

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री मनोज कुमार अग्रवाल, लेखा सदस्य एवं श्री अनिकेश बनर्जी, न्यायिक सदस्य के समक्ष
**BEFORE SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND SHRI. ANIKESH BANERJEE, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.: 3359/Chny/2019

निर्धारण वर्ष / Assessment Year: 2012-13

Shri. Nikhil Ramnik Shah,
194, Palace Road,
Madurai – 625 001.

The Income Tax Officer,
v. Non Corporate Ward -2(5),
Madurai.

[PAN: AAVPN 2695K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri. S. Sridhar, Advocate
: Shri. P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 17.03.2022

घोषणा की तारीख/Date of Pronouncement

: 04.05.2022

आदेश /ORDER

PER ANIKESH BANERJEE, JUDICIAL MEMBER:

The appeal was filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-2/ Madurai, [in brevity CIT(A)] order dated 14.11.2019 for Assessment Year 2012-13 bearing appeal no ITA No. 0032/2015-16 under Section 250(6) of the Income Tax Act, 1961(In brevity the Act).

2. The assessee filed grounds of appeal which are extracted as under:

“ 1. The order of the Commissioner of Income Tax (Appeals) -2, Madurai dated 14.11.2019 in I.T.A.No.0032/2015-16, for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in sustaining the addition of Rs.1,51,00,435/-as presumed suppression of commission income from M/s Anchor Electrical P Ltd., Mumbai on the rejection of explanation offered at various stages of the proceedings including the remand proceedings without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that having ignored the acceptance of the stand of the appellant in the remand report of the Assessing Officer dated 25.07.2019, the sustenance of the said addition in para 5.6 of the impugned order while further ignoring the materials placed to negate the presumption of suppression of commission income was wrong, erroneous, unjustified, incorrect, invalid and not sustainable both on facts and in law

4. The CIT (Appeals) failed to appreciate that having noticed the fact of cross verification and confirmation of the stand of the appellant by the Mumbai Company, the sustenance of the said addition of presumed suppression of commission income should be reckoned as bad in law.

5. The CIT (Appeals) failed to appreciate that the determination of commission of income for the purpose of imposing tax under the Act should be based on the accrual of income/receipt of income while it was wrongly assumed to be based on agency agreement inasmuch as ought to have appreciated that the misreading of the facts in any event would vitiate the findings from para 5.1 of the impugned order.

6. The CIT (Appeals) erred in sustaining the addition of Rs.52,57,280/-being the deposits with M/s Anchor Electrical P Ltd., Mumbai on the rejection of the explanation offered for the source in the computation of taxable total income without assigning proper reasons and justification.

7. The CIT (Appeals) failed to appreciate that having ignored the findings of the Assessing Officer in the remand report dated 25.07.2019 on this issue which findings were based on the analysis of the materials furnished by the appellant, the sustenance of the said addition in para 6.4 of the impugned order was wrong, erroneous, unjustified, incorrect, invalid and not sustainable both on facts and in law

8. The CIT(Appeals) failed to appreciate that the provisions of section 68 of the Act had no application to the facts of the case and ought to have appreciated that the conditions prescribed to invoke the said deeming provisions in the Act were completely absent to make the addition in view of the discharge of the burden cast upon the appellant to establish the source for the said deposits, thereby vitiating the related findings.

9. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing the impugned order and any order passed in violation of the principles of natural justice is nullity in law.

10. The Appellant craves leave to file additional grounds/arguments at the time of hearing.”

3. Facts:- During the appellate proceedings, two remand reports were forwarded by the Id. Assessing Officer. In the first remand report, Ld. AO proposed allowance of amount of Rs.4,99,242/- out of total addition of Rs.2,03,57,715/-/-. The balance was proposed to be sustained, being unexplained.

4. However, in the second remand report, Ld. AO proposed addition of Rs.52,57,280/-. Thus, in remand report dated 25/07/2019 and 09/10/2019, a different view has been taken on same set of facts. The Ld. CIT(A), taking cognizance of the last remand report, dismissed the appeal. Aggrieved, the assessee is in further appeal before us.

5. We are of the considered opinion that, the Id. CIT(A), without any cogent reason, erred in considering one remand report whereas different view has been expressed in the two remand reports. The Ld. AR fairly conceded that the matter may be remanded back to the file of Ld. CIT(A) for fresh consideration, with which we agree. Accordingly, the impugned order is set aside and the matter is restored back to the file of Ld. CIT(A) for denovo adjudication after bringing on record correct factual matrix. The assessee is directed to substantiate its case. Needless to add that adequate opportunity of hearing shall be granted to the assessee.

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

Order pronounced in the court on 04th May, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /Accountant Member

Sd/-

(अनिकेश बनर्जी)

(ANIKESH BANERJEE)

न्यायिकसदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 04th May, 2022

JPV

आदेश की प्रतिलिपि ँ ग्रेषित/Copy to:

1. ँ पीलर्षी/Appellant
2. प्रत्यर्षी/Respondent
4. आयकर आयुक्त/CIT
5. विभर्षीय प्रतिनिधि/DR

3. आयकर आयुक्त (ं पील)/CIT(A)
6. गर्ष फर्षल/GF