

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' (SMC) BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. Nos.3355 & 3356/Mds/2016
निर्धारण वर्ष /Assessment years : 2011-2012 & 2012-2013.

Shri. M. Lakshmanan,
No.129A, Kamaraj Lane
Street, Near SBI,
Theni 625 531.

Vs. The Income Tax Officer,
Ward -1,
Theni.

[PAN ABXPL 1009N]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. A.S. Sriraman, Advocate
प्रत्यर्थी की ओर से /Respondent by : Shri. Clement Ramesh Kumar,
JCIT.

सुनवाई की तारीख/Date of Hearing : 01-03-2017
घोषणा की तारीख /Date of Pronouncement : 29-03-2017

आदेश / ORDER

These are appeals filed by the assessee directed against orders dated 07.10.2016 of Id. Commissioner of Income Tax (Appeals)-1, Madurai for the impugned assessment years.

2. Ld. Counsel for the assessee submitted that Id. Commissioner of Income Tax (Appeals) had dismissed the appeals of the assessee for a reason that assessee had not paid the admitted tax for the income disclosed in the return voluntarily filed by it.

Contention of the Id. Authorised Representative is that for assessment year 2011-2012, assessee had filed a revised return on 19.03.2015 and as per this return they was no tax payable by the assessee. In so far as assessment year 2012-2013 was concerned, Id. Authorised Representative submitted that assessee was compelled by the Id. Assessing Officer to file a return on 26.03.2015 pursuant to a notice u/s.148 of the Income Tax Act, 1961 (in short "the Act") and tax resulting from such income should not have been considered as tax payable on admitted income. Thus, according to him, Id. Commissioner of Income Tax (Appeals) erred in dismissing the appeals of the assessee for want of payment of tax.

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

4. I have considered the rival contentions and perused the orders of the authorities below. In so far as assessment year 2011-2012 is concerned assessee had indeed mentioned before Id. Commissioner of Income Tax (Appeals) that he had filed a second revised return on 19.03.2015 based on which no tax was payable. Para 3 of the order of the Id. Commissioner of Income Tax (Appeals) which is reproduced hereunder records this fact.

"3. During the course of appeal proceedings, it was noticed that the appellants had not paid the tax on

admitted income as per the revised return filed on 19.03.2015 and, therefore, the assessee was asked to show cause as to why the appeal should not be dismissed in limine as per this office letter dated 19.09.2016. In response to the above show cause notice the appellant filed his reply dated 05.10.2016. In this reply it is submitted that the ITO compelled the appellant to file the return admitting higher income and in fact the then auditor along with the learned ITO got the blank form filled up with short term capital gains on sale of Veerapandi land adopting 50C value. It is also contended that the appellant filed another revised return on 31.03.2015 as per which no self assessment tax was payable. It is prayed that 140A tax payment for the first return u/s.148 might be waived and the appeal be decided on merits”.

While disposing the appeal of the assessee for assessment year 2011-2012, Id. Commissioner of Income Tax (Appeals) held that assessee had not paid the tax for the income returned by him in the return filed on 19.03.2015 pursuant to notice issued u/s.148 of the Act. However, Id. Commissioner of Income Tax (Appeals) has not considered the contention of the assessee that as per revised return filed on 31.03.2015 no tax was payable. When no tax was payable as per revised return, whether the appeal could have been dismissed for want of payment of tax as per original return, is an issue which in our opinion requires a consideration by the Id. Commissioner of Income Tax (Appeals). I therefore, set aside the order of the Id. Commissioner of Income Tax (Appeals) in so far as it relates to assessment year 2011-2012 and remit it back to him for consideration afresh in accordance with law.

5. Coming to assessment year 2012-2013, there is a clear finding by Id. Commissioner of Income Tax (Appeals) the assessee had filed a revised return on 31.03.2015 admitting income of ₹19,47,379/- and tax liability of ₹3,85,395/- which was not paid. Even now the tax has not been remitted. In the circumstances the appeal for assessment year 2012-2013, in my opinion was rightly dismissed by the Id. Commissioner of Income Tax (Appeals). I do not find any reason to interfere.

6. In the result, appeal of the assessee for assessment year 2011-2012 as allowed for statistical purpose, whereas that for assessment year 2012-2013 is dismissed.

Order pronounced on Wednesday, the 29th day of March, 2017, at Chennai.

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 29th March, 2017

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 |