

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.:775 & 776/CHNY/2019
निर्धारण वर्ष /Assessment Year: 2014 - 2015

M/s. SMI Logistics Pvt. Limited,
New No.6, Old No.22,
C.P. Ramasamy Road,
Alwarpet, Chennai – 600 018.

PAN : AAOCS 2180E

(अपीलार्थी/Appellant)

The Deputy Commissioner of
Vs. Income Tax, Corporate Circle – 6(2)/
The ITO, Corporate Ward – 6(3)
Chennai – 600 034.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Mr. S. Sridhar, Advocate &
Mr. N. Arjunraj, C.A

प्रत्यर्थी की ओर से/Respondent by

: Mr. ARV. Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 06.04.2022

घोषणा की तारीख/Date of Pronouncement

: 11.04.2022

आदेश /ORDER

PER MAHAVIR SINGH, VP:

These two appeals by the Assessee are arising out of the orders of the Commissioner of Income Tax (Appeals)-16, Chennai in appeal nos. ITA No.463/CIT(A)-15/2016-17 in the matter of assessment framed by the Deputy Commissioner of Income Tax, Corporate Circle-6(2), Chennai for the Assessment Year 2014 – 2015 u/s.143(3) of the Income Tax Act, 1961, (hereinafter 'the Act') vide order dated 26.12.2016 & ITA No.622/CIT(A)-15/2016-17 of even

date 31.01.2019 in the matter of fees levied by Ld. AO u/s 234-E for late filing of TDS return. The assessee has filed revised Form No.36 which is taken on record.

2. At the outset, the learned Counsel for the Assessee took us through the orders of the CIT(A) and stated that, in regard to I.T.A. No.775/Chny/2019, i.e. against the original assessment u/s.143(3) of the Act, the CIT(A) has simply reproduced the grounds of appeal and thereafter reproduced the assessment order and thereafter reproduced the provisions of Section 194C of the Act and adjudicated with regard to the disallowance of domestic freight payment to twenty parties amounting to Rs.1,13,04,786/-. He noted the facts vide paragraph No.6.1, as under:

“6.1. Assessee made payment totaling to Rs.1,13,04,786/- towards domestic freight payments to 20 parties without deducting TDS. Assessing Officer asked the Assessee whether the above payments along with the PAN of the respective parties were furnished in the Form-26Q filed by the Assessee. The Assessee replied that PANs of these parties were not reflected in the Form-26Q.

Hence, the Assessing Officer concluded that the Assessee had violated the provisions contained in Section 194C(7) and disallowed Rs.1,13,04,786/- u/s.40(a)(ia).”

Thereafter, he adjudicated the issue in paragraph No.6.4, as under:

“6.4. In the present case, the Assessee did not furnish the PAN of the respective parties in the Form-26Q and did not submit the PAN and

addresses of the parties before the Assessing Officer.

Assessee did not furnish the PAN and addresses of the parties before the CIT(Appeals) also.

Hence, respectfully following the above stated decision of the Hon'ble ITAT Kolkata, the disallowance of Rs.1,13,04,786/- u/s.40(a)(ia) is upheld."

3. In regard to the disallowance u/s.40(a)(i) of the Act, the CIT(A) adjudicated the issue vide paragraph No.7.3, as under:

"7.3. Assessing Officer disallowed Rs.38,61,750/- u/s.40(a)(i), as the payments made to companies / entities of non-DTAA counties are squarely covered by the domestic Act.

Assessee did not bring any material on record in support of the grounds of appeal. Hence, the disallowance of Rs.38,61,750/- u/s.40(a)(i) is upheld."

4. First of all, the learned Counsel for the Assessee had stated that there is no adjudication by the CIT(A) and moreover he had dismissed the appeal for non-appearance and default on the part of the Assessee by noting five dates in paragraph No.4.1. Subsequently, the CIT(A) noted that he has heard the learned Counsel for the Assessee but actually he has not heard anyone and had passed an ex-parte order. Similar are the facts in appeal no.I.T.A. 776/Chny/2019 wherein none appeared for assessee and the appeal was dismissed for want of condonation of delay.

5. When these facts were confronted to Senior Departmental Representative, he submitted that the assessee' own negligence has

resulted into dismissal of the appeals before lower authorities. After hearing the rival contentions and going through the facts and circumstances of the case, we note that both the orders of the CIT(A) are ex-parte and non-speaking. Hence, we set aside the orders of CIT(A) and remand the matter in both the appeals to the file of the CIT(A) for adjudicating afresh after allowing reasonable opportunity to the Assessee and also by passing a speaking order. Thus, the orders of the CIT(A), in both the appeals, are set aside and remanded back to the file of the CIT(A) for fresh adjudication. However, this concession to the assessee would come at a cost of Rs.5,000/- per appeal. The amount of Rs.10,000/- shall be deposited by the assessee within a period of one month from the date of receipt of this order to Tamil Nadu State Legal Services Authority at Hon'ble High Court of Madras. The proof of deposit shall be furnished by the assessee forthwith before Ld. CIT(A).

6. In the result, the appeals of the Assessee in I.T.A. No.775/Chny/2019 and I.T.A. No.776/Chny/2019 are allowed for statistical purposes.

Order pronounced in the court on 11th April, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 11th April, 2022

IA, Sr. PS

आदेश की प्रतिलिपि ँ ग्रेषित/**Copy to:** 1. ँ पीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (ं पील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF