

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 No.: 534/CHNY/2021**

निर्धारण वर्ष /Assessment Year:2009-10

Shri K.S.G. Venkatesh,
C/o. A.N. Seetharaman & Co,
Sri Rama Sadhanam-First Floor,
NewNo.23, Chinnaiah Road,
T.Nagar, Chennai – 600 017

The Income Tax Officer,
v. Non-Corporate Ward – 20(5),
Chennai

PAN: ABSPV 4473F

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri Dirshak, CA

for Shri R.Viswanathan, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 12.05.2022

घोषणा की तारीख/Date of Pronouncement

: 20.05.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-7, Chennai in ITA No.220(T-14)/CIT(A)-7/2016-17 dated 17.03.2020. The assessment was framed by the Income Tax Officer, Non-Corporate Ward-20(5), Chennai for the assessment year 2009-10 u/s.143(3) r.w.s. 147 of

the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 27.12.2016.

2. At the outset, it is noticed that this appeal is barred by limited by 273 days. The appellate order was received by the assessee as per Form No.36 on 18.12.2020, the appeal before Tribunal was filed only on 26.11.2021 and now, the assessee's contention is that this period of delay comes within the lockdown imposed by Government of India w.e.f. 25.03.2020 due to Covid-19 pandemic and subsequently the Hon'ble Supreme Court in Miscellaneous Application No.665 of 2021 vide order dated 23.03.2020 has given directions that the delay are to be condoned during this period 15.03.2020 to 14.03.2021 and they have condoned the delay up to 28.02.2022 in Miscellaneous Application No.21 of 2022 vide order dated 10.01.2022. Respectfully following the same, we feel that the delay needs to be condoned. Hence, we condone the delay and admit the appeal.

3. The Id.AR for the assessee Shri Dirshak, CA took us through the first issue which is raised by the following Grounds:-

"1. The order of the learned CIT(A) is contrary to Law, facts and circumstances of the case.

2.1 The learned CIT(A) erred in not appreciating that the notice u/s.148 was dated issued on the last day of limitation period and the learned AO resorted

to service of the notice by Post as well as substituted service i.e by Affixture, without following mandatory procedures as laid down in Code of Civil Procedure, 1908. The notice purported to have been sent electronically was not addressed to the correct email address of the Appellant.

2.2 The learned CIT(A) ought to have held that service of notice u/s.148 was illegal and bad in law; the Assessment order passed in pursuant to such invalid notice deserved to be quashed as held by the Jurisdictional High Court.”

4. The Id.AR for the assessee took us through the order of CIT(A) and stated that the CIT(A) has not passed the order on reopening rather he simply confirmed the action of AO by stating that the order of AO is self-speaking order and addressed both the issues adequately. The Id.AR took us through the findings of the CIT(A), which reads as under:-

“The above self-speaking order of the AO has adequately addressed both the issues of the assessee’s allegation that the objections to the re-opening were not disposed off by a speaking order. As regards the allegation that the notice is served beyond the time and is ab-initio void, the issue has no substance since the AO has taken all the steps necessary including service by e-mail on the assessee’s designated e-mail id on 31.03.2016 itself. As per sec.282(C) of the IT Act, service of a notice is sanctioned in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000. Hence the objections of the assessee on legal ground are hereby dismissed.”

4.1 As regards to the merits of the case in regard to addition of unexplained investment u/s.69 of the Act, for an amount of Rs.1,96,90,500/-, the Id.AR stated that the CIT(A) simply was in

agreement with the AO without speaking a word and the relevant findings of CIT(A) reads as under:-

“I am in agreement with the AO on the issue of bringing to tax the impugned amount of Rs.1,96,90,500 u/s.69. However, alternatively, if the claim of the appellant that he has not invested in the impugned properties is accepted, then the value of the properties have to be considered as deemed gifts and taxed accordingly in appellants hands.

Either way there is no escaping from taxing the value of the impugned properties.

In the result, this ground stands dismissed.”

4.2 The Id.AR stated that there is no adjudication by the CIT(A). The CIT(A) simply agreed on the issue of reopening as well as on merits. Hence, he simply requested that the matter may be restored back to the file of the CIT(A).

5. When these facts were confronted to Id. Sr. DR, he could not controvert the above fact situation.

6. We have heard rival submissions and gone through the facts and circumstances of the case. Admittedly, the order of CIT(A) is a non-speaking order on the issue of jurisdiction as well as on merits. Hence, these issues need re-consideration at the level of CIT(A) afresh. Therefore, we set aside the order of CIT(A) and remand the matter back to the file of CIT(A) for fresh consideration

after allowing reasonable opportunity of being heard to the assessee.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 20th May, 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 20th May, 2022

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. |