

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' 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. No.661/Chny/2023
निर्धारण वर्ष/Assessment Year: 2009-10

Abdul Samad,
35, Chicken Market, Amman Koil
Street, Broadway, Chennai 600 001.
[PAN:ADVPA3535G]

Vs. The Assistant Commissioner of
Income Tax,
Central Circle 1(1),
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri B. Ramakrishnan, FCA
प्रत्यर्थी की ओर से/Respondent by : Shri AR V Sreenivasan, Addl. CIT
सुनवाई की तारीख/ Date of hearing : 29.02.2024
घोषणा की तारीख /Date of Pronouncement : 06.03.2024

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-16, Chennai, dated 29.03.2023 relevant to the assessment year 2009-10.

2. Brief facts of the case are that the assessee has filed his return of income on 29.09.2009 admitting income at ₹.3,60,990/-. Subsequently, a search and seizure operation under section 132 of the Income Tax Act, 1961 ["Act" in short] was carried out in the case of M/s. S.S. Hyderabad Biryani Pvt. Ltd., Old No. 35, 1st Floor, Amman Koil Street, Near Chicken

Market, Broadway, Chennai. Consequent to search operation, the Assessing Officer has received information from the DDIT(Inv.), Unit-3(2), Chennai vide his letter dated 09.03.2016. On verification of the said information, the Assessing Officer has noticed that in the case of the assessee, the income has escaped assessment for the assessment year 2009-10 and a notice under section 148 of the Act was issued after recording the reasons for reopening of assessment. The assessee, has not filed the return of income in response to notice under section 148 of the Act nor furnished any reply to the notices issued under section 142(1) of the Act. Therefore, the Assessing Officer proposed to show-cause the assessee as to why the assessment should not be completed under section 144 of the Act at an estimated profit of ₹.92,15,673/-. In reply, the AR of the assessee, vide his letter dated 01.12.2016, objected to the estimation of profit. After considering the explanation of the assessee, the Assessing Officer has completed the assessment under section 144 r.w.s. 147 of the Act dated 16.12.2016 by assessing income of the assessee at ₹.95,76,663/- after making addition of undisclosed profit on undisclosed sales of ₹.92,15,673/-. On appeal, the Id. CIT(A) confirmed the assessment order.

3. On being aggrieved, the assessee is in appeal before the Tribunal. When the appeal was taken up for hearing, the Id. counsel for the

assessee has submitted that in the grounds of appeal, the assessee has raised a legal issue of reopening of assessment, which is not valid and to further strengthen, the assessee filed a petition under Rule 11 of the ITAT Rules, 1963, seeking permission to file additional grounds of appeal. The Id. counsel further submitted that the Id. CIT(A) has not passed detailed order and simply confirmed the assessment order. Thus, the Id. counsel prayed that the entire matter may be remitted back to the file of the Id. CIT(A) for fresh adjudication and passing detailed order.

4. On the other hand, the Id. DR relied on the orders of authorities below.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. So far as the legal issue raised by the assessee with regard to reopening of assessment is concerned, the assessee has not raised such ground before the Id. CIT(A) and therefore, the Id. CIT(A) has not adjudicated the legal issue. Considering the petition under Rule 11 of the ITAT Rules, 1963 filed by the assessee and also raising legal issue in the grounds of appeal before the Tribunal, to meet the ends of natural justice, we are of the opinion that the assessee shall raise the legal issue before the Id.

CIT(A) and the Id. CIT(A) may adjudicate and pass order in accordance with law.

6. In so far as merits of the case is concerned, we are of the opinion that the Id. CIT(A) has simply confirmed the order of the Assessing Officer and observed that the assessee has not furnished any evidence to substantiate the estimated turnover in the assessment year under consideration. Accordingly, we set aside the order of the Id. CIT(A) and remit the matter back to the file of the Id. CIT(A) for fresh adjudication and pass detailed order in accordance with law after affording reasonable opportunities of being heard to the assessee.

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

Order pronounced on 06th March, 2024 at Chennai.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 06.03.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.