

आयकर अपीलुीय अधलकरण, 'डी' नुयायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI

शुी एन.आर.एस. गणेशन, नुयायलक सदसुय एवं
शुी रमलत कुओर, लेखल सदसुय के समकुष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA No.2134/Chny/2019

नुलरुधलरण वरुष / **Assessment Year: 2015-16**

Shri S. Venkateswara Babu,
No.7/495, 2nd Street, D-Type,
Sidco Nagar, Villivakkam,
Chennai-600 049.

v. The Income Tax Officer,
Non-Corporate Ward-10(5),
Chennai-600 034.

[PAN: ADDPV6161H]

(अपीललरुथी/ **Appellant**)

(प्रतुयलरुथी/ **Respondent**)

अपीललरुथी कुी ओर से/ Appellant by

: Ms.Tharish.V, CA

प्रतुयलरुथी कुी ओर से /Respondent by

: Ms.R.Anitha, JCIT

सुनवलई कुी तलरुीख/Date of Hearing

: 13.11.2019

कुषषणल कुी तलरुीख /Date of Pronouncement

: 15.11.2019

आदेश / ORDER

PER RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal filed by assessee is directed against appellate Order dated 29.04.2019 passed by learned Commissioner of Income Tax (Appeals)-12, Chennai (hereinafter called "the CIT(A)"), in ITA No.43/CIT(A)-12/17-18 for assessment year (ay) 2015-16, the appellate proceedings before learned CIT(A) had arisen from assessment order

dated 29.11.2017 passed by learned Assessing Officer (hereinafter called "the AO") u/s.143(3) of the Income-tax Act, 1961 (hereinafter called "the Act") for ay: 2015-16.

2. The grounds of appeal raised by assessee in memo of appeal filed with the Income-Tax Appellate Tribunal, Chennai (hereinafter called "the Tribunal") read as under:-

| Sl.No. | Ground | Tax Effect |
|---------------|---|-------------------|
| 1. | <i>The Order of the Ld.Commissioner of Income-tax (Appeals) 12, Chennai is contrary to the law and facts of the case.</i> | |
| 2. | <i>The Ld. CIT(A) - 12, Chennai erred in adjudicating the appeal without considering the Grounds of Appeal filed by the appellant.</i> | |
| 3.1 | <i>The Ld.CIT(A)- 12, Chennai erred in confirming the Order of the Assessing Officer in invoking the provisions of Section 56(2)(vii)(b) and adding the difference between the consideration recorded in the sale deed and the stamp duty value without considering the market value of the Undivided Share of Land in the location.</i> | Rs. 66,413/- |
| 3.2 | <i>The Ld. C1T(A) - 12, Chennai erred in ignoring the fact that value per sq. ft. of vacant land will always be higher than the value of Undivided Share of land as there is a built-up area attached with Undivided share of land and such undivided share of land cannot be independently parted away.</i> | |
| 3.3 | <i>The Ld. CIT(A) - 12, Chennai erred in not considering the fact that, in case of residential flats, the value of Undivided Share of Land cannot be determined individually without considering the value of the built up area attached to it, as only the purchase price for is determined by the assessee and the builder and the value of Undivided Share of Land mentioned in the Sale Deed is an amount assigned for registration purposes.</i> | |
| 4.1 | <i>The Ld. CIT(A) - 12, Chennai erred in confirming the order of the Assessing Officer with regard to diesel expenses and vehicle maintenance expenditure incurred during the year under consideration.</i> | Rs. 3,79,976/- |
| 4.2 | <i>The Ld. CIT(A) - 12, Chennai erred in not considering the fact that the appellant has engaged third party contractors for carrying out substantial works in the earlier years and whereas during the Assessment year under consideration, the entire work has been carried out by the Appellant only, which is also evident from the substantial decrease in turnover during the year under consideration.</i> | |
| 4.3 | <i>The Ld. CIT(A) - 12, Chennai erred in ignoring the fact that during the earlier Assessment year, vehicle Maintenance and fuel expenses were included in the contract payments made by the Appellant, whereas during the Assessment year under consideration, these expenses were directly borne by the Appellant causing the increase in fuel and maintenance expenses.</i> | |
| 4.4 | <i>The Ld. CIT(A) - 12, erred in confirming the order of the Assessing Officer, wherein only cash book was called for to invoke the disallowance, without considering the Bills for Fuel Expenses and Vehicle Maintenance Expenses to confirm the disallowance.</i> | |
| 4.5 | <i>The Ld. CIT(A) - 12, erred in confirming the order of the Assessing Officer,</i> | |

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| | <i>even after the fact that, the books of accounts were duly audited under Section 44AB of the Act after verification of the books of account, and making a further disallowance of 30 percent of diesel and maintenance expenses is uncalled for.</i> | |
| 5. | <i>The appellant craves leave to add, to amend or alter the above grounds of appeal as may be deemed necessary.</i> | |

3. Briefly stated the facts of the case are that assessee is engaged in business of earthwork excavation, road works, filling & hirers of proclain, JBC, tipper and other machinery. The assessment was framed against the assessee by AO u/s.143(3) vide assessment order dated 29.11.2017, wherein, additions were made by the AO to the returned income of the assessee under different heads . The assessee had filed return of income with Revenue declaring loss of ₹7,81,340/-, while assessed income by AO was to the tune of ₹17,27,327/- vide assessment order passed u/s 143(3) of the 1961 Act. Aggrieved by an assessment framed by the AO vide assessment order dated 29.11.2017 passed u/s 143(3) of the 1961 Act, the assessee filed first appeal before Ld.CIT(A) which was dismissed by Ld.CIT(A) , inter-alia, for non-prosecution, but however, while passing appellate order the Ld.CIT(A) simply upheld assessment order passed by the AO without independently discussing on merits the issues raised by assessee in its appeal filed with learned CIT(A) , as is required under provisions of Sec.250(6) of the 1961 Act.

4. Aggrieved by an appellate order dated 29.04.2019 passed by learned CIT(A) , the assessee has filed this appeal before tribunal and arguments are advanced by both the rival parties before the Bench. The Ld.Counsel for the assessee submitted that Ld.CIT(A) ought to have adjudicated the issues in appeal filed by assessee on merits by independent application of mind , as is required under provisions of Section 250(6) but however learned CIT(A) simply upheld assessment order passed by learned AO. It was prayed that matter may be restored to the file of Ld.CIT(A) for fresh adjudication and an fresh opportunity may be granted to the assessee to appear before Ld.CIT(A) and present its case/arguments/evidences in its defense in denovo appellate proceedings . The Ld.DR submitted that the assessee did not appeared before learned CIT(A) in the first round of litigation and it is the assessee who is responsible for its woes but however, learned DR fairly submitted that the issues may be restored to the file of Ld.CIT(A) for fresh adjudication.

5. We have considered rival contentions and perused the material on record. We have observed that assessee is engaged in the business of earthwork excavation, road works, filling & hirers of proclain, JCB, tipper and other machinery. It is observed that the case of the assessee was selected for scrutiny by Revenue for framing assessment u/s.143(3) & 143(2) of the 1961 Act. The return of income declaring loss of ₹7,81,340/- was filed by assessee , wherein the AO assessed income of

₹17,27,327/- of the assessee while framing scrutiny assessment u/s 143(3) of the 1961 Act, wherein, several additions were made by AO to the returned income of the assessee. Aggrieved by an assessment framed by the AO u/s 143(3) of the 1961 Act, the assessee filed first appeal before Ld.CIT(A). The assessee did not appear before Ld.CIT(A) despite several opportunities granted by learned CIT(A), but , however, Ld.CIT(A) passed an appellate order without discussing issues in the appeal filed by assessee independently on merits and has , inter-alia, dismissed appeal of the assessee for non-prosecution and simply upheld assessment order passed by the AO without independently discussing all the issues in appeal filed by assessee on merits based on material on record , as is required u/s 250(6) of the 1961 Act. In our considered view, the matter needs to be restored to file of Ld.CIT(A) for fresh adjudication on merits in accordance with the law of all the issues/grounds raised by assessee in its first appeal filed with learned CIT(A). We hereby direct assessee to appear before Ld.CIT(A) and submit all necessary evidences, explanations etc., in support of its contention , when the appeal comes for denovo hearing before Ld.CIT(A). It is made clear that in case if the assessee still did not come forward and co-operate in denovo appellate proceedings before learned CIT(A), then Ld.CIT(A) shall be at liberty to decide the issue's on merits in accordance with law. The Ld.CIT(A) is directed to denovo adjudicate all the issues raised by assessee in its first appeal filed with learned CIT(A) denovo on merits in accordance with law. Needless to say that learned CIT(A) shall provide proper and adequate opportunity of

being heard to the assessee in accordance with principles of natural justice in accordance with law, in denovo appellate proceedings. Thus, the appeal of the assessee stands allowed for statistical purposes. We order accordingly.

6 In the result, the appeal filed by the assessee in ITA No.2134/Chny/2019 for ay: 2015-16 is allowed for statistical purposes.

Order pronounced on the 15th day of November, 2019 in Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(रमित कोचर)

(RAMIT KOCHAR)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 15th November, 2019.

TLN

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