

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.2167/Mds/2014

निर्धारण वर्ष / Assessment Year : 2007-08

Smt. S. Malar,  
Selvakumar Sago Factory,  
136-A, Manikavasakar  
Street, Fairlands,  
Salem – 636 016.

v. The Income Tax Officer,  
Ward – I(4),  
3, Gandhi Road,  
Salem – 636 007.

PAN : AJEPM 1809 Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri G. Baskar, Advocate

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

सुनवाई की तारीख/Date of Hearing : 23.10.2015

घोषणा की तारीख/Date of Pronouncement : 13.11.2015

### **आदेश /O R D E R**

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Salem, dated 04.07.2014 and pertains to assessment year 2007-08.

2. Shri G. Baskar, the Ld.counsel for the assessee, submitted that the assessee is engaged in the business of manufacturing and sale of sago, starch from tapioca. In the course of her business activity, the assessee purchased tapioca from various farmers. The Assessing Officer found that the name and address of the persons from whom the tapioca was purchased, were not available in the record. Therefore, he made an addition of ₹8,81,960/-. According to the Ld. counsel, the tapioca was purchased through bought note from agriculturists from various villages. According to the Ld. counsel, all the purchases were made on credit basis and the payments were made at a later stage. The Ld.counsel further submitted that the assessee has furnished the name and address of the middlemen through whom the purchases were made. The assessee has also furnished three lists of 21 closing credit balances. The Assessing Officer accepted the quantity and cost of purchases made by the assessee. The CIT(Appeals) rejected the claim of the assessee only on the ground that there is no reference about the middlemen for purchasing tapioca. During the assessment proceedings, the assessee in fact furnished name and address of the middlemen engaged by her in purchasing tapioca. In fact, one R. Mani and K. Shanmugam appeared before the

Assessing Officer and they were examined by the Assessing Officer. These two persons confirmed the role played by them as middlemen for purchasing tapioca for the assessee. Since the purchase was made from agriculturists through agents, according to the Ld. counsel, there cannot be any addition. Since the purchases were not doubted, the quantity is also admitted, according to the Ld. counsel, there cannot be any addition.

3. On the contrary, Shri A.V. Sreekanth, the Ld. Departmental Representative, submitted that the assessee claimed purchase of tapioca to the extent of ₹8,81,960/- from the agriculturists. The assessee never claimed before the Assessing Officer that the purchases were made through middlemen. The Assessing Officer found that the transaction was not genuine, the assessee has failed to establish identity of the creditors, creditworthiness of creditors and genuineness of the transaction. In the absence of verifiable details, according to the Ld. D.R., the Assessing Officer made addition under Section 68 of the Income-tax Act, 1961 (in short 'the Act'), which was rightly confirmed by the CIT(Appeals).

4. I have considered the rival submissions on either side and perused the relevant material on record. From the order of the

CIT(Appeals) it appears that the CIT(Appeals) called for remand report from the Assessing Officer. In fact, the CIT(Appeals) reproduced the remand report in his order. After reproducing the remand report and the reply given by the assessee to the remand report, the CIT(Appeals) without much of discussion, rejected the claim of the assessee on the ground that the Assessing Officer has come to a conclusion that the claim of purchase through middlemen is not acceptable. Therefore, he rejected the claim of the assessee. Similarly, other issues are also confirmed without any discussion. This Tribunal is of the considered opinion that the CIT(Appeals) being the first Appellate Authority, he has to re-appreciate the material available on record. The CIT(Appeals) has to appreciate the remand report filed by the Assessing Officer and thereafter examine the reply given by the assessee and has to record a finding why he is not accepting the explanation of the assessee. Merely because the Assessing Officer concluded that engagement of middlemen is not acceptable to him, that cannot be a reason for the CIT(Appeals) to accept the conclusion reached by the Assessing Officer. This Tribunal is of the considered opinion that the CIT(Appeals) has to examine the material facts available on record and record his own reasons for arriving at his conclusion. In this

case, the CIT(Appeals) has not recorded any of his reasoning for the conclusion reached in his order. The order of the CIT(Appeals) being a quasi-judicial order, the application of mind shall reflect in the order itself. Reproducing the remand report and reply and thereafter simply rejecting the claim of the assessee on one line cannot be appreciated by the Appellate Authority. Therefore, the order of the CIT(Appeals) is set aside and the matter is remitted back to his file. The CIT(Appeals) shall re-examine the issue afresh in accordance with law after giving reasonable opportunity to the assessee. It is made clear that the CIT(Appeals) shall pass a speaking order and the order shall reflect the application of mind on material facts available on record.

5. With the above observation, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 13<sup>th</sup> November, 2015 at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 13<sup>th</sup> November, 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.