

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' (SMC) BENCH: CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

आयकर अपील सं./ITA No.2932/Chny/2019
निर्धारण वर्ष /Assessment Year: 2005 - 2006

Shri. Shankarlal Gidra,
No.133/1-2A,
Sivagangai Main Road,
Varichur,
Madurai – 625 020

The Income Tax Officer,
Ward – II (3),
Vs. Income Tax Department,
No.2, V.P. Rathinasamy Nadar Road,
Bibikulam,
Madurai – 625 002.

[PAN: ADJPG 9316K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Mr. R. Kumar, Advocate
: Mr. G. Chandrababu, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 17.11.2020

घोषणा की तारीख /Date of Pronouncement

: 19.11.2020

आदेश / ORDER

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is against the order of the learned Commissioner of Income Tax (Appeals)-1, Madurai in .I.T.A No.11/2019-20 dated 30.09.2019 relevant to the Assessment Year 2005 - 2006.

2. The brief facts of the case is that the Assessee is carrying on a business of purchase and sale of granites. There was a search operation conducted in the case of the Assessee. During the course of examination of accounts, it is noticed that the Assessee has purchased Khanda from M/s. Sri Hari Trading Company, 3/J4, D.D. Road, Virudhunagar to a tune of Rs.7,38,747/-. The Assessing Officer had issued a letter dated 23.04.2007 to the supplier M/s. Sri Hari Trading Company and asked him to produce the accounts as appearing in its books for the sale of Khanda to the Assessee. The letter was returned as unserved. The authorized representative of the Assessee appeared before the Assessing Officer and submitted that he will try to bring the supplier M/s. Sri Hari Trading Company. However, was unable to produce him because his whereabouts are not available and submitted the same before the Assessing Officer. Therefore, the Assessing Officer issued a letter on 10.10.2007 to the Commercial Tax Officer – II, Virudhunagar with a request to confirm as to whether the supplier is found in the records of the Sales Tax Authorities.

The Commercial Tax Officer, Viridhunagar vide letter dated 12.10.2007 intimated that the supplier M/s. Sri Hari Trading

Company was granted a sales tax registration in TNGST No.5741268/504643 for supply of Toor, Moong, Orid, Loba, Peas, Toordhall, Moongdhall, Orid Dhall, Dhania, Peas Dhall and dust only. He also confirmed that the relevant sales tax registration was cancelled with effect from 01.04.2005. So, by considering the reply given by the Commercial Tax Officer [CTO], the Assessing Officer came to a conclusion that it was only a sham transaction. Accordingly, the Assessing Officer confirmed the above addition.

3. On appeal, the learned Commissioner of Income Tax (Appeals) had confirmed the order of the Assessing Officer.

4. We have heard both the sides, perused the materials available on record and gone through the orders of the authorities below.

5. In this case, the Assessing Officer has doubted the purchase made by the Assessee from M/s. Sri Hari Trading Company and a letter was issued to the company but however the letter had returned un-served. Thereafter, the letter was returned to the Commercial Tax Officer [CTO] and the Commercial Tax Officer replied stating that M/s. Sri Hari Trading Company was granted Sales Tax Registration up to 01.04.2005. Therefore, the existence

of the Assessee cannot be doubted. The doubt of the Assessing Officer is that M/s. Sri Hari Trading Company is not at all available and that the transaction made by the Assessee is a bogus transaction. Further, for that reason given by the Assessing Officer is that the letter that was issued was un-served. However, the Commercial Tax Officer confirmed the existence of M/s. Sri Hari Trading Company and therefore the finding of the Assessing Officer is not correct. Once the Commercial Tax Officer had confirmed the existence of the Assessee, the Assessing Officer ought to have issued a summon u/s.131 of the Income Tax Act, 1961. The Assessing Officer without following any procedure that contemplated under the Income Tax Act, 1961, simply disbelieved the explanation of the Assessee and came to a conclusion that it is a bogus transaction.

In our opinion, the Assessing Officer has not made a proper enquiry and concluded the assessment, without considering the explanation of the Assessee. In view of the above, the order passed by the Assessing Officer and that confirmed by the learned Commissioner of Income Tax (Appeals) cannot survive. Thus, the

order passed by the learned Commissioner of Income Tax (Appeals) is cancelled and the appeal of the Assessee is allowed.

6. In the result, the appeal of the Assessee in ITA No.2932 /Chny/2019 is allowed.

Order pronounced on 19th November, 2020 in Chennai.

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 19th November, 2020

IA, Sr. PS

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