

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.s: 1098 & 1099/Chny/2017
निर्धारण वर्ष /Assessment Years: 2011-12

Shri. R, Madanagopal
G.V. Jhabakh F.C.A.
157, P.M. Swamy Colony,
5th Street,
Coimbatore -43.

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

PAN: AGNPR-7928-P
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. S. Sridhar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri Chinthapalli Mehar Chand, JCIT
सुनवाई की तारीख/Date of Hearing : 26.05.2022
घोषणा की तारीख/Date of Pronouncement : 26.05.2022

आदेश /O R D E R

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

These appeals are re-instituted against the disposal of the MA No. 128 & 129/Chny/2018 dated 20.05.2022, wherein, the erstwhile orders of the Co-ordinate bench of the Tribunal, Chennai dated 31.10.2017 were recalled.

2. Originally, both the appeals filed by the assessee are directed against the different orders of the Id. Commissioner of Income Tax (Appeals) 2, Coimbatore, dated 30.03.2017, relevant to the assessment year 2011-12 passed against quantum addition as well as levy of penalty under section 271(1)(c) of the Income-tax Act, 1961 ["Act" in short]. In the appeal against quantum addition, besides challenging confirmation of various additions, the assessee also challenged that the Id. CIT(A) has erred in denying opportunity to the AR of the assessee to represent assessee's case. The assessee also challenged in appeal, the levy of penalty under section 271(1)(c) of the Act against the quantum addition. While disposing of the MA filed by the assessee, it was brought to the attention of the bench that the Ld. Counsel of the assessee represented the matter with regard to the limited opportunity provided before the first appellate authority. In the MAs, a prayer was made to grant one more opportunity to the assessee by remitting both the matters back to the file of the first appellate authority. No other arguments were made at the time of hearing and the Ld. SR. DR also argued only on the preliminary issue.

3. The observations made and findings given in the order of the MAs (supra) is reproduced as under:

"2. Drawing attention to the petitions, Ld. AR submitted that appeals were against confirmation of quantum additions as well as against imposition of penalty. The Ld. AR further submitted that the only

limited argument advanced at the time of hearing was with regard to the limited opportunity to re-present the case before the first appellate authority. A prayer was made to grant one more opportunity to the assessee by remanding both the matters back to the file of learned first appellate authority. No other arguments were made at the time of hearing and Ld. DR also argued only on the preliminary issue. However, the Bench dealt the issue on merits and concluded in para-7 of the order that there was no evidence adduced for claiming or establishing the source for cash deposits. Accordingly, the Bench erroneously dismissed the appeals without affording opportunity to both sides in presenting their case on merits.

3. The Ld. DR, on the other hand, submitted that since all the aspects have been considered by the bench while framing the order, the same need not be interfered with.

4. However, after going through the arguments of Ld.AR and the contents of the miscellaneous application, we accept the prayer of Id.AR and recall the Tribunal order dated 31.10.2017 passed in captioned appeals. Both the appeal shall come up for hearing before "B" Bench on 24.05.2022 as informed to both the sides. Separate notice of hearing is dispensed with.

5. In the result, both the miscellaneous applications stand allowed in terms of our above order."

4. Before us, Ld. Counsel of the assessee reiterated the prayer, wherein, he requested for granting of one more opportunity to the assessee by remitting matter back to the file of the Assessing Officer. Ld. Counsel prayed for sending the matter to the file of the Ld. AO instead of the Ld. CIT(A) where he will produce the books of account and other records to get the transactions verified. Considering the facts on record and the assurance given by the Ld Counsel of the assessee to produce books of accounts, invoice/vouchers and other records to substantiate the claim made by the assessee as he was prevented from producing the same, we find it proper to remit the matter back to the file of the Ld. AO for fresh adjudication of the

matter by taking into consideration the submissions placed on record by the assessee. We also direct the assessee to comply with all the notices issued by the Assessing Officer in this respect for the meritorious and expedience disposal of the matter without seeking adjournments except under certain specific and unavoidable circumstances. Needless to say, the assessee shall be given reasonable opportunity of being heard and will be at liberty to make all the submissions along with documentary evidences to substantiate its claim. While remitting the matter back to the file of the Ld. AO, it is made clear that we are not expressing any views and observations in respect of the merits of the case so as to limit the assessment procedure before the Ld. AO. The observations herein made by us in remitting the matter back to the file of the Id. AO will not impair or injure the case of the Revenue nor will it cause any prejudice to the findings/explanations of the assessee. Accordingly, in terms of above, the appeal of the assessee is allowed for statistical purposes.

5. The other appeal of the assessee vide ITA NO. 1099/Chny/2017 is in respect of penalty imposed u/s. 271(1)(c) of the Act by making the additions therein dealt in ITA No. 1099/Chny/2017. Since, the matter in ITA No. 1098/Chny/2017 has been set aside for fresh adjudication by the Ld. AO, the penalty which is consequent to the assessment which has been remitted back to the file of the Id. AO, the

appeal relating to penalty so imposed becomes infructuous and accordingly, the appeal in ITA No. 1099/Chny/2017 is allowed. It is made clear that disposal of this penalty appeal will not have any bearing on the power of the Ld. AO to reinitiate and impose the penalty consequent to the outcome of denovo assessment based on decision given in ITA No. 1098/Chny/2017 (supra).

6. In the result, the appeal filed by the assessee in ITA No. 1098/Chny/2017 is allowed for statistical purposes and the appeal in ITA NO. 1099/Chny/2017 is allowed.

Order pronounced on 26th May, 2022 at Chennai.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

Sd/-

(गिरीश अग्रवाल)

(GIRISH AGRAWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 26th May, 2022

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy 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. |