

आयकर अपीलीय अधिकरण 'डी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER

आयकरअपील सं./ ITA Nos.2402 & 2403/Chny/2024
(निर्धारणवर्ष / Assessment Years: 2014-15 & 2014-2015)

Shri Ramasamy HUF,
11, 4th Main Road,
Kamaraj Nagar,
Thiruvanmiyur,
Chennai 600 041.

Vs. The Deputy Commissioner of
Income Tax,
Non Corporate Ward 10(1)
Chennai.

[PAN: AAFHR 1520R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr. Kathir and Ms. B. Agnus
Jennifer, Advocates.

प्रत्यर्थी की ओर से /Respondent by

: Ms. Kavitha, IRS, Addl. CIT.

सुनवाई की तारीख/Date of Hearing

: 20.11.2024

घोषणा की तारीख /Date of Pronouncement

: 25.11.2024

आदेश / O R D E R

PER MANU KUMAR GIRI (Judicial Member)

The assessee has filed two appeals i.e. ITA Nos.2402 & 2403/Chny/2024 for assessments years 2014-2015. For the sake of brevity, we first take up ITA No.2402/Chny/2024 for adjudication.

2. This appeal ITA No.2402/Chny/2024 by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal

Centre (NFAC), Delhi in order No.ITBA/NFAC/S/250/2023-24/1053634860(1) dated 09.06.2023. The assessment was framed by the Income Tax Officer, Non Corporate Ward 15(3), Chennai for the assessment year 2014-15 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 26.12.2016.

3. At the outset, it is noticed that the appeal filed by the assessee is barred by limitation by 402 days. The order of the Id.CIT(A) dated 09.06.2023 was communicated to the assessee on 09.06.2023 as per Form 36. The appeal has to be filed on or before 07.08.2023 but was filed only on 13.09.2024. At the time of hearing, the Id. Authorized Representative requested to condone the delay whereas Id.Addl. CIT-DR, objected for condoning the delay. In the interest of justice, we condone the delay and admit the appeal for adjudication.

4. Brief facts of the case are that assessee Dr. V Ramasamy (HUF) is carrying on the business of selling pharmaceutical products especially Diagnostics kits in whole sale in the name and style of Fort Pharma. The assessee is also running an exclusive showroom for Levis and Titan Brands in Coimbatore. The assessee filed his Return of Income electronically on 30/11/2014 for the A.Y.2014-15 declaring a total income of Rs. Nil. The Return of Income was processed u/s 143(1) of the Act. The case was selected for scrutiny under Computer Assisted Scrutiny Selection (CASS) for the reason that "Large Increase of unsecured loans during the year and Depreciation claimed at higher rates/Higher additional depreciation claimed." A notice u/s 143(2) of the I.T. Act, 1961 dated 31.08.2015 was issued to the assessee. The same was duly served on the assessee. Later, this case was notified

by Pr.CIT--6, Chennai to this charge vide Notification No. 4/2016-17 in C No. 6121/PCIT-6/2016-17 dated 20/06/2016. Subsequently, a letter dated 18/07/2016 was issued to the assessee calling for details in connection with the scrutiny proceedings. The Id. Authorized Representative during the course of Scrutiny proceedings submitted Copies of Balance Sheet, P & L account and Return of Income, Statement of Total Income for the last five years. The assessee had also filed, copy of ledger extracts in respect of the maintenance voucher with statement, Stock statement with closing quantity wise Rate, salary statement with list of employees, Financial Expenses statement and Bank statement along with audit report. Further, the Id. Assessing Officer vide office letter dated 13/10/2016 directed the assessee to explain the reason for large increase of unsecured loans during the year and Depreciation claimed at higher rates/Higher additional depreciation claimed and produce relevant documentary evidences. On 24/10/2016, the assessee submitted the reason for claiming depreciation and confirmation letter for unsecured loans. On examination of the submission and on verification of details, the Id. Assessing Officer noticed that the assessee had received a sum of Rs. 1,54,64,117/- as compensation from M/s Reebok for termination of Distributorship. The assessee failed to offer the same as income of the business in the year under consideration. The assessee filed a return of loss of Rs. 93,77,841/- due to termination of Distributorship of M/s Reebok India Limited. As per the statement of the assessee it is noticed that the assessee had made book adjustments for the franchises claim to the extent of Rs. 1,41,31,084/- after

adjusting the compensation received from M/s Reebok India. There is only a book entry to show the transactions. For the transactions the franchisees has raised debit note and from the debit note the assessee had written off the franchisees loss of Rs. 39,18,724/. The assessee has written off franchisees loss of Rs. 39,18,724/- in his books of accounts. It was not very clear whether the assessee has actually paid the compensation to its franchisees. The Ld. Assessing Officer formed an opinion that assessee made only a book entry for the above loss claimed by the franchisees on account of loss due to M/s Reebok. Further, there was no written agreement between the assessee and the franchisees for the distribution of Reebok Products, the Id. Assessing Officer has not accepted the book entry and hence, the compensation received from M/s Reebok India Ltd of Rs. 1,54,64,117/-, is added as assessee's business income and brought to tax. Aggrieved, assessee preferred an appeal before the Id. Ld.CIT(A).

5. The Id. CIT(A) issued a notice u/s.250 of the Act on 08.01.2022. In response to hearing notice, the assessee vide letter dated 25.11.2022 submitted that assessee settled the case under VIVAD SE VISWAS-2020 and hence, requested to withdraw the appeal. Accordingly, Id. CIT(A) dismissed the appeal of the assessee as infructuous. Aggrieved, assessee preferred an appeal before us.

6. The Id. Authorized Representative submitted before us that the assessee could not comply with the requirement of the DTVSV 2020, hence, the Id. CIT(A) ought have restored the appeal and adjudicated on merits. Further, Id. Authorized Representative argued that the Id. CIT(A) without verifying if all the requirement of

DTVSV 2020 was complied with or not dismissed the appeal of the assessee. The Ld. Counsel for the appellant further prayed that if an opportunity of hearing is given before Id.CIT(A), assessee will prosecute the case in appellate proceedings.

7. On the other hand, the Id. Addl. CIT-Departmental Representative relied upon the order of Id.CIT(A) and prayed for dismissal of appeal.

8. We have gone through the orders of lower authorities and submissions addressed by the parties before us. We are of the considered view that assessee intended to settle the case under VIVAD SE VISWAS -2020 and hence, requested to withdraw the appeal bonafidely. However, assessee could not comply with the requirement of the DTVSV 2020. So, he has prayed to restore the appeal before the Id. CIT(A). To meet the ends of justice, we are inclined to grant assessee one more opportunity of hearing before Id.CIT(A) to prosecute his case. Therefore, in the light of aforesaid factual position we deem it fit to set aside this appeal to the file of Id.CIT(A) for denovo adjudication of appeal. The Ld.CIT(A) who shall proceed for denovo adjudication of appeal after providing proper opportunity of hearing to the assessee. The assessee is directed to substantiate its case forthwith without any fail, failing which Ld.CIT(A) shall be at liberty to proceed with the appellate proceedings as per law.

9. Now, we take up ITA No.2403/Chny/2024 for adjudication, since we have remitted the appeal in ITA No.2402/Chny/2024 back to the file of the Id. CIT(A) for fresh adjudication, the appeal filed by the assessee in ITA No.2403/Chny/2024 becomes infructuous.

10. In the result, the appeal filed by the assessee in ITA No.2402/Chny/2024 for assessment year 2014-2015 is allowed for statistical purpose whereas the appeal of the assessee in ITA No.2403/Chny/2024 for assessment year 2014-2015 is dismissed as infructuous.

Order pronounced in the open court on 25th day of November,2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई Chennai:

दिनांक Dated : 25-11-2024

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF