

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' 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.1982/Chny/2019

निर्धारण वर्ष /Assessment Year : 2012-13

Smt. Bhagavathy,  
20/2, Thirunagar 1<sup>st</sup> Street,  
Vadapalani, Chennai.

v. The Income Tax Officer,  
Non Corporate Ward 13(2),  
Chennai - 600 034.

PAN : AFQPB 1875 D

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Ms. S. Sriniranjani, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing : 12.09.2019

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 assessee is directed against the order of the Commissioner of Income Tax (Appeals) -7, Chennai, dated 30.03.2019 and pertains to assessment year 2012-13.

2. Ms. S. Sriniranjani, the Ld.counsel for the assessee, submitted that the assessee is engaged herself in the business of civil construction. During the course of business activity, according

to the Ld. counsel, the assessee incurred expenditure to the extent of ₹48,37,490/- towards land development and purchase of materials. According to the Ld. counsel, the labour charges were paid once in a week as lump sum to the site supervisor who, in turn, paid to all the labourers, therefore, there was no payment exceeding ₹20,000/- in a day. According to the Ld. counsel, each payment does not exceed ₹20,000/-. Moreover, the annual payments were not exceeding ₹50,000/- for each labour. Therefore, according to the Ld. counsel, the CIT(Appeals) is not correct in confirming the order of the Assessing Officer. Referring to the order of the CIT(Appeals), the Ld.counsel submitted that the CIT(Appeals) has not applied his mind to the material available on record and he has simply dismissed the appeal of the assessee. Therefore, the Ld.counsel submitted that the matter may be remitted back to the file of the CIT(Appeals).

3. We heard Shri AR.V. Sreenivasan, the Ld. Departmental Representative also. We have carefully gone through the order of the CIT(Appeals). The CIT(Appeals) has dismissed the appeal on the ground that there is no further material available either by way of explanatory notes or submissions to rebut the A.O.'s findings.

Presumably, the CIT(Appeals) dismissed the appeal for non-prosecution. Under the scheme of income-tax Act, the CIT(Appeals) has no authority to pass order dismissing the appeal for non-prosecution. The power of the CIT(Appeals) is coterminous with that of the Assessing Officer. There is a specific power conferred on the CIT(Appeals) to enhance the assessment made by the Assessing Officer. Therefore, there is an onerous responsibility cast on the CIT(Appeals) to call for records from the Assessing Officer, re-examine the matter and dispose the appeal on merit irrespective of the fact whether the assessee appeared before him or not.

4. In this case, the assessee did not appear before the CIT(Appeals). The CIT(Appeals) dismissed the appeal on the ground that there is no further material available either by way of explanatory notes or submissions to rebut the A.O.'s findings. Obviously, the CIT(Appeals) has not taken any pain of calling for records from the Assessing Officer to re-examine the matter as required under the scheme of Income-tax Act. This Tribunal is of the considered opinion that this kind of attitude on the part of the CIT(Appeals) cannot be allowed to continue. In other words, the

CIT(Appeals) is expected to dispose the appeal on merit by way of speaking order on the issues arising for consideration irrespective of the fact whether the assessee appeared before him or not. Since such an exercise was not done by the CIT(Appeals), the order of the CIT(Appeals) is set aside and the entire issue raised by the assessee 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.

5. It is made clear that if the assessee has not appeared before the CIT(Appeals) after receiving the notice of hearing, it is open to the CIT(Appeals) to call for records from the Assessing Officer and re-examine the same and pass order on the basis of material available on record. It is needless to point out that the CIT(Appeals) has to pass a speaking order by giving reason for the conclusion reached in the order.

6. With the above observation, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the court on 1<sup>st</sup> October, 2019 at Chennai.

sd/-

(इंटूरी रामा राव)

(Inturi Rama Rao)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 1<sup>st</sup> October, 2019.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-7, Chennai
4. Principal CIT- 10, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.