

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

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

श्री एस. जयरामन, लेखा सदस्य केसमक्ष

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

आयकर अपील सं./ITA No.2578/Chny/2019

निर्धारण वर्ष / Assessment Year : 2015-16

Shri Shanmugam Senthilkumar,
No.140, Kundrathur High Road,
Porur, Chennai - 600 116.

v. The Income Tax Officer,
Non Corporate Ward 8(4),
Chennai - 600 034.

PAN : ALGPS 6106 E

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri S. Bharath, CIT

सुनवाई की तारीख/Date of Hearing : 26.11.2019

घोषणा की तारीख/Date of Pronouncement : 16.01.2020

आदेश /ORDER

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

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) – 9, Chennai, dated 02.08.2019 and pertains to assessment year 2015-16.

2. Shri S. Sridhar, the Ld. counsel for the assessee, drawn our attention to the impugned order of the CIT(Appeals) and submitted

that the CIT(Appeals) has simply reproduced the assessment order and notice of hearing and then dismissed the appeal. According to the Ld. counsel, in fact, Shri Jambulingam, who appeared before the CIT(Appeals), is a staff from his office and not a Chartered Accountant. According to the Ld. counsel, the CIT(Appeals) mistook the office staff from the Ld. counsel's office to a Chartered Accountant and proceeded to dispose of the appeal without appreciating the material available on record. It is also brought to the notice of the Bench that the CIT(Appeals) in the guise of hearing, was making the practitioners like tax practitioners, Advocate and Chartered Accountant to wait till 9 PM and 10 PM in his office and passing this kind of order without actually applying his mind. The Ld. counsel further submitted that instead of re-appreciating the material available on record and passing a speaking order, the CIT(Appeals) has summarized the finding of the Assessing Officer in a nutshell and dismissed the appeal. Therefore, the Ld. counsel submitted that the matter may be remitted back to the file of the CIT(Appeals) for reconsideration on merit.

3. Shri S. Bharath, the Ld. Departmental Representative, submitted that he did not want to comment on the functioning of the

CIT(Appeals). He also submitted that the CIT(Appeals) has reproduced the assessment order and the notice of hearing in the impugned order of the CIT(Appeals) which could have been avoided.

4. We have considered the submissions of the Ld. counsel for the assessee and the Ld. D.R. and perused the impugned order of the CIT(Appeals) and other material available on record. As rightly submitted by the Ld. counsel for the assessee and the Ld. D.R., the CIT(Appeals) has simply reproduced the assessment order, notice of hearing, etc. and summarized the finding of the assessment order and dismissed the appeal. The power conferred on the CIT(Appeals) under Section 251 of the Income-tax Act, 1961 (in short "the Act") is onerous. The CIT(Appeals) has to apply his mind independently and re-appreciate the material available on record in accordance with law and pass a speaking order. The CIT(Appeals) is expected to give his own reason for the conclusion reached in his order. The application of mind shall be reflected in the impugned order of the CIT(Appeals). In this case, by reproducing the notice of hearing, the CIT(Appeals) might have intended to bring on record that the assessee is not interested in prosecuting the appeal any more, therefore, he had not appeared before him even after the

receipt of the notice. This Tribunal is of the considered opinion that even in case the assessee has not appeared before the CIT(Appeals) after due service of notice of hearing, under Section 251 of the Act, the CIT(Appeals) is empowered to reappraise the material available on record and enhance the assessment if necessary by a speaking order.

5. The power conferred on the CIT(Appeals) to enhance the assessment is onerous responsibility. Such a responsibility cannot be ignored by the CIT(Appeals) by simply blaming the assessee that he has not responded to the notice of hearing. Moreover, the judicial discipline requires that the CIT(Appeals) shall pass an order by bringing on record all material facts and record his own reason for the conclusion reached therein. There should be a live link to the material available on record and the application of mind by the CIT(Appeals) while disposing of the appeal. Such a live link can be brought in only by passing a speaking order. Therefore, this Tribunal is of the considered opinion that the CIT(Appeals) has to apply his mind independently to the material available on record and reappraise the same and thereafter decide the issue afresh in accordance with law.

6. Moreover, it is brought to the notice of the Tribunal that the present incumbent of the CIT(Appeals) was making to wait the tax practitioners, Advocates and Chartered Accountant till 9 PM or 10 PM every day. This Tribunal is of the considered opinion that the CIT(Appeals) being a Government employee, is expected to work for the entire 24 hours in a day. It does not mean that the CIT(Appeals) has to work for entire 24 hours. The CIT(Appeals) has to work within the office hours as prescribed and take sufficient rest so that he may recoup his energy to do his job in the next day morning. Even though we are not blaming his working upto 10 PM in the night, there may not be any productive result after such prolonged work after the office hours. Working in the late hours upto 10 PM in the night and passing this kind of cryptic and non-speaking order will not only affect the health of the officer but also prejudice the interest of the assessee. This could have been avoided by the CIT(Appeals). Moreover, even though Saturdays and Sundays are being declared holidays for Central Government offices, including the office of the CIT(Appeals), this Tribunal is of the considered opinion that such holidays are declared by the Government of India expecting the Government employees to relax, rest and recoup energy on Saturday and Sunday so that they can

work effectively and efficiently on the coming working days. Therefore, this Tribunal is confident that the CIT(Appeals) may confine his hearing of appeals within the working hours of the Income-tax Department so that the Chartered Accountants, Advocates and tax practitioners, who are appearing before him, may have more confidence and certainty in his functioning. It may not be wrong to continue the hearing after office hours occasionally. But hearing the appeals and making the tax practitioners, advocates and Chartered Accountants to wait till 9 PM to 10 PM on daily basis has to be avoided.

7. With the above observation, the order of the CIT(Appeals) is set aside and the entire issue raised by the assessee is remitted back to the CIT(Appeals). The CIT(Appeals) shall re-examine the matter in the light of the material available on record and thereafter decide the same in accordance with law, after giving a reasonable opportunity to the assessee.

8. It is made clear that if the assessee has not appeared before the CIT(Appeals) after due service of notice of hearing, it is open to the CIT(Appeals) to call for records from the Assessing Officer and

re-appreciate the material available on record and thereafter decide the issue in accordance with law.

9. With the above observation, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the court on 16th January, 2020 at Chennai.

sd/-
(एस. जयरामन)
(S. Jayaraman)
लेखा सदस्य/Accountant Member

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

चेन्नई/Chennai,
दिनांक/Dated, the 16th January, 2020.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-9, Chennai-34
4. Principal CIT-4, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.