

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री इंटूरी रामा राव, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.193/Mds/1999

निर्धारण वर्ष /Assessment Year : 1995-96

The Deputy Commissioner of
Income Tax,
Company Circle IV(4),
Chennai.

v. M/s Sharp Detectives Pvt. Ltd.,
7, Taluk Office Road,
Little Mount, Saidapet,
Chennai - 600 015.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by :

Shri V.M. Mahidar, JCIT

प्रत्यर्थी की ओर से/Respondent by :

Shri J. Prabhakar, CA

Shri B. Jeevan Kumar, CA

Shri A.P. Ravi, Advocate

सुनवाई की तारीख/Date of Hearing : 06.08.2019

घोषणा की तारीख/Date of Pronouncement : 19.08.2019

आदेश / O R D E R

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

This appeal of the assessee was disposed of earlier by an order dated 15.02.2005. The assessee filed an appeal before the High Court. The High Court by judgment in T.C.A. No.2416 of 2008 dated 25.02.2019, remitted back the matter for deciding the appeal afresh in accordance with law pronounced by the Apex Court in CIT v. Alom Extrusions Ltd. (2009) 319 ITR 306. Therefore, the appeal

was posted as per the statement of the High Court, for fresh hearing.

2. Shri V.M. Mahidar, the Ld. Departmental Representative, submitted that the Assessing Officer made disallowance of ₹11,85,777/- and ₹4,65,817/- towards the payments made by the assessee to PF and ESI respectively. On appeal by the assessee, the CIT(Appeals), however, restricted the disallowance to ₹2,43,869/- and ₹83,209/- towards PF and ESI respectively. Referring to the judgment of High Court, the Ld. D.R. submitted that the payments were made before the due date for filing of the return of income. Therefore, according to the Ld. D.R., the High Court remanded back the matter for reconsideration in the light of the judgment of Apex Court in Alom Extrusions Ltd. (supra). On a query from the Bench what was disallowed by the Assessing Officer whether it is employees' contribution or employer's contribution? The Ld. D.R. very fairly submitted that the facts are not emerging from the order of the Assessing Officer. The Ld. D.R. submitted that the judgment of Apex Court in Alom Extrusions Ltd. (supra) is applicable only in respect of the employer's contribution to PF and ESI and it is not applicable to employees' contribution. According to

the Ld. D.R., once the employees' contribution was received by the assessee, it has to be deposited within the due date provided under the respective statute.

3. On the contrary, Shri J. Prabhakar, the Ld. representative for the assessee, submitted that the Madras High Court after considering the judgment of Apex Court in Alom Extrusions Ltd. (supra), specifically directed this Tribunal to decide the appeal afresh in accordance with law as pronounced by the Apex Court. On a query from the Bench what was disallowed by the Assessing Officer whether it is employees' contribution or employer's contribution? The Ld. representative submitted that employees' contribution was disallowed by the Assessing Officer as well as the CIT(Appeals) and the assessee has not filed any further appeal. What is disputed before this Tribunal is only in respect of employer's contribution. On a query from the Bench, the Ld. representative very fairly submitted that the facts are not emerging from the order of the Assessing Officer as well as the CIT(Appeals). The Ld. representative further submitted that these are all the matters of the year 1999 and the facts may be available in the auditor's statement

which is not readily available. According to the Ld. representative, it may be available with the Department in the assessment folder.

4. By way of rejoinder, Shri V.M. Mahidar, the Ld. Departmental Representative, submitted that the assessment records are not readily available and the so called auditor's statement is also not available readily to produce the same before this Tribunal.

5. We have considered the rival submissions on either side and perused the relevant material available on record. From the orders of the lower authorities and the material available on record, it is not known whether the subject matter of the present appeal is in respect of employees' contribution or employer's contribution to PF and ESI. The Ld. representative for the assessee submitted that the employees' contribution was disallowed by the CIT(Appeals) as well as the Assessing Officer. This fact is not emerging from the orders of the Assessing Officer and the CIT(Appeals). To decide this issue in the light of the judgment of Apex Court in Alom Extrusions Ltd. (supra) as directed by the High Court, this Tribunal is of the considered opinion that the facts whether the subject matter of issue before this Tribunal is in respect of employees' contribution or employer's contribution has to be brought on record.

6. Since the facts are admittedly not emerging from the impugned orders of the both the authorities below, this Tribunal is of the considered opinion that the Assessing Officer has to re-examine the same and bring on record what was disallowed by the authorities below was in respect of employees' contribution or employer's contribution. Since the actual facts are not available before this Tribunal and both the assessee and the Revenue could not produce the so called auditor's statement, wherein the facts are said to be elucidated, is not readily available and the High Court has fixed the time limit of six months for disposal of appeal from 25.02.2019, this Tribunal is of the considered opinion that the matter needs to be remitted back to the file of the Assessing Officer for reconsideration. 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 and bring on record whether it is employees' contribution or employer's contribution which was the subject matter of the issue and thereafter decide the issue afresh after considering the judgment of the High Court dated 25.02.2019 and the judgment of

Apex Court in Alom Extrusions Ltd. (supra), after giving a reasonable opportunity to the assessee.

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

Order pronounced in the court on 19th August, 2019 at Chennai.

sd/-

(इंटूरी रामा राव)

(Inturi Rama Rao)

लेखा सदस्य/Accountant Member
चेन्नई/Chennai,

दिनांक/Dated, the 19th August, 2019.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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