

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
' C' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No. 396/Mds/2015
निर्धारण वर्ष /Assessment year : 2011-2012.

Shri. T. John Rajasekar,
Prop. Monica Surgicals & Monica
Enterprises,
No.8, Lourdu Nagar,
6th Street, K. Pudur,
Madurai 625 007.

Vs. The Assistant Commissioner
of Income Tax,
Circle I(2)
Madurai.

[PAN ADSPJ 6685K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri. S. Sridhar, Advocate
: Shri. Sasikumar, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing
घोषणा की तारीख /Date of
Pronouncement

: 13-10-2016
: 28-10-2016

आदेश / O R D E R

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

In this appeal filed by the assessee, its grievance is that
ld. Commissioner of Income Tax (Appeals) did not decide the case on
merit but had dismissed for default in appearance.

2. Ld. Counsel for the assessee submitted that assessee could not enter into appearance before Id. Commissioner of Income Tax (Appeals) when the appeal was posted for hearing on various dates. As per Id. Authorised Representative assessee had a good case on merits, since the addition due to disallowance of commission and addition due to unexplained deposits in Axis bank account, could all be explained by assessee with evidence. As per Id. Authorised Representative, Id. Commissioner of Income Tax (Appeals) was obliged under law to dispose the case on merit and ought not have dismissed for default in entering appearance.

3. Per contra, the Id. Authorised Representative strongly supported the orders of the authorities below.

4. We have considered the rival contentions and perused the orders of the authorities below. Sub (6) to Section 250 is reproduced hereunder:-

“The order of the Commissioner of Income Tax (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision”.

It is clear from the above section that Id. Commissioner of Income Tax (Appeals) has to dispose the appeal stating the points for determination, the decision given by him and reason for reaching such decision. In the case before us, no doubt the appeal was posted

for hearing nine times but assessee had not entered appearance. However, Id. Commissioner of Income Tax (Appeals) did not proceed in accordance of amendment of Sec. 250(6) of the Act reproduced by us above. We are of the opinion that considering the facts and circumstances of the case, the matter has to be remitted back to the Id. Commissioner of Income Tax (Appeals) for disposal in accordance with law. The assessee shall be given one last chance for entering appearance and supporting its case with evidence. We therefore, set aside the order of the Id. Commissioner of Income Tax (Appeals) and remit the issue back to the file for consideration afresh in accordance with law.

5. In the result, the appeal of the assessee is partly allowed for statistical purpose

Order pronounced on Friday, the 28th day of October, 2016, at Chennai.

Sd/-

(एन.आर.एस. गणेशन))

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 28th October, 2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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