

आयकर अपीलिय अधिकरण, 'बी' (एस एम सी) न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL

'B' (SMC) BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ITA No.: **546/CHNY/2020**
निर्धारण वर्ष /Assessment Year: 2004-05

M/s. Vincent & Co. P. LTd.,
No.6, Madurai Road,
Trichy – 620 001.

The ACIT,
v. Company Circle -1(1),
No.44, Willams Road,
Trichy- 620001.

PAN : AAACV 2977L
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Arjun Raj, CA
for Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri B. Sajive, JCIT

सुनवाई की तारीख/Date of Hearing : 09.11.2021

घोषणा की तारीख/Date of Pronouncement : 09.11.2021

आदेश /O R D E R

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-1, Trichy, in ITA No.158/2009-10/CIT(A)-1/TRY vide order dated 27.12.2019. The Assessment was framed by ACIT, Company Circle 1, Trichy for the assessment year 2004-05 vide order dated 24.12.2009 U/s 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. At the outset, the Id.counsel for the assessee stated that the CIT(A) has passed the order ex-parte, passed in violation of principles of natural justice.

3. I have gone through the order of CIT(A), who first decided the appeal ex-parte but the CIT(A) has not at all discussed about the facts of the case on merits. The relevant adjudication by CIT(A) in Para 3.2 & 3.4 reads as under:-

“3.2 Only issue in this case is regarding taxability u/s.115JB of the Act on book profits, which have been computed without including capital gains on sale of shares. This issue has been decided against the assessee by ITAT Bangalore [ITA 1659/1660/1861 & 1862/203] which has allowed benefit of indexation to assessee while computing the mat liability, as has been done in this case. The relevant extracts of this judgement as under:

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3.3.....

3.4 AR of assessee, Mr. S. Sridhar, CA's have not responded to notices dated 09.11.2016 and then again on 27.12.2019 and hence the matter is decided on the merits of the case.”

4. As the CIT(A) passed ex-parte order and moreover nothing was discussed on merits, I deem it fit to remand the matter back to the file of the CIT(A) for fresh adjudication. When these facts was pointed out to Id. senior Department Representative, he could not controvert the above stated position. In the facts and

circumstances, I set aside the order of CIT(A) and remand the matter back to his file for fresh consideration.

5. In the result, the appeal of the assessee is allowed for statistical purpose

Order pronounced in the open court on 9th November, 2021 at Chennai.

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

चेन्नई/Chennai,
दिनांक/Dated, the 9th November, 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. |