

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **860/CHNY/2020**

निर्धारण वर्ष/Assessment Year: 2009 - 10

**Twenty First Century
Management Services Ltd.,**
G3 No.67, Eldams Road,
Alwarpet, Chennai – 600 018.

The ACIT,
vs. Corporate Circle-3(1),
Chennai

PAN: AAAC 2397L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: None

प्रत्यर्थी की ओर से/Respondent by

: Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 31.10.2022

घोषणा की तारीख/Date of Pronouncement

: 31.10.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-7, Chennai, in ITA No.404(T)/CIT(A)-7/2016-17 dated 21.02.2020. The assessment was framed by the ACIT, Corporate Circle-3(1), 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 28.06.2016.

2. At the outset, it is noticed that this appeal is delayed by 169 days. This appeal was filed before Tribunal only on 26.10.2020 and as per Form 36, the order of CIT(A) was received on 11.03.2020. The assessee has filed condonation petition stating that the delay was due to the spread of Covid-19 pandemic and nationwide lockdown imposed by the Government from 25.03.2020. 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. In term of the directions of Hon'ble Supreme Court, we condone the delay in filing of this appeal by assessee and admit the appeal for adjudication.

3. At the outset, it is noticed that the assessee has raised the issue on jurisdiction that the CIT(A) has not adjudicated the issue of reopening on the applicability of proviso to section 147 of the Act and also on merits i.e., claim of business loss on client code modification.

4. We noticed from the order of CIT(A), that the CIT(A) has decided the legal issued vide para 6 by observing as under:-

LEGAL GROUND

Before making assessment u/s 147, the AO must have "reasons to believe" that income chargeable to tax has escaped assessment. The important words in section 47 are "has reason to believe" and these words are stranger than the words "is unsatisfied" (Ganga Saran and Sons Pvt. Ltd.) Vs. ITO (1981) 130 ITR 1 (SC).

There must exist reasons for holding a belief of escapement of income. It is open to the assessee to establish that there infact existed no belief or that the belief was not a bonafide one or was based on non-specified information. Phoolchand Bajrang Lal Vs ITO 919930 203 ITR 456 (SC).

In my considered view the AO has sufficient "reason to believe" which formed the basis for reopening the assessment u/s 147 of the Act. Moreover, the re-opening was effected on the basis of fresh evidence which was not in AO's possession.

Legal grounds are therefore dismissed.

4.1 The CIT(A) on merits has decided the issue by observing as under:-

ON MERITS

Investigations showed assessee's broker, M/s. Twenty First Century Shares and Securities Ltd. was found to have undertaken the trade of shares and carried out client code modification to the tune of Rs. 61,96,301/-. The trades were originally done in the names of others. Such modification was seen to have been done all through the year, involving 667 trades and 1751136 shares were found to be modified to give the assessee undue benefit.

Therefore, AO's action calls for no interference and appeal is dismissed.

4.2 When the above were confronted to Id. Senior DR and was required to explain how the CIT(A) has adjudicated the issue on applicability of proviso to section 147 on the Act, on legal issue and what is his adjudication on merits, he could not reply. None is present from assessee's side, despite the matter is fixed on various occasions and hence, we proceed to hear ex-parte qua assessee.

5. After hearing Id. Senior DR and going through the adjudication done by CIT(A), which is reproduced above, we noted that the CIT(A) has neither adjudicated the issue on merits nor on jurisdictional issue by a speaking order. Even the basic facts are not at all discussed. Hence according to us, the order of CIT(A) cannot be sustained and accordingly, remanded back to the file of the CIT(A) for deciding the issue afresh by a speaking order after hearing the assessee and allowing reasonable opportunity of being heard.

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

Order pronounced in the open court on 31st October, 2022 at Chennai.

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 31st October, 2022

RSR

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त (अपील)/CIT(A) |
| 4. आयकरआयुक्त /CIT | 5. विभागीयप्रतिनिधि/DR | 6. गार्डफाईल/GF. |