

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.:2494/CHNY/2019
निर्धारण वर्ष / Assessment Year: 2009-10

M/s. Kesaria Marketing
Pvt. Ltd.,
Kent Apartments, Flat No.31,
No.26, Ritherdon Road,
Vepery,
Chennai - 600 007.

The ACIT,
v. Company Circle II(4),
Chennai - 34.

PAN: AAACK 1447N
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri D. Anand, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri G. Johnson, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 22.09.2021

घोषणा की तारीख/Date of Pronouncement

: 22.09.2021

आदेश / O R D E R

Per G Manjunatha, AM:

This appeal filed by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)-9, Chennai dated 25.07.2019 and pertains to assessment year 2009-10.

2. The assessee has raised the following grounds of appeal:-

- 1) The order of the CIT(A) is contrary to the law, facts and circumstances of the case.
- 2) The CIT(A) erred in dismissing the appeal on the basis of his findings in Para 5 of his order.
- 3) The CIT(A) erred in rejecting the submission made by the appellant that the decision of the Madras High Court in the writ petition filed by Mr.Umed Mehta against the order of Income tax Settlement Commission and its outcome has bearing in the present proceedings. According to the CIT(A) the said plea is not acceptable to him.
- 4) The CIT(A) erred in his observation that the appellant was evading the conclusion of appeal proceedings under one pretext or the other.
- 5) The CIT(A) erred in his conclusion that the appellant company failed to give any evidence against its own admission of commission and so the AO's order is correct in law.
- 6) The CIT(A)'s order violates the principles of natural justice as he had not given adequate opportunity to the appellant.
- 7) The CIT(A) ought to have dealt with the merits of the case in a judicious manner.
- 8) The appellant craves leave to adduce additional grounds of appeal at the time of hearing.

3. The brief facts of the case are that the assessee company is engaged in the business of mining, filed its return of income for the assessment year 2009-10 on 06.10.2009 admitting 'nil' total income. A survey u/s.133A of the Income Tax Act, 1961 (hereinafter the 'Act') was conducted in the assessee company

along with other group companies which were floated by Mr. Umed C Mehta. During the survey, it was admitted by Mr. Umed Mehta that the assessee company is not doing any mining activity but, was engaged for providing accommodation entries to cover up income received from M/s. Kawarlal & Co. The case has been taken up for scrutiny. During the course of assessment proceedings, the AO noticed that receipt shown by the assessee under the head commission income and interest income from M/s. Kawarlal & Co., is bogus and hence, made addition u/s.68 of the Act. The assessee preferred an appeal before the CIT(A) and submitted that it has filled a writ petition before the Hon'ble High Court of Madras against the order of settlement commission and the outcome of writ petition filed before the Hon'ble High Court of Madras have bearing on the appellate proceedings and hence, the appeal may be kept pending till such time, the Hon'ble High Court of Madras decides the writ petition filed by the assessee. The Id.CIT(A) however, was not convinced with the explanation furnished by the assessee and according to him, the assessee is delaying appellate proceedings under one or other pretext for which the proceedings cannot be kept pending forever. Hence, confirmed addition made by the AO and dismissed appeal filed by the assessee. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

4. The Id.AR for the assessee referring to the findings of the Id.CIT(A) submitted that the Id.CIT(A) has dismissed the appeal filed by the assessee, even though the assessee has pleaded that outcome of writ petition filed before the Hon'ble High Court of Madras does have bearing on the appellate proceedings. Therefore, the appeal may be set aside to the file of the CIT(A) to give one more opportunity of hearing to the assessee to decide the issues on merits.

5. The Id.DR on the other hand strongly supporting order of the Id.CIT(A) submitted that it is the duty of the appellant to file necessary evidences before the appellate authority to justify its case. In this case, the assessee neither furnished any details nor justified its case, but seeking adjournment on one or other grounds. Therefore, the Id.CIT(A) has dismissed the appeal filed by the assessee. Hence, there is no reason to give another chance to the assessee to go back to the Id.CIT(A).

6. We have heard both the sides and considered material on record. We find that the Id.CIT(A) has dismissed the appeal filed by the assessee, even though the assessee has requested the Id.CIT(A) to keep the appeal in abeyance, till such time writ petition filed

before the Hon'ble High Court of Madras is decided. No doubt, the appellant cannot defer hearing of appeal for unlimited period without any valid reasons. But, if there is a sufficient reason for deferring the appeal then it is the duty of the appellate authorities to accommodate the assessee till such time, the assessee furnishes necessary evidences to support its case and for completion of appellate proceedings. In this case, it was the case of the assessee that writ petition filed before the Hon'ble High Court of Madras does have bearing on the appellate proceedings. In our considered view, the reasons given by the assessee to defer hearing of appeal appears to be bonafide and reasonable and thus, the Id.CIT(A) ought to have kept the appeal in abeyance, as requested by the assessee till such time the Hon'ble High Court decides the writ petition filed by the assessee. Therefore, considering facts and circumstances of this case, we are of the considered view that the appeal needs to go back to the file of the Id.CIT(A) to give one more opportunity of hearing to the assessee. Hence, we set aside the appeal to the file of the Id.CIT(A) and direct him to reconsider the issue by giving adequate opportunity of hearing to the assessee in accordance with law.

7. In the result, appeal filed by the assessee is treated as allowed for statistical purpose.

Order pronounced in the court on 22nd September, 2021 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(जी. मंजुनाथ)
(G. MANJUNATHA)
लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated, the 22nd September, 2021

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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