

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री एसएस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री एस.आर. रगुनाथा, लेखा सदस्य के समक्ष
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri S.R. Raghunatha, Accountant Member

आयकर अपील सं./I.T.A. Nos.1439, 1440, 1441, 1442, 1443 & 1444/Chny/2023
निर्धारण वर्ष/Assessment Years: 1993-94, 1995-96 & 1996-97

Krishnasamy Sai Jagannathan,
L/H Sai Sowri, 26A, Kalkshetra Road,
A-4, Vijaya Akshya Apartment,
Thiruvanmiyur, Chennai 600 041.

Vs. The Assistant Commissioner of
Income Tax,
Central Circle 1(2),
Chennai.

[PAN: AXGPS3888K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Ms. T.V. Muthu Abirami, Advocate
प्रत्यर्थी की ओर से/Respondent by : Ms. Gowthami Manivasagam, JCIT
सुनवाई की तारीख/ Date of hearing : 27.08.2024
घोषणा की तारीख /Date of Pronouncement : 28.08.2024

आदेश /ORDER

PER BENCH:

All these appeals consisting of quantum addition as well as penalty filed by the assessee are directed against the common order dated 31.08.2023 passed by the Id. Commissioner of Income Tax (Appeals) 18, Chennai for the assessment years 1993-94, 1995-96 and 1996-97.

2. Since the issue raised in the appeals are similar based on the same identical facts, with the consent of the both the parties, we proceed to

hear all these appeals together and pass consolidated order for the sake of convenience.

3. At the outset, we note that this Tribunal, in assessee's own case for the assessment year 1994-95 in ITA No. 1279/Mds/2003, remanded the matter back to the file of the Assessing Officer for fresh consideration vide consolidated order dated 20.07.2004, which is placed on record at page 11 of the paper book. On perusal of the same, we find that the ITAT Chennai Bench discussed the issue in detail in para 3 and directed the Assessing Officer to re-examine the whole issue afresh after examining the entire documents stated to be available with CBI and DRI by giving a fair and reasonable opportunity to the assessee. The relevant part at para 3 is reproduced herein below:

We have heard rival submissions and also perused the material placed before us. Admittedly, the lower authorities made the addition only on the ground that the assessee had not filed any material to show that the advance was given by MVR group of companies in the course of business. The case of the assessee is that the materials are available with CBI & DRI. Therefore, they cannot be produced. Now, the learned counsel for the assessee produced a Xerox copy of extracts from Registrar of Companies to show that investment was made in the name of M/s. Ramraj Trading Co Pvt. Ltd. and not in the individual name. If the investment was made in the name of M/s. Ramraj Trading Co. Pvt. Ltd., the addition had necessarily to be made on the above said company and not in the Individual name. However, the assessing authority has to examine the position after examining the entire material available before the CBI and DRI. We have also gone through the orders of the lower authorities. It appears from the order of the first appellate authority that some affidavit had been filed to show that the funds were advanced by MVR group of companies with instructions to invest the same in the share of other companies. The first appellate authority refused to admit the affidavit on the ground that only a Xerox copy was filed. We would like to point out that the income tax authorities are quasi-Judicial authorities. Therefore, the Indian Evidence Act is not applicable to the income tax

proceedings. Only in Indian Evidence Act, there is certain restriction in admitting copies of documents. However, Indian Evidence Act is now amended by Information Technology Act, 2000. The amendment now provides for admitting Xerox copies of documents and also Information downloaded from websites. Therefore, even the regular civil courts now cannot refuse to admit copies of documents. When such is the position, income tax authorities, to whom Indian Evidence Act is not applicable, have to necessarily take note of copies of the material that may be produced before them. Therefore, in our view, the first appellate authority is not correct in refusing to admit copies of affidavit filed by the assessee. When copies are filed, if the lower authorities have any doubt about the genuineness of the same, assessee may be asked to produce the original. However, it is not proper to reject the same on the ground that only a Xerox copy was filed. In our view, the affidavit should be considered and if there is any substance in the contents of the affidavit, it has to be taken note of while taking decision. Since the assessee could not produce the material, as the same was with CBI and DRI, it appears that the assessee had filed an application before the first appellate authority to summon the documents in exercise of powers vested under section 131 of the IT Act. It appears that even after making of application to summon those documents, no action had been taken by lower authorities. In these circumstances, in our opinion, the matter has to be sent back to the Assessing Officer to re-examine the whole issue afresh after examining the entire documents now stated to be available with CBI and DRI. In our view, ends of justice require that the assessee should be given a fair and reasonable opportunity to put forward their case. Merely because the materials are available with CBI and DRI, there is no justification, in making addition in the hands of the assessee without examining the above materials. In view of the above observations, we set aside the order of the lower authorities and remand the case back to the Assessing Officer. The Assessing Officer shall examine the whole issue afresh and decide in accordance with law after giving sufficient opportunity to the assessee. The Assessing Officer may, at his option, exercise his powers under Section 131 of the IT Act, to call for the copies of all the materials that is said to be in the custody of CBI & DRI.

4. On careful reading of the above, we find the facts and circumstances of the case before us is similar basing on the same identical facts, which is not disputed by the Id. AR and the Id. DR. Further, it was brought to our notice that the Assessing Officer has passed giving effect order to the order dated 20.07.2004, having aggrieved by the same, an appeal was preferred by the assessee, is pending for adjudication before the Id. CIT(A). Therefore, in the interest of justice, taking into

account the order of the Tribunal in assessee's own case for the assessment year 1994-95, we deem it proper to remit the matter back to the file of the Assessing Officer for fresh consideration and complete the assessment in terms of the directions as contained in para 3 of the above order, which is reproduced herein above and he shall examine the whole issue and decide afresh in accordance with law. Thus, the grounds raised in the quantum appeals are allowed for statistical purposes.

5. Since we have remitted the quantum appeals to the file of the Assessing Officer for fresh consideration, the appeals in ITA Nos. 1440, 1442 & 1444/Chny/2023 in challenging levy of penalty under section 271(1)(c) of the Act are also remitted to the file of the Assessing Officer for fresh consideration and to decide in terms of quantum appeals.

6. In the result, all the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on 28th August, 2024 at Chennai.

Sd/-
(S.R. RAGHUNATHA)
ACCOUNTANT MEMBER

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Chennai, Dated, 28.08.2024

Vm/-

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.