

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
**Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member**

आयकर अपील सं./I.T.A.Nos.1363 & 1364/Chny/2019
निर्धारण वर्ष/**Assessment Years: 2010-11 & 2011-12**

Resplenda Expressions Pvt. Ltd.,
No. 138, Luz Church Road,
Mylapore, Chennai 600 004.

Vs. The Income Tax Officer
Corporate Ward 5(4),
Chennai.

[PAN: AADCR6466M]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri T. Banusekar, C.A.
प्रत्यर्थी की ओर से/Respondent by : Shri S. Senthilkumaran, CIT
सुनवाई की तारीख/ Date of hearing : 01.11.2022
घोषणा की तारीख /Date of Pronouncement : 04.11.2022

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

Both the appeals filed by the assessee are directed against the common order of the Id. Commissioner of Income Tax (Appeals)-3, Chennai dated 07.03.2019 relevant to the assessment years 2010-11 & 2011-12. Both the appeals were restored for the limited purposes of fresh adjudication of legal ground vide order in M.A. Nos. 92 & 93/Chny/2020 dated 27.05.2022.

2. Facts are, in brief, that the ITAT in I.T.A. Nos. 1363 &

1364/Chny/2019 dated 04.11.2019 for the assessment years 2010-11 and 2011-12, in para 2.2 it has been held as under:

2.2 Against the reopening of assessment, the assessee has not raised any specific ground before the ld. CIT(A) and thereby, the assessee has accepted the reopening of assessment, which was done as per law. On perusal of the appellate order, we find that the assessee has raised only common ground relating to addition made on account of bogus purchase. Thus, before the Tribunal, the assessee cannot raise the ground which was not raised before the ld. CIT(A). Accordingly, the ground raised by the assessee stands dismissed.

3. On merits, the Tribunal has remitted the matter back to the file of the Assessing Officer to decide the issue afresh. Against the findings of the Tribunal with regard to the legal issue, the assessee filed applications for both the assessment years and vide its order in M.A. Nos. 92 & 93/Chny/2020 dated 27.05.2022, the Tribunal has observed as under:

“4. Having considered the contents of petitions and the arguments of Ld.AR, we concur that specific legal grounds were raised by the assessee before Tribunal, by way of ground nos. 2 to 5, in both the appeals. The bench fell in error by observing that the assessee had not raised any specific ground before Ld. CIT(A) which is found to be incorrect after perusal of order of Ld. CIT(A). Accordingly, the order stand recalled, for both the years, for the limited purpose of adjudication of legal grounds as contained in grounds nos. 2 to 5 of the appeals.”

4. Accordingly, both appeals were taken up for hearing in order to adjudicate the legal grounds as contained in the grounds No. 2 to 5 of the appeals for limited purposes. Before us, the Id. Counsel for the assessee has submitted that the legal ground of reopening of

assessment raised before the Id. CIT(A) has not been adjudicated and prayed for directing the Id. CIT(A) to adjudicate the legal ground raised by the assessee.

5. On the other hand, the Id. DR has not raised any objection.

6. We have heard both the sides and perused the records. In this case, the legal ground in respect of reopening of assessment has not been adjudicated by the Id. CIT(A) and the ITAT also, by order dated 04.11.2019, inadvertently, dismissed the legal ground as the same was not raised before the Id. CIT(A). However, on perusal of the appellate order, we find at page 2 in ground No. 8, that the assessee has raised specific ground and moreover in para 6 of the impugned appellate order, the Id. CIT(A) concurred with the adjudication of the Assessing Officer on all the issues raised including issue of reopening of assessment under section 147 of the Act. Accordingly, we are of the considered opinion that the issue of reopening of assessment has to be remitted back to the file of the Id. CIT(A) to adjudicate the validity of reopening of the assessment under section 147 of the Act and pass speaking order. In view of the above, we direct the Id. CIT(A) to adjudicate the legal issue of validity of reopening of assessment under

section 147 of the Act in accordance with law by affording an opportunity of being heard to the assessee.

7. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on 04th November, 2022 at Chennai.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 04.11.2022

Vm/-

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.