

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' 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.2041/Mds/2016

&

C.O. No.123/Mds/2016

(in I.T.A. No.2041/Mds/2016)

निर्धारण वर्ष / Assessment Year : 2010-11

The Income Tax Officer,
Ward 1(1),
Erode.

v. Smt. T. Umadevi,
No.396, Nethaji Road,
Erode – 638 001.

(अपीलार्थी/Appellant)

PAN : AAFPU 7529 P

(Respondent & Cross-objector)

अपीलार्थी की ओर से/Appellant by : Shri Shiva Srinivas, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri N.V. Balaji, Advocate

सुनवाई की तारीख/Date of Hearing : 27.10.2016

घोषणा की तारीख/Date of Pronouncement : 30.11.2016

आदेश /O R D E R

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

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) – 3, Coimbatore, dated 28.03.2016 and pertains to assessment year 2010-11.

2. There was a delay of 3 days in filing this appeal by the assessee. The assessee has filed a petition for condonation of delay. We have heard the Ld. Departmental Representative and the Ld.counsel for the assessee. We find that there was sufficient cause for not filing the appeal before the stipulated time. Therefore, we condone the delay and admit the appeal.

3. The only issue raised by the Revenue is that the CIT(Appeals) admitted additional evidence without calling for remand report. No ground was raised by the Revenue on merits.

4. Shri Shiva Srinivas, the Ld. Departmental Representative, submitted that there was a cash payment of ₹12,00,000/- to M/s S.P. Palaniappa Mudaliar & Sons and another payment of ₹15,00,000/- to M/s S.P.P. Silk Show Room made by the assessee. The Assessing Officer has also found that the assessee has made a payment of ₹21,00,000/- to Shri P. Balasubramaniam. These were not explained. According to the Ld. D.R., the assessee offered explanation before the CIT(Appeals) and the CIT(Appeals) allowed the claim of the assessee after admitting the additional evidence filed by the assessee. On a query from the Bench, what was the additional evidence filed by the assessee? The Ld. D.R. clarified

that the additional evidence is the explanation that was offered by the assessee before the CIT(Appeals). Referring to the order of the CIT(Appeals), the Ld. D.R. submitted that the CIT(Appeals) at para 6.5 observed that these evidences were available with the Assessing Officer. In fact, these evidences were not available before the Assessing Officer. The Ld. D.R. clarified that the details of payments and receipts reproduced by the CIT(Appeals) at para 6.4 of the impugned order were very much available before the Assessing Officer. The Ld. D.R. further submitted that the matter may be remitted back to the file of the Assessing Officer for re-examination.

5. On the contrary, Shri N.V. Balaji, the Ld.counsel for the assessee, submitted that the assessee has not filed any additional evidence before the CIT(Appeals). Therefore, it is not known how the Revenue contends that the assessee has filed additional evidences before the CIT(Appeals). The assessee has offered explanation with regard to cash credit. Referring to Rule 46A of the Income-tax Rules, 1962, the Ld.counsel submitted that when the assessee has filed additional evidence, either oral or documentary, other than the evidence produced before the Assessing Officer,

then the CIT(Appeals) has to necessarily give opportunity to the Assessing Officer to controvert the contents of the document. In this case, admittedly, no oral evidence was adduced before the CIT(Appeals) and no documentary evidence was also adduced. Therefore, arguing the case by offering explanation does not mean producing any evidence before the CIT(Appeals). Therefore, it cannot be said that the assessee has filed any additional evidence before the CIT(Appeals).

6. We have considered the rival submissions on either side and perused the relevant material available on record. Rule 46A clearly says that when the assessee produces additional evidence in the form of oral or documentary, an opportunity shall be given to the Assessing Officer to controvert the contents of the additional evidence. In the case before us, it is nobody's case that the assessee has filed any additional evidence either in the form of oral or document. The explanation of the assessee with regard to payment of cash cannot be construed as additional evidence within the meaning of Rule 46A of the Income-tax Rules, 1962. Therefore, this Tribunal do not find any merit in the contention of the Ld. Departmental Representative.

7. No ground was raised by the Revenue in respect of the addition made by the Assessing Officer with regard to cash payment. Therefore, we refrain ourselves from going into the merit of addition.

8. The cross-objection filed by the assessee is only to support the order of the CIT(Appeals), therefore, it becomes infructuous.

9. In the result, the appeal of the Revenue as well as the cross-objection of the assessee are dismissed.

Order pronounced on 30th November, 2016 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 30th November, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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