

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

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.680/Chny/2023

निर्धारण वर्ष /Assessment Years: 2017-18

Income Tax Officer,
International Taxation Ward,
Tuticorin, Tamil Nadu

Shri Abdul Rahman Viswas Abdul
Salam, No.64/114, Kalvath Nayagam
Street, Kadayanallur, Tenkasi Dist,
TN-627751
[PAN: APPPA9666L]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr. Abhishek Murali, CA

प्रत्यर्थी की ओर से /Respondent by

: Shri ARV Srinivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 04.06.2024

घोषणा की तारीख /Date of Pronouncement

: 12.06.2024

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

This appeal is filed against the order bearing DIN & Order No.ITBA/APL/M/250/2022-23/ 1051658842(1) 29.03.2023 of CIT(A) 16, Chennai. Through the aforesaid appeal the Revenue has challenged order u/s 250 dated 29.03.2022 passed by CIT(A) 16, Chennai.

2.0 In the instant case orders u/s 143(3) dated 31.12.2019 was passed by the assessing officer determining total income of the assessee at Rs.1,57,86,220/- against returned income of Rs.8,80,380/- after making an addition of Rs.1,49,05,840/- as undisclosed income u/s 69.

3.0 Brief factual matrix of the case as available in the impugned assessment order is as under:-

“...3. In the Limited Scrutiny, the assessee was requested to explain the source of increase in capital. In particular a Cash Flow Statement for F.Y.2015-16 and F.Y. 2016-17 was called for online to analyse the nature / source of the inflows.

4. The assessee did not provide the Cash Flow Statement. Instead Bank Book / Folio of capital account were given online. This cannot substitute the Cash Flow Statements called for. The assessee is substituting a tool of analysis and attendant evidences with self-serving statements.

5. In the circumstances above, the gross accretion to capital on 31.03.2017 Rs.1,57,86,200/- is reduced by the income returned for the A.Y. 2017-18 Rs.8,80,384/-

6. The net accretion Rs.1,49,05,840/- is brought to tax as unexplained investment u/s. 69 r.w.s. 115BBE.

Addition u/s. 69 : Rs. 1,49,05,840/- ...”

4.0 Aggrieved by the above order the assessee preferred an appeal before the Ld.CIT(A) who deleted the additions made by the assessing officer.

5.0 Aggrieved by the relief accorded by the Ld.CIT(A), the Revenue has preferred present appeal requesting for quashing of order of the Ld.CIT(A) and that the order of the assessing order be restored. Revenue has raised grounds of appeal no.1 to 6 contesting the impugned order of the Ld.CIT(A). Grounds of appeal no. 1 to 4 are centering around the impugned addition of Rs.1,49,05,840/-. Ground of appeal no.5 challenges the authority of the Ld.CIT(A) to adjudicate upon the additional evidence without affording the AO an opportunity of examining the same.

Ground of appeal no.6 is regarding allowance of the claim of depreciation by the Ld.CIT(A).

6.0 During the course of the proceedings the Ld.AR invited reference to the order of the Ld.CIT(A) and his Paper Book so as to indicate that order of the Ld.CIT(A) is based upon correct understanding of facts. The Ld. DR vehemently opposed the order of the Ld.CIT(A). It was submitted that the Ld.CIT(A) did not provide opportunity of examining evidences filed before it. It was submitted that in this case the Ld.CIT(A) had called for first remand report from the AO based upon evidences submitted by the assessee. The Ld.DR submitted that the Ld.CIT(A) had called for some information from the assessee which was considered for giving relief but no opportunity was given to the AO u/r 46A. For the purposes of clarity relevant part of the Ld.CIT(A) order are extracted as under:

“...3.9 And again on 20.01.2023, the following questionnaire was issued by me calling for the under mentioned data. 'Refer to your submissions filed on 17.01.2023.

1. It was stated salary was earned from M/s. Al-Ayuni Investments and Contracting Co. UAE based on the certificate issued by the, dated 22.03.2022. In this regard, you are required to furnish the bank statement copy for the period 01.04.2015 to 31.03.2017 in which salary was credited by the company.

2. You are required to furnish salary certificate from the employer for the Years 2015, 2016 and 2017 mentioning salary earned per month along with other remunerations.

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3. *Furnish in detail the salary credited in the bank account held in India for the years 2015, 2016 and 2017 and also furnish bank statement of ICICI Bank A/c No. XXXXX50219 and XXXXX50464.*

4. *The IDBI bank account also for the years 2015, 2016 and 2017 be furnished explaining the nature of deposits in the account".*

3.10 *In reply, the appellant via his Authorized Representative has replied as under on 31.01.2023. The reply reads as under:*

"....I humbly submitted that the bank statement copy of the account in which foreign salary is credited has been enclosed for your kind perusal. As it runs to 105 pages, the summary of the key pages has been enclosed. The website has not permitted us to attach the full copy of the same in any other manner as you may deem fit. Salary certificate from the employer detailing the monthly salary received by the appellant has been enclosed your kind perusal. The copy of the bank statements for ICIC 50219 and ICIC 50464 for the year 2015, 2016 and 2017 has been enclosed. The IDBI bank statement have also been enclosed for your kind perusal and consideration. IT is humbly submitted once again that these are all genuine transactions and all of the transactions have been executed through banking channels. Therefore, it is humbly submitted that the addition is both bad in facts and also bad in law. Therefore, it needs to be quashed its entirety. We will pleased to furnish any additional information on hearing from you..."

7.0 The Ld.AR argued that the Ld.CIT(A), by the second requisition of information had merely asked the assessee to submit a clarification and hence there is no case of violation of 46A. It was argued that the clarification was in continuation of the earlier information sought by the Ld.CIT(A) and for which the AO had been given an opportunity of giving his view.

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8.0 We have heard rival submission in the light of facts of the case and material brought on records. It is an undisputed fact of this case that the assessee had filed additional evidences before the Ld.CIT(A) and in respect of which a remand report was requisitioned from the assessing officer. It is also an undisputed fact of this case that the Ld.CIT(A) did ask for some more information from the assessee and which was duly considered by her while giving relief to the assessee. The order of the Ld.CIT(A) clearly alludes the impugned information was never confronted by her to the AO for comments. The arguments of the Ld.AR qua "clarification" have been found to be bereft of any supporting evidence and merely conjectures. Adequate opportunity of being heard to an aggrieved party is a natural right and cannot be violated. Any order passed in violation of this right is liable to be quashed. Accordingly, we are of the view that the Ld.CIT(A) has violated the provisions of Rule-46A by not affording the assessing officer a reasonable opportunity of being heard. The undisputed facts of the case indicate that the assessee had not provided requisite details to the assessing officer compelling him to make an addition based upon his discretion. Facts of the matter indicates that the assessing officer has also made an addition to assessee's return income without appreciating accompanying evidences. Therefore, the order of the Ld.CIT(A) as

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well as of the assessing officer is set aside. The assessing officer is directed to make an assessment denovo after considering all the evidences provided by the assessee on the matter. The assessee is directed to furnish all the evidences in support of its claim to the assessing officer and comply. Accordingly, the ground of appeal no.5 raised by the Revenue is partly allowed. As the order of the Ld.CIT(A) is set aside for re-adjudication, grounds of appeal raised by the Revenue challenging the merits of the addition have not been found necessary to be adjudicated.

9.0 In the result, the appeal is partly allowed for statistical purposes.

Order pronounced on 12th June, 2024 at Chennai.

Sd/-

(यस यस विश्वनेत्र रवि)

(SS Viswanethra Ravi)

न्यायिक सदस्य / Judicial Member

Sd/-

(श्री अमिताभ शुक्ला)

(Amitabh Shukla)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 12th June, 2024.

KB/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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