

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

' B' BENCH : CHENNAI

श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष

एवं एस जयरामन, लेखा सदस्य

**BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER &
SHRI S.JAYARAMAN, ACCOUNTANT MEMBER**

I.T.A.No.2954/Chny/2016

Assessment year : 2011-12

Assistant Commissioner of **Vs. Shri Dulquer Salmann,**
Income Tax, New No.5/Old No.7,
Central Circle 1(1), Greenways Road Extn.,
Chennai 34. Annamalai Puram,
Chennai 600 028.

(अपीलार्थी/Appellant)

[PAN AJIPD 2210 L]

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.M.Srinivasa Rao,CIT D.R
प्रत्यर्थी की ओर से /Respondent by : Mr.D.Anand,Advocate

सुनवाई की तारीख/Date of Hearing : 05-03-2020
घोषणा की तारीख /Date of Pronouncement : 29-05-2020

आदेश / ORDER

PER S.JAYARAMAN, ACCOUNTANT MEMBER

The Revenue filed this appeal against the order of the
Commissioner of Income Tax (Appeals)-18, Chennai in ITA
No.140/14-15, dated 28.07.2016 for the assessment year 2011-12.

2. Shri Dulquer Salmann, S/o.Sri Mammooty, the assessee is an individual and consequent to search and seizure operations conducted under Section 132 of the Act at his premises on 22.07.2011, the assessee filed his return of income in response to the notices issued under Section 153C read with section 153A. During the course of assessment, the A.O. found that out of ₹.12,83,000/- as professional receipt, the assessee admitted ₹.8,59,360/- as income. In the absence of Profit and Loss Account and other evidences, the A.O. disallowed 50% of the expenses claimed by the assessee. Further after examining the balance sheet figures, the A.O found that as the source for investments were not explained, therefore, the A.O added ₹.2,03,35,311/- as undisclosed income of the assessee. Aggrieved against the order of Id. A.O., the assessee preferred an appeal before the CIT(A). The learned CIT(A) allowed the appeal.

3. Aggrieved against that order, the Revenue filed this appeal before the Tribunal with the following grounds.

"1. The order of the learned CIT(A) is wholly erroneous on facts of the case and in law.

2. The Id.CIT(A) erred in deleting the disallowance of Rs.2,11,820/- made by the Assessing Officer being 50 % of expenditure claimed by the assessee against professional receipts for AYs 2011-12, in the absence of any supporting evidence.

2.1 The Id. CIT(A) erred in holding that the Assessing Officer had not gone through any material pertaining to the claim of expenditure and he had not mentioned on what basis he has disallowed 50 % of the expenditure,

2.2 The Id.CIT(A) erred in not appreciating that a specific questionnaire dated 17/01/2014 was issued to the assessee calling for the information mentioned therein and the disallowance was resorted to by the Assessing officer only because the assessee failed to produce the information called for, even after being accorded reasonable opportunity by the Assessing Officer.

3. The Id.CIT(A) erred in deleting the addition of Rs. 2,03,35,311/- made by the Assessing Officer towards undisclosed investments in the assessment for AY 2011-12.

3.1 The Id. CIT(A) erred in allowing relief to the assessee merely on the submission of the assessee that in the Hon'ble Settlement Commission's Order dated 20.03.2015 in the csse of assessee's father Sri.Mammootty, it was confirmed that all the investments made in the name of the assessee have been reconciled with the bank statements of his father and that of the assessee.

3.2 The Ld.CIT(A) erred in not appreciating that a specific questionnaire dated 17.01.2014 was issued to the assessee caling for the information mentioned therein and the said addition was made by the A.O. only because the assessee failed to produce the required information called for, even after being accorded reasonable opportunity by the Assessing Officer.

3.3 The Id,CIT(A) having considered for allowing relief to the assessee based on fresh submission from the assessee during the appellate proceedings, ought to have given an opportunity to the A.O. on this issue officer as mandated under Rule 46A of IT Rules 1962, as the said explanation was not put forth during the assessment proceedings by the assessee."

4. Before us, the Ld. D.R. submitted that the assessee could not produce any evidence before the A.O. and hence, the A.O. made the additions. Before the learned CIT(A), the assessee filed certain fresh details on which the learned CIT(A) has not given an opportunity to the A.O. as mandatory required under Rule 46A of I.T.Rules, 1962. Further, without any supporting evidence, the learned CIT(A) allowed the appeal. Therefore, the Ld. D.R. pleaded that the order of the learned CIT(A) may be set aside and that of the A.O. be restored.

5. Per contra, the Ld. A.R. supported the order of the learned CIT(A). Since we could not find on what basis the learned CIT(A) allowed the assessee's appeal i.e. without extracting the relevant portion of the order of Settlement Commission dated 20.03.2015, etc., we required the Ld. A.R. to show the basis. Thereafter, the Ld. A.R. submitted the order of the Hon'ble Settlement Commission in Tamil Nadu/CN 51/2013-14/22/IT dated 28.11.2013 in the case of assessee's father, Shri P.I.Mohammed Kutty @ Mammooty and pleaded that the issues were already covered. Since we could not ascertain the required reconciliation from the order of the Hon'ble Settlement Commission, then the Ld. A.R. invited our attention to the copies of bank statement reconciliation made in the paper book filed before us

and made an attempt to explain the transactions on which the Ld. D.R. submitted that the materials placed before the ITAT was not at all placed before the Assessing Officer. Therefore, the A.O. has not examined the nature and source of impugned transactions. In the absence of such details, the A.O. made the additions based upon incremental difference between the balance sheet of earlier year and the current year. Since the learned CIT(A) has not examined these issues in detail, and the required reconciliation is not available from the order of the Hon'ble Settlement Commission, he pleaded that the issues may be remitted back to the A.O. for due examination.

6. We have heard the rival submissions and perused the material available on record. Since the nature and source of the impugned transactions were not properly placed and explained before the A.O., we deem it fit to remit the issues back to the file of A.O. for a fresh examination. The assessee shall place relevant materials in support of his contentions before the A.O. and comply with the requirements of the A.O. in accordance with law. The A.O. is also free to conduct appropriate enquiry as deemed fit. On due examination and after affording effective opportunity to the assessee, the A.O. shall decide the matter on merits

7. In the result, the appeal of Revenue is partly allowed for statistical purposes.

Order pronounced on 29th May, 2020 at Chennai.

Sd/-
(धुव्वुरु आर.एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(एस जयरामन)
(S. JAYARAMAN)
लेखा सदस्य/Accountant Member

चेन्नई/Chennai

दिनांक/Dated: 29th May,2020.

K S Sundaram

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