

आयकर अपीलिय अधिकरण, 'ए' (एस एम सी) न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' (SMC) BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ITA Nos.: **592 & 593/CHNY/2020**
निर्धारण वर्ष /Assessment Years: 2008-09 & 2009-10

Shri A. Govindan,

4/403-A 2, Maniramkudil (Opp),
Pillaiyar Koil 2nd Street,
Bama Nagar, P & T Extension,
Madurai – 625017.

The ITO,

v. Ward-I(1),
V.P. Ratnasamy Nadar Road,
Madurai – 625 002.

PAN : AFQPG 8660R

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: None

प्रत्यर्थी की ओर से/Respondent by

: Shri B. Sajive, JCIT

सुनवाई की तारीख/Date of Hearing

: 08.11.2021

घोषणा की तारीख/Date of Pronouncement

: 08.11.2021

आदेश /O R D E R

1. These two appeals by the assessee are arising out of the orders of Commissioner of Income Tax (Appeals)-2, Madurai, in ITA No.0011/2013-14 & 0090/2011-12, both order dated 20.08.2019. The Assessments were framed by Income Tax Officer, Ward - I(1), Madurai for the assessment year 2008-09 vide order dated 06.03.2013 U/s 144 r.w.s. 147 of the Income

Tax Act, 1961 (hereinafter 'the Act') and for assessment year 2009-10 vide order dated 12.12.2011 U/s.144 of the Act.

2. At the outset, it is noticed that none present for assessee, when these appeals were called for hearing. However, going through the facts, I decided to decide these appeals after hearing Id. senior Department Representative.

3. I have noticed that these two appeals were filed belatedly by 169 days. The assessee has filed condonation petition and affidavit stating the reasons for delay. I noticed from the affidavit, the reason stated was that the earlier advocate of the assessee, due to pre-occupation of other works could not file the appeal and after 3 months, the assessee approached another advocate after learning that the earlier advocate has not taken any step to file these appeals. The new counsel advised that the appeal can be filed belatedly with a condonation petition. The assessee contended in the affidavit that he is an individual and having no knowledge of Income Tax procedures and nuances of the Income Tax laws for filing of appeal before the Tribunal. Therefore he has to

rely on the advice of the advocate for the above purpose. Because of the negligence of advocate, the assessee should not be punished. When these facts were confronted, the Id. senior Department Representative opposed the condonation of delay but could not controvert the above stated facts.

4. After hearing Id. senior DR and going through the condonation petition supported by affidavit, I noticed that earlier advocate due to pre-occupation with other works could not file these two appeals before ITAT. The assessee after 3 months approached the advocate and learnt that no appeal has been filed before the Tribunal. Based on the opinion of another advocate, he filed these appeals belatedly with the condonation petition. The orders of CIT(A) was communicated to the assessee on 04.09.2019 and appeals were filed before the Tribunal on 20.04.2020. Even some of time relating to COVID-19 pandemic period, hence seeing the reasons, I condone the delay and admit these two appeals.

5. I noticed that there are two additions under challenge which are as under:-

1. Addition of Rs.11,42,934/- u/s.69
2. Addition of Rs.1,43,453/- being undisclosed income from business.

6. The assessee has raised common ground that the CIT(A) has violated the principles of natural justice and requested that the appeals be set aside to the file of CIT(A) for fresh consideration. The relevant grounds raised by the assessee are Ground Nos.2 to 4, which read as under:-

“2. The Commissioner of Income Tax (Appeals) has erred in confirming the order of the Assessing Officer by dismissing the grounds taken by the appellant.

3. The Commissioner of Income Tax (Appeals) ought to have granted adequate opportunities to the appellant for remand proceedings and also for appellate proceedings and hence ought not have dismissed the appeal of the appellant.

4. For these and such other grounds that may be adduced at the time of hearing, it is prayed that the order of the Commissioner of Income tax (Appeals) may be set-aside and the issues may be remanded back to the file of the Commissioner of Income tax (Appeals) for fresh consideration and render justice.”

7. I have gone through the orders of CIT(A) and noticed that the orders of CIT(A) is ex-parte and even on merits the CIT(A) has recorded his findings in Para 6, which is common in both the orders. The relevant para 6 reads as under:-

“6. I have considered the assessment order, the written submission made by the authorised representative and the remand report submitted by the Assessing Officer. Despite being given adequate opportunity during the remand proceedings, the appellant could not explain all the credits in the undisclosed bank account. Accordingly, the Assessing Officer has reiterated that the assessment made u/s 144 was correct. There is nothing on record to controvert finding made by the Assessing Officer in the assessment order and/or the remand report. The appellant has not explained the credit in his bank accounts. The issues involved in this appeal are factual in nature. It was responsibility of the appellant to explain the credits in his undisclosed bank account. The appellant has failed to avail of the opportunity granted to him in the remand proceedings and also during the present appellate proceedings. On the basis of facts available on record, in my considered opinion, the appellant has not discharged his onus despite being granted several opportunities even during this appellate proceeding. In my considered view no interference is required in the assessment order. Therefore, the grounds taken by the appellant are dismissed.”

8. When the above para was confronted to Id. senior Department Representative, he could not state what is discussed in the order of CIT(A) on merits and it is a simpliciter confirming the additions made by the AO and no discussion about the credits appearing in the undisclosed bank account and even the remand proceedings are not confronted to the assessee. Hence, I deem it fit to remand these two appeals back to the file of the CIT(A). The orders of CIT(A) in both the appeals are set aside and matter remanded back to his file for fresh consideration.

9. In the result, both the appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open court on 8th November, 2021 at Chennai.

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष /Vice President

चेन्नई/Chennai,
दिनांक/Dated, the 8th November, 2021

RSR

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. |