

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1074/Mds/2013

निर्धारण वर्ष / Assessment Year : 2009-10

The Income Tax Officer,  
Business Ward XV(4),  
Chennai - 600 034.

M/s Intellectual Realty,  
Old No.34, New No.58,  
v. Veerabadran Street,  
Nungambakkam,  
Chennai - 600 034.

(अपीलार्थी/Appellant)

PAN : AADFI 1760 N

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Supriyo Pal, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing : 09.03.2017

घोषणा की तारीख/Date of Pronouncement : 31.05.2017

### **आदेश /O R D E R**

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

This appeal of the Revenue was disposed of earlier by an order dated 22.07.2016. The Revenue filed a Miscellaneous Petition in M.P. No.306/Mds/2016 on the ground that the ground relating to disallowance under Section 40A(3) of the Income-tax Act, 1961 (in short 'the Act') was not disposed of by this Tribunal.

Accordingly, the appeal of the Revenue was reopened only for the purpose of disposal of ground relating to 40A(3) of the Act which was raised by the Revenue in grounds No.4.1 and 4.2 in the appeal.

2. Shri Supriyo Pal, the Ld. Departmental Representative, submitted that the Assessing Officer disallowed ₹18,91,958/- under Section 40A(3) of the Act. The Assessing Officer disallowed the claim of the assessee since the payment exceeded ₹20,000/- to a person on a particular day. The CIT(Appeals) found that the ledger extract and vouchers did not show any cash payment to any person on a particular day exceeding ₹20,000/-. This ledger extract and vouchers were not produced by the assessee before the Assessing Officer. Therefore, there was a violation of Rule 46A of Income-tax Rules, 1962. The CIT(Appeals) without calling for any remand report and without giving any opportunity to the Assessing Officer, allowed the claim of the assessee. The Assessing Officer had no occasion to examine the ledger extract and vouchers. Therefore, according to the Ld. D.R., the CIT(Appeals) is not justified in allowing the claim of the assessee.

3. We have heard Shri S. Sridhar, the Ld.counsel for the assessee also. The Ld.counsel submitted that the CIT(Appeals)

after verifying ledger and vouchers, found that the assessee has not paid to any person money exceeding ₹20,000/- on a particular day. On a query from the Bench whether copies of said extract of ledger and vouchers were available before the Assessing Officer? The Ld.counsel very fairly submitted that the ledger extract and vouchers were not filed before the Assessing Officer, hence, the matter may be remitted back for verification.

4. We have considered the submissions on either side and perused the relevant material available on record. The CIT(Appeals) after verifying the ledger extract and vouchers found that cash payment did not exceed ₹20,000/- on a particular day to any particular person. However, the copies of ledger extract and vouchers were not filed by the assessee before the Assessing Officer. Moreover, the Revenue claims that the Assessing Officer had no occasion to examine ledger extract and vouchers. In those circumstances, this Tribunal is of the considered opinion that the matter needs to be re-examined. Accordingly, the orders of the authorities below are set aside and the issue of disallowance made by the Assessing Officer under Section 40A(3) of the Act is remitted back to the file of the Assessing Officer. The Assessing Officer

shall re-examine the matter afresh after verifying the ledger extract and vouchers and other material that may be filed by the assessee and thereafter decide the issue in accordance with law, after giving a reasonable opportunity to the assessee.

5. It is made clear that the order of this Tribunal dated 22.07.2016 in respect of other issues remain as such.

6. With the above observation, the appeal of the Revenue is partly allowed for statistical purposes.

Order pronounced on 31<sup>st</sup> May, 2017 at Chennai.

sd/-

(डि.एस. सुन्दर सिंह)

(D.S. Sunder Singh)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 31<sup>st</sup> May, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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