

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.2917/Chny/2018
(निर्धारण वर्ष / Assessment Year: 2009-10)

Shri K. Sankar Rao No.33, Venkataramier Street, Kondithope, Chennai-600 079.	बनाम/ Vs.	ACIT Non-Corporate Circle-6(1), Chennai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AACPR-1610-H		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri S.Sridhar (Advocate) – Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri AR.V. Sreenivasan (Addl. CIT) –Ld. DR
सुनवाई की तारीख/ Date of Hearing	:	16-02-2023
घोषणा की तारीख / Date of Pronouncement	:	01-03-2023

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2009-10 arises out of the order of learned Commissioner of Income Tax (Appeals)-5, Chennai [CIT(A)] dated 23-02-2018 in the matter of an order passed by Ld. AO on 30-03-2017 pursuant to the directions of Tribunal. The grounds raised by the assessee read as under: -

1. The order of The Commissioner of Income Tax (Appeals) - 5, Chennai dated 23.02.2018 in I.T.A.No.16/CIT(A)-5/17-18 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.
2. The CIT (Appeals) erred in confirming the assessment of certain credits aggregating to Rs.31,78,366/- as not proved presumably within the scope of

section 68 of the Act section 41(1) of the Act in the computation of taxable total income without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that the assessment of the said credits was wholly unjustified and ought to have appreciated that the evidence filed in support were completely brushed aside, thereby vitiating the related findings based on non application of mind.

4. The CIT (Appeals) failed to appreciate that the decisions cited negating the applicability of section 68 of the Act and further the decisions cited negating the applicability of section 41(1) of the Act were completely overlooked and brushed aside, thereby vitiating the relating findings.

5. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.

6. The Appellant craves leave to file additional grounds/arguments at the time of hearing.

As evident, the assessee is aggrieved by confirmation of certain addition with respect to sundry creditors.

2. The Registry has noted delay of 113 days in the appeal, the condonation of which has been sought by Ld. AR on the strength of affidavit of the assessee wherein it has been submitted that appeals were prepared by the counsel which were received for signature. However, the papers got mixed up which led to delay in filing the appeal. Considering the contents of affidavit, the bench formed an opinion that the delay deserves to be condoned. Accordingly, the appeal is admitted for adjudication on merits.

3. This is second round of appeal. Upon perusal of the case records, it could be seen that the assessee was assessed u/s. 143(3) on 29-12-2011. One of the additions made was for Rs.37.87 Lacs which represent amount outstanding against 22 sundry creditors since the assessee could not produce confirmations. The addition was confirmed by Ld. CIT(A). Upon further appeal, the matter was restored back by the Tribunal vide ITA No.2027/Mds/2015 order dated 05-02-

2016 with a direction to Ld. AO to re-examine unproved creditors by issuing summons and decide the issue in accordance with law.

4. In the set aside the proceedings, the assessee was directed to furnish the complete addresses of 22 creditors along with their respective pin code along with mobile numbers and email ids. The assessee could furnish details with respect to few creditors only. It also filed confirmation from M/s Vijayalakshmi Enterprises for Rs.6.09 Lacs which was accepted by Ld. AO. The assessee expressed inability to provide the requisite details with respect to rest of the parties in view of lapse of time and in view of the fact that the transactions had taken place in earlier years. These creditors were stated to be not settled in view of certain litigation with the parties. The Ld. AO issued summons to those parties whose addresses were made available. However, all the notices were returned back by postal authorities with the remarks such as not known / insufficient address / no such addressee / party closed etc. Left with no option, the balance of Rs.31.78 Lacs standing against 21 sundry creditors was held to be non-genuine and added to the income of the assessee. The position remained the same before Ld. CIT(A) which led to confirmation of addition in the impugned order. Aggrieved, the assessee is in further appeal before us.

5. From the fact, it emerges that the assessee has shown sundry creditor balances of Rs.31.78 Lacs against 21 sundry creditors. The assessee could not file confirmation of the same during original assessment proceedings. Considering the plea of assessee for another opportunity, the matter was remanded back by Tribunal with a direction to Ld. AO to issued summons to these sundry creditors to verify their genuineness. It could be seen that the assessee could not even

provide the addresses and basis details of 9 creditors. The summons were issued to other creditors, all of which remained unserved by postal authorities with the remarks such as not known / insufficient address / no such addressee / party closed etc. Thus, the assessee has miserably failed to establish the genuineness of outstanding creditors. Before us, nothing could be shown that in subsequent years, the assessee has settled any of these creditors till date. No evidence of any litigation with any of the sundry creditors could be furnished before us. These facts would lead to an inevitable conclusion that these sundry creditors do not exist in reality. In the result, no interference is required in the orders of lower authorities.

6. The appeal stand dismissed.

Order pronounced on 01st March, 2023.

Sd/-
(MAHAVIR SINGH)
उपअध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 01-03-2023
EDN/-

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF