

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं
श्री मंजूनाथा.जी, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI MANJUNATHA.G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.652 to 653 & 654 to 655/Chny/2020
निर्धारण वर्ष /Assessment Years: 2005-06 to 2006-07 & 2008-09 to 2009-10

Mr.R.Sundaravadanam
Legal representative of
Late S.Ramanathan,
No.1985, Servaikara Street,
Karandhai,
Thanjavur-613 001.
[PAN: AKAPR 8714 L]
(अपीलार्थी/Appellant)

v. The Income Tax Officer,
Ward-I,
Thanjavur.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Ms.N.V.Lakshmi, Adv.
प्रत्यर्थी की ओर से /Respondent by : Mr. AR.V.Sreenivasan,
Addl.CIT
सुनवाई की तारीख/Date of Hearing : 09.03.2023
घोषणा की तारीख /Date of Pronouncement : 09.03.2023

आदेश / ORDER

PER MANJUNATHA.G, ACCOUNTANT MEMBER:

This bunch of four appeals filed by the assessee are directed against common order passed by the Commissioner of Income Tax (Appeals)-1, Trichy, dated 23.01.2020, and pertains to assessment years 2005-06 to 2009-10. Since, the facts are identical and issues are common, for the sake of convenience, these appeals are being heard together and disposed off, by this consolidated order.

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2. The assessee has, more or less, raised common grounds of appeal for both the assessment years. Therefore, for the sake of brevity, grounds of appeal filed for the AY 2005-06, are re-produced as under:

The order of the Commissioner of Income tax (Appeals)-Trichy is objected to on the following grounds of appeal

On grounds of law.

1. *The learned Commissioner(Appeals) ought to have appreciated the fact that the honorable High Court of Chennai and the honourable Tribunal Chennai had unanimously upheld the order of transfer of the assessee's case from the Income Tax Officer Ward-1 Thanjavur to the Joint Commissioner Thanjavur Range Thanjavur for the reason that the transfer was effected within the same city and the assessee was not at all put to any difficulty by the transfer of the case.*

2. *The learned Commissioner (Appeals) ought to have appreciated the fact that while the appeals with regard to the jurisdiction was pending before the honorable Tribunal the assessee's file was transferred suddenly without considering the judicial verdict once again back to the Income Tax Officer Ward-I, Thanjavur with effect from 15/11/2014.*

3. *The learned Commissioner (Appeals) ought to have appreciated the fact that judicial verdicts cannot be overruled by executives and on this score the transfer of the case from the Joint Commissioner to the Income Tax Officer militates against the principle of judicial discipline that an authority lower in rank cannot sit in judgment over an order passed by the Superior Officer.*

4. *The learned Commissioner (Appeals) ought to have appreciated the fact that the CBDT notification on transfer of the case from the Joint Commissioner to the Income tax Officer was effected on 15/11/2014 and since the Joint Commissioner had passed his orders before this date the CBDT order cannot have retrospective jurisdiction and hence the fresh order consequent upon the order of the honorable Tribunal ought to have been passed only by the Joint Commissioner and not by the Income tax Officer.*

5. *The learned Commissioner (Appeals) ought to have appreciated the fact that the honourable Tribunal had restored the assessment to the file of the Joint Commissioner for making a fresh assessment and the Income Tax Officer Ward-I, Thanjavur cannot disobey the order of the honorable Tribunal and repeat the same original assessment in the set aside assessment also.*

6. *The learned Commissioner(Appeals) ought to have appreciated the fact that the proper course for the department in the changed circumstances was to have to move a miscellaneous petition before the Honourable Tribunal to amend the restoration of the appeal to the income tax Officer Ward-1, Thanjavur in the light of the CBDT notification and the Income tax Officer Ward-I, Thanjavur erred in assuming the jurisdiction on his own interpretation of law.*

7. *The learned Commissioner (Appeals) ought to have appreciated the fact that there was no independent survey in the case of the assessee and that there were no incriminating materials during the survey of Karandhati Tamil Sangam where there was a survey on 4/8/2010 and where the assessee was a Secretary in a representative capacity only.*

8. *The learned Commissioner (Appeals) erred in stating that the issues had been common for all the four years of appeal and hence erred in passing a common order for all the four years instead of passing a separate order for each year of appeal*

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On grounds of facts

1.The learned Income Tax Officer ought to have appreciated the fact that there were no incriminating materials found during the survey in the premises of the Trust where a survey was carried out on 4/10/2010 and where the assessee was the Secretary.

2.The learned Income Tax Officer ought to have appreciated the fact that where there had been no incriminating materials against the assessee during the survey the Assessing Officer ought to have closed the assessment as No Proceedings instead of making an assessment indulging in imaginary figures of income for which there is no evidence that such income had been actually earned.

3.The learned income tax Officer ought to have appreciated the fact that there were no basis for estimating the income from sale of milk, rent receipts and interest and when there are no evidences even for making any estimates the Assessing Officer ought not to have made any estimates on his imagination alone.

5.The assessee craves leave to file additional grounds and or additional evidences as the hearing progresses in case the need arises for the same.

4.The assessee under the circumstances submits that the honourable Tribunal may be pleased to annul the assessment or allow any other appropriate relief to the assessee.

3. The brief facts of the case are that the assessee is a Secretary of M/s.Karanthai Tamil Sangam, Thanjavur. A survey u/s.133A of the Income Tax Act, 1961 (in short "the Act") was conducted in the case of M/s.Karanthai Tamil Sangam on 04.08.2010. At the time of survey, statements have been recorded from the assessee in his capacity as Secretary of the said Sangam and books of accounts found during the course of search were impounded. Consequent to search, the assessment has been completed u/s.144 of the Act, on 26.03.2013 for all four assessment years. Against the said assessment order, the assessee preferred an appeal before the Commissioner of Income Tax(Appeals)-1, Trichy. The Commissioner of Income Tax (Appeals)-1, Trichy, vide ITA Nos.87, 88, 89 & 90/2013-14/CIT(A)/TRY dated 30.10.2014 passed a consolidated order for all four assessment years and dismissed appeals filed by the assessee. The assessee preferred further appeal against the order of the Ld.CIT(A) before the Tribunal. The ITAT, Chennai Benches in ITA

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Nos.129-132/Mds/2015 dated 09.10.2015 remanded the issue back to the file of the AO on various additions for fresh consideration. Pursuant to directions of the Tribunal, the AO provided number of opportunities to the assessee to justify its case with necessary evidences. Since, the assessee could not file any evidences, the AO has completed best judgment assessment u/s.144 r.w.s.254 of the Act, on 24.02.2016 and completed the assessment and made various additions which was in the original assessment proceedings. The assessee carried the matter in appeal before the First Appellate Authority, but could not succeed. The Ld.CIT(A) for the reasons stated in his appellate order dated 23.01.2020, dismissed the appeals filed by the assessee.

4. The Ld.AR for the assessee submitted that the assessee could not represent his case before the AO, because of various reasons. Therefore, the issue may be set aside to the file of the AO to give one more opportunity of hearing to the assessee to file necessary evidences to justify his case.

5. The Ld.DR, on the other hand, opposing the plea of the Ld.Counsel for the assessee for setting aside the issue to the file of the AO and submitted that the issues have been already set aside to the file of the AO by the Tribunal and even in the second round of proceedings, the assessee could not appear and file necessary evidences to justify his case. Therefore, there is no need to give one more opportunity of hearing to the assessee. Per contra, the Ld.Counsel for the assessee explained the reasons for non-appearance before the AO and argued that he has recently taken up the

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case for change of Counsel by the assessee and could not get necessary evidences and thus, if one opportunity is given, the assessee will file necessary evidences before the AO.

6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. Admittedly, in the first round of proceedings, the AO has passed best judgment assessment u/s.144 r.w.s.147 of the Act, when the assessee could not file necessary evidences in support of his claims. Further, in the second round of litigation, consequent to remand proceedings by the ITAT, the assessee once again failed to file necessary evidences and argue his case before the AO. Therefore, the AO once again passed ex-parte assessment order u/s.144 r.w.s.254 of the Act. Before us, the Ld.Counsel for the assessee submitted that there is a change in Counsel by the assessee and he has recently taken up the case and need some time to collect necessary details to represent the case. He further submitted that it is a matter on record that in both occasions, the assessee could not file any evidences to justify his case. Therefore, requested to give one more opportunity of hearing to the assessee to go back to the file of the AO and file necessary details. We find that the assessee is non-cooperative right from the beginning which is evident from the fact that even re-assessment proceedings have been completed u/s.144 of the Act, in absence of necessary information. Further, even remanded proceedings, the assessee did not appear and file any details. However, fact remains that the new Counsel for the assessee

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has requested to give one more opportunity of hearing to the assessee to appear before the AO and file necessary details and further, he undertakes the responsibility to appear before the AO if one opportunity is given. Therefore, considering the fact that the assessment was completed u/s.144 of the Act, in absence of necessary details, we are of the considered view that cases deserve one more opportunity before the AO. Thus, we set aside the order of the Ld.CIT(A) and restore the issue back to the file of the AO and direct the AO to re-consider the issue **de novo** in accordance with law after providing one more opportunity of hearing to the assessee. Needless to say, the assessee shall appear before the AO without seeking any adjournment unless otherwise warranted.

7. In the result, appeals filed by the assessee for all four assessment years are allowed for statistical purposes.

Order pronounced on the 09th day of March, 2023, in Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(मंजूनाथा.जी)
(MANJUNATHA.G)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 09th March, 2023.
TLN

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