-14

Shri S. MeenakshiSundaram,
82A, North Street,
Palanganatham,
Madurai – 626 003.

v. The Income Tax Officer,
Non Corporate Ward 2(4),
Madurai.

PAN : AJSPM 3695 G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. N. Devanathan, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri K. Hari Govind, JCIT

सुनवाई की तारीख/Date of Hearing : 10.07.2019

घोषणा की तारीख/Date of Pronouncement : 15.07.2019

आदेश / O R D E R

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) -2, Madurai, dated 25.01.2019 and pertains to assessment year 2013-14.

2. Sh. N. Devanathan, the Ld.counsel for the assessee, submitted that the CIT(Appeals) has dismissed the appeal for non-prosecution without discussing anything on merit. Therefore, according to the Ld. counsel, the order of the CIT(Appeals) is nullity, hence, needs to be

quashed. According to the Ld. counsel, recording of reasons is essential pre-condition for disposing of the appeal. According to the Ld. counsel, the Assessing Officer disallowed 20% of expenses on ad hoc basis. The assessing authority has no jurisdiction to disallow the expenditure on ad hoc basis. Therefore, according to the Ld. counsel, there is no justification in the orders of both the authorities below.

3. On the contrary, Shri K. Hari Govind, the Ld. Departmental Representative, submitted that the CIT(Appeals) has given ample opportunities, almost six opportunities. Still, the assessee failed to appear before him. Therefore, according to the Ld. D.R., the CIT(Appeals) found that since the assessee has not availed the opportunities and no material is available on record, he dismissed the appeal.

4. Having heard Sh. N. Devanathan, the Ld.counsel for the assessee and Shri K. Hari Govind, the Ld. D.R., this Tribunal finds that the CIT(Appeals) dismissed the appeal without discussing on merit. The CIT(Appeals), under the scheme of Income-tax Act, is the first appellate authority having all the powers of the Assessing Officer. In other words, the CIT(Appeals) has power which is coterminous with that of the Assessing Officer. The Income-tax Act specifically empowers the CIT(Appeals) to enhance the assessment in case the Assessing Officer failed to assess any source of income or part thereof. Therefore, the

CIT(Appeals) has to examine the appeal on merit after calling for records from the Assessing Officer even in case where the assessee has not appeared before him. In the case before us, no doubt, the assessee failed to appear before him even after several opportunities. The failure of the assessee to appear before the CIT(Appeals) does not empower the CIT(Appeals) to dismiss the appeal for non-prosecution or without passing any speaking order.

5. Even though the assessee has not cooperated or failed to appear before the CIT(Appeals) even after due opportunities, this Tribunal is of the considered opinion that the CIT(Appeals) being the first appellate authority under the scheme of the Income-tax Act, has to call for records from the Assessing Officer and dispose the appeal on merit. Since such an exercise was not done by the CIT(Appeals), this Tribunal is of the considered opinion that the matter needs to be re-examined by the CIT(Appeals). Accordingly, the order of the CIT(Appeals) is set aside and the entire issue is remitted back to the file of the CIT(Appeals). The CIT(Appeals) 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 assessee is allowed for statistical purposes.

Order pronounced in the court on 15th July, 2019 at Chennai.

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

चेन्नई/Chennai,

दिनांक/Dated, the 15th July, 2019

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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