

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

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.614/Chny/2020**
(निर्धारण वर्ष / **Assessment Year: 2013-14**)

M/s. Golden Granites Flat No.1, No.10, Prime Rose Apartments, Jawaharlal Street, T. Nagar, Chennai – 600 017.	बनाम/ Vs.	ACIT Non Corporate Circle-1, Chennai.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No.AAEFG-8929-N		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri S. Sridhar (Advocate) – Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri ARV. Sreenivasan (Addl. CIT) –Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	04-05-2022
घोषणा की तारीख / Date of Pronouncement	:	11-05-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2013-14 arises out of the order of learned Commissioner of Income Tax (Appeals)-2, Chennai [CIT(A)] dated 28.02.2020 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 02.03.2016. The grounds raised by the assessee read as under:

1. The order of the Commissioner of Income Tax (Appeals) - 2, Chennai dated 28.02.2020 in I.T.A.No. 80/CIT(A)-2/19-20, 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 re-assessment without assigning proper reasons and justification and ought to have appreciated that the order of re-assessment was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.
3. The CIT (Appeals) failed to appreciate that the lack of fresh materials would vitiate the assumption of jurisdiction u/s 147 of the Act and further ought to have appreciated that the findings recorded in para 6.1 to para 6.3 of the impugned order in this regard were wrong, erroneous, unjustified, incorrect, invalid and not sustainable both on facts and in law.
4. The CIT (Appeals) erred in sustaining the disallowance of the claim of expenses incurred for construction of a ramp by making distinction between the incurring of expenditure in the capital field and incurring of expenditure in the revenue field without assigning proper reasons and justification.
5. The CIT (Appeals) failed to appreciate that the expenses incurred on construction of a ramp should be reckoned as revenue outgo as per the elaborate facts submitted before him in the written submissions filed on 26.02.2020 and hence ought to have appreciated that the findings recorded in para 7.4 of the impugned order were wrong, erroneous, unjustified, incorrect, invalid and not sustainable both on facts and in law.
6. The CIT (Appeals) failed to appreciate that having examined the claim in the original assessment thoroughly, the change of course in treating the said expenditure as capital in the re-assessment should be reckoned as bad in law.
7. 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.
8. The Appellant craves leave to file additional grounds/arguments at the time of hearing.

2. The Registry has noted the delay of 36 days in the appeal, the condonation of which has been sought by Ld. AR on the ground that the delay occurred due to lockdown situation arising out of Covid-19 Pandemic. The Ld. AR submitted that the order was received during the exclusion period commencing from 15.03.2020 to 28.02.2022. Though Ld. DR opposed condonation, however, keeping in view the adverse situation arising out of Covid-19 pandemic, we condone the delay and admit the appeal for adjudication.

3. The Ld. AR submitted that the reassessment proceedings were initiated beyond four years and the prescription of **GKN Driveshaft (India) Ltd. (259 ITR 19 SC)** was not followed which provide as under: -

we see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking Order before proceeding with the assessment in respect of the abovesaid five assessment years.

4. The Ld. AR also submitted that the legal grounds raised by the assessee were not properly appreciated in the impugned order. The Ld. DR controverted the stand of Ld. AR. Having heard rival submissions, our adjudication would be as under.

5. The assessee was subjected to reassessment proceedings and notice u/s 148 was issued on 05.03.2019 on the ground that the assessee claimed certain expenditure to be revenue in nature though the same, in the opinion of revenue, was capital in nature. The assessment order record that the reasons for reopening were shared with the assessee vide letter dated 22.05.2019. Though the assessee justified the claim, however, Ld. AO added the amount of Rs.373.32 Lacs to the income of the assessee, treating the same to be capital expenditure. The depreciation of the same was provided accordingly.

6. During appellate proceedings, the assessee assailed the validity of reassessment proceedings and also contested the issue on merits. However, Ld. CIT(A) held that there was failure on the part of the assessee to establish the nature of expenses and accordingly, the

proceedings were upheld. The issue on merits was also upheld since the assessee did not furnish the relevant details. Aggrieved, the assessee is in further appeal before us.

7. After careful consideration of factual matrix, we are of the considered opinion that the assessee deserves another opportunity of hearing before Ld. AO since the requisite details were not furnished by the assessee before lower authorities. We also find that the issue of legality of reassessment proceeding has also not been appreciated in the correct perspective by Ld. CIT(A). Therefore, we deem it fit to restore the matter back to the file of Ld. AO as pleaded by Ld.AR, keeping all the issues open. The Ld. AO shall make denovo assessment and also deal with assessee's objections as to validity of reassessment proceedings. Needless to add that adequate opportunity of hearing shall be granted to the assessee.

8. The appeal stands allowed for statistical purposes.

Order pronounced on 11th May, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखसदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 11-05-2022
EDN/-

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded 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