

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'D' 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.1669/Chny/2018

निर्धारण वर्ष /Assessment Year : 2014-15

The Income Tax Officer,
Corporate Ward – 5(4),
Chennai - 600 034.

v. M/s Raj Kishor Engineering
Constructions Pvt. Ltd.,
486, 17th Street, 4th Sector,
K.K. Nagar, Chennai - 600 078.

PAN : AAECR 9284 L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Ms. R. Anitha, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri G. Baskar, Advocate

सुनवाई की तारीख/Date of Hearing : 03.09.2019

घोषणा की तारीख/Date of Pronouncement : 01.10.2019

आदेश /O R D E R

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

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) -3, Chennai, dated 27.02.2018 and pertains to assessment year 2014-15.

2. Ms. R. Anitha, the Ld. Departmental Representative, submitted that the first issue arises for consideration is disallowance of ₹6,23,16,348/- under Section 40(a)(ia) of the Income-tax Act,

1961 (in short 'the Act'). According to the Ld. D.R., in the course of appellate proceeding, the CIT(Appeals) admitted additional evidence filed by the assessee without giving any opportunity to the Assessing Officer in violation of Rule 46A of the Income-tax Rules, 1962. Therefore, the Ld. D.R. submitted that the matter may be remitted back to the file of the Assessing Officer.

3. We heard Shri G. Baskar, the Ld.counsel for the assessee also. The Ld.counsel very fairly submitted that the additional evidence was filed before the CIT(Appeals), therefore, the matter may be remitted back to the file of the Assessing Officer for reconsideration.

4. Having heard the Ld. D.R. and the Ld.counsel for the assessee, this Tribunal is of the considered opinion that since the additional material was filed before the CIT(Appeals) and the same was admitted without giving any opportunity to the Assessing Officer in violation of Rule 46A, the matter needs to be re-examined by the Assessing Officer. Accordingly, orders of both the authorities below are set aside and the disallowance made under Section 40(a)(ia) of the Act is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter in the light of the

material that was filed by the assessee and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

5. The next issue arises for consideration is disallowance made by the Assessing Officer under Section 36(1)(va) of the Act.

6. We heard the Ld. D.R. and the Ld.counsel for the assessee. The Ld.counsel for the assessee very fairly submitted that the date of payment of employees' contribution is not available on record, therefore, this issue also needs to be re-examined. We have carefully gone through the orders of the authorities below. The employees' contribution to Provident Fund and ESI was disallowed by the Assessing Officer. However, the date of actual payment was not brought on record by the Assessing Officer. Therefore, as rightly submitted by the Ld.counsel for the assessee, this Tribunal is of the considered opinion that the matter needs to be re-examined by the Assessing Officer. Accordingly, the orders of both the authorities below are set aside and the entire disallowance made by the Assessing Officer under Section 36(1)(va) of the Act is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter and bring on record the actual date of

payment of employees' contribution to the Provident Fund and ESI and thereafter decide the issue afresh in accordance with law, 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 1st October, 2019 at Chennai.

Sd/-

(इंटूरी रामा राव)

(Inturi Rama Rao)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 1st October, 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)-3, Chennai
4. Principal CIT- 5, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.