

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, CHENNAI

श्री बी.आर. बास्करन, लेखा सदस्य एवं श्री विकास अवस्थी, न्यायिक सदस्य केसमक्ष

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 1458/Mds/2014

निर्धारण वर्ष /Assessment Year : 2004-05

Shri Mahendra Kumar S. Jain,
18, Kesava Iyer Street,
Sowcarpet, Chennai - 600 001.

v. The Assistant Commissioner of
Income Tax,
Central Circle – IV(1),
Chennai - 600 034.

PAN : AAFPJ 9250 N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri B. Ramana Kumar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Ms. Ruby George, CIT-DR

सुनवाई की तारीख/Date of Hearing : 20.01.2015

घोषणा की तारीख/Date of Pronouncement : 21.01.2015

आदेश / O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The appeal filed by the assessee is directed against the order dated 31.03.2014, passed by Ld. Commissioner of Income Tax (Appeals) (Central)-I, Chennai and it relates to assessment year 2004-05. The assessee is aggrieved by the decision of Ld. CIT(Appeals) on confirming the addition of ₹50 lakhs relating to unexplained advances given through pro-notes.

2. The facts relating to the above said issue are in brief. The Department carried out search and seizure operation in the business and residential premises of the assessee on 27.03.2007. During the course of search, two pro-notes, both dated 19.9.2003, signed by a person named Mohanlal Jain, were found. The aggregate amount mentioned in both the pro-notes was ₹50 lakhs. Since the assessee failed to explain the sources for giving loan through pro-notes, the Assessing Officer assessed the amount of ₹50 lakhs as income of the assessee treating the same as undisclosed advances. The Ld. CIT(Appeals) also confirmed the said addition. Aggrieved, the assessee has filed appeal before us.

3. Ld. counsel appearing for the assessee submitted that the Ld. CIT(Appeals) has not properly considered the explanation of the assessee with regard to the two pro-notes found during the course of search. The assessee had also furnished confirmation letter obtained from Shri Mohanlal Jain, wherein he has clearly stated that he did not give any money against the pro-notes since the deal got cancelled. Ld.counsel submitted that the Ld. CIT(Appeals), without considering the explanations of the assessee as well as the confirmation letter given by Shri Mohanlal Jain, has proceeded to confirm the addition on the ground that the assessee has failed to

furnish financial statements pertaining to Shri Mohanlal Jain. Ld.counsel submitted that the assessee was not in a position to get financial statements from Shri Mohanlal Jain as the said party was not under his control. Accordingly, the Ld.counsel submitted that the Ld. CIT(Appeals) was not justified in confirming the impugned addition.

4. On the contrary, the Ld. D.R. submitted that the assessee has failed to furnish any explanation before the Assessing Officer. Even though he filed a confirmation letter alleged to have been obtained from Shri Mohanlal Jain, yet, he failed to furnish other documents to substantiate his claim. Accordingly, the Ld. D.R. submitted that the Ld. CIT(Appeals) was justified in confirming the addition of ₹50 lakhs.

5. We have heard the rival contentions and carefully perused the record. Admittedly, the Department has unearthed two pro-notes having an aggregate value of ₹50 lakhs, executed by a person named Shri Mohanlal Jain. It is also an undisputed fact that the assessee has failed to furnish any explanation with regard to these pro-notes during the course of assessment proceedings. However, during the appellate proceedings before Ld. CIT(Appeals), the assessee has come up with an explanation that

the financial deal did not get through, i.e. the assessee did not advance any money against the pro-notes found during the course of search. In support of this explanation, the assessee has also filed a confirmation letter obtained from Shri Mohanlal Jain. However, we notice that the Ld. CIT(Appeals) did not consider the explanation of the assessee as well as the confirmation letter filed by the assessee and instead proceeded to confirm the addition on the ground that the assessee has failed to furnish financial statements relating to Shri Mohanlal Jain. The approach adopted by the Ld. CIT(Appeals), in our view, does not appear to be correct. In our view, the Ld. CIT(Appeals) should have examined the explanation of the assessee and should have called for a remand report from the Assessing Officer with regard to the explanation as well as the confirmation letter before deciding the issue. In our view, when an assessee offers a fresh explanation, it is necessary on the part of tax authorities to examine the veracity of the explanation before rejecting the same. Since the Ld. CIT(Appeals) has failed to examine or cause to be examined the explanation as well as the documents furnished by the assessee, we are of the view that this issue requires a fresh examination at his end. Accordingly, we set aside the order of the Ld. CIT(Appeals) and remit it to his file with the direction to reconsider the issue afresh

and take appropriate decision in accordance with law after affording necessary opportunity of being heard to the assessee.

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

Order pronounced on the 21st day of January, 2015 at Chennai.

Sd/-
(विकास अवस्थी)
(Vikas Awasthy)
न्यायिक सदस्य/Judicial Member

sd/-
(बी.आर. बास्करन)
(B.R. Baskaran)
लेखा सदस्य/Accountant Member

चेन्नई/Chennai,
दिनांक/Dated, the 21st January, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A) (Central)-I, Chennai
4. आयकर आयुक्त/CIT, Central-I, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.