

आयकर अपीलीय अधिकरण, एस एम सी न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

S M C BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य के समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER

आयकर अपील सं./ITA No.474/Mds/2015

निर्धारण वर्ष / Assessment Year : 2007-08

(Late) Vijay Raj Jain,
(Rep by wife and legal heirs
V. Leelavathi,
No.66, Arunachala Asari Street,
Salem – 636 001.

The Income Tax Officer,
v. Ward I(1),
Salem.

PAN : ACCPJ 6661 N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Dr. B. Nischal, JCIT

सुनवाई की तारीख/Date of Hearing : 04.09.2015

घोषणा की तारीख/Date of Pronouncement : 11.09.2015

आदेश /O R D E R

The appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals), Salem, dated 30.12.2014, pertaining to assessment year 2007-08.

2. The brief facts of the case are the assessee is an individual, engaged in the business of trading in electrical goods as a proprietor of M/s Vardhaman Enterprises. During the financial year 2006-07, when a survey operation under Section 133A of the Income-tax Act, 1961 (in short 'the Act') was conducted, declaration was made and statement was recorded. The assessee passed away on 03.08.2007 and the assessee's wife Smt. V. Leelavathy was brought on record as legal representative and filed the income-tax return for the assessment year 2007-08 on 24.03.2008 admitting total income of ₹2,33,830/-. Subsequently, the case was selected for scrutiny and after hearing on various dates and explanations filed. Assessing Officer has made additions to the returned income and determined the assessed income at ₹9,14,220/- and demand raised.

3. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the CIT(Appeals). The assessee submitted that the additions were made by the Assessing Officer in respect of additional cost of construction and treating the cessation of liability as income under Section 68 of the Act without verifying the sundry credit balance in the assessee's books, who are not liable to be paid and the list was produced in the assessment

proceedings and challenged the treatment of cessation of liability as income under Section 68 of the Act. The assessee had offered ₹4,49,160/- as income and credited to Profit & Loss account as unproved creditors who are not distinguished and filed return of income. The Assessing Officer deducted the income credited from returned income, but not allowed loss from business to the extent of ₹2,15,330/- as the return was not filed within the due date under Section 139(1) of the Act. It was submitted that the A.O. has not considered the provisions of Section 71 of the Act where set off of loss from one head against income from another is allowed except capital gain loss. The assessee also made submission in respect of addition of ₹4,65,060/- as undisclosed investment in buildings. The CIT(Appeals), after hearing submissions and information filed, has rejected the grounds of the assessee and sustained the order of the Assessing Officer.

4. Aggrieved by the order of the CIT(Appeals), the assessee filed appeal before the Tribunal raising three grounds. But, at the time of hearing proceedings, the Ld. counsel did not press grounds Nos.2 and 3. Hence, the only ground raised before the Tribunal is as under:-

“The CIT(A) erred in not considering the mistake committed by the Assessing Officer in making the addition towards creditors again in the assessment, when the income towards creditors had already been included in the return of income filed.”

5. The Tribunal heard the rival submissions of both the parties. The issue being narrowed down and crystallized, on perusal of Trading and Profit & Loss account as on 31.03.2007, the assessee has offered income by crediting the Profit & Loss account of ₹4,49,060/-. The same was considered in the assessment proceedings where the return of income was filed declaring total income of ₹2,33,830/-. Since the assessee has voluntarily come forward before filing of the return by offering session of liability of creditors, it shows the integrity of the assessee to offer such income for taxation. Hence, reducing the same amount from returned income and not allowing set off of business income and taxing the income twice is not permissible and violative to the principles of natural justice. Hence the A.O. is directed to delete the addition of ₹4,49,160/-.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 11th September, 2015 at Chennai.

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 11th September, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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