

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.762/Mds/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Shri Shanmugham Sakthivel,  
14/6, Avenue Garden,  
Balamurugan Street,  
Vyasarpadi, Chennai - 600 036.

v. The Income Tax Officer,  
Salary Ward – VI(1),  
Chennai - 600 034.

PAN : BOJPS 7521 E

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Ms. Jharna B. Harilal, FCA

प्रत्यर्थी की ओर से/Respondent by : Shri A.V. Sreekanth, JCIT

सुनवाई की तारीख/Date of Hearing : 14.06.2016

घोषणा की तारीख/Date of Pronouncement : 01.07.2016

### **आदेश /O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) – 15, Chennai, dated 11.01.2016 and pertains to assessment year 2011-12.

2. Ms. Jharna B. Harilal, the Ld. representative for the assessee, submitted that the only issue arises for consideration is

with regard to addition of ₹30,16,000/- as unexplained money under Section 69A of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. representative, the assessee deposited a sum of ₹40,41,000/- in HDFC Bank account on various dates. The Assessing Officer accepted the explanation of the assessee in respect of ₹10,25,000/- out of ₹21,00,000/- deposited on 14.03.2011 and the balance amount was added by the Assessing Officer under Section 68 of the Act. Referring to the order of the Assessing Officer, the Ld. representative submitted that the addition under Section 68 of the Act cannot be made in respect of the bank deposit. According to the Ld. representative, the addition under Section 68 of the Act can be made only in respect of entries found in the books of account and not in respect of deposits made in the bank account. Moreover, the assessee has filed additional evidence before this Tribunal to establish the source for making the deposits of ₹30,16,000/-. This additional evidence could not be filed before the lower authorities in the course of assessment proceeding and appellate proceeding. Therefore, the Ld. representative submitted that an opportunity may be given to the Assessing Officer to re-examine the issue afresh in the light of the material filed by the assessee.

3. On the contrary, Shri A.V. Sreekanth, the Ld. Departmental Representative, submitted that the additional evidence now filed before this Tribunal was admittedly not filed before the lower authorities, therefore, both the authorities below had no occasion to consider the so-called additional evidence filed by the assessee. Moreover, the Assessing Officer accepted the explanation of the assessee to the extent of ₹10,25,000/- out of ₹21,00,000/- deposited on 14.03.2011. Referring to the order of the CIT(Appeals), the Ld. D.R. submitted that merely because a wrong Section or provision of law was referred in the impugned order of the Assessing Officer that cannot be a reason to delete the entire addition. According to the Ld. D.R., when the assessee admittedly invested / deposited money in the bank account maintained with HDFC Bank, the same can very well be added under Section 69A of the Act. Therefore, referring to a wrong section or not referring the correct provision of law cannot be a reason for deleting the addition.

4. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the assessee has deposited a sum of ₹40,41,000/- on five days. The deposit made on 14.03.2011 to the extent of ₹21,00,000/- was

explained by the assessee to the extent of ₹10,25,000/-. The Assessing Officer, in fact, accepted the explanation to the extent of ₹10,25,000/- said to be deposited on 14.03.2011. Out of ₹40,41,000/-, the balance amount of ₹30,16,000/- was added by the Assessing Officer as income of the assessee. The assessee has now filed before this Tribunal an additional material to establish the source for making the deposits. Admittedly, this material was not filed before the lower authorities. This Tribunal is of the considered opinion that under the scheme of Income-tax Act, the Assessing Officer is expected to compute the total taxable income as per the provisions of the Act. Therefore, when the assessee has filed additional evidence before this Tribunal and this Tribunal being final fact finding authority, the same has to be necessarily considered by the assessing authority for the purpose of computing the total taxable income. Since both the authorities had no occasion to consider this additional evidence, this Tribunal is of the considered opinion that the Assessing Officer has to examine the same at the first instance.

5. This Tribunal is of the considered opinion that giving opportunity to the Assessing Officer to examine the additional

material filed by the assessee before this Tribunal would not prejudice the interests of Revenue in any way. In other words, giving opportunity to the Assessing Officer to examine the additional material would definitely promote the cause of justice. Accordingly, the orders of the authorities below are set aside and the issue regarding addition of ₹30,16,000/- is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the issue afresh in the light of the additional material filed by the assessee and thereafter decide the same in accordance with law after giving a reasonable opportunity to the assessee.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 1<sup>st</sup> July, 2016 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 1<sup>st</sup> July, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-15, Chennai-34
4. आयकर आयुक्त/CIT-6, Chennai-34
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.