

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.603/Mds/2015

निर्धारण वर्ष / Assessment Year : 2011-12

Smt. Hemalatha Chandran,
C/o Shri S. Sridhar, Advocate,
New No.14, Old No.82, Flat No.5,
1st Avenue, Indira Nagar, Adyar,
Chennai - 600 020.

v. The Income Tax Officer,
Business Ward III(3),
Chennai - 600 034.

PAN : AACPC 2079 H

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri Shiva Srinivas, JCIT

सुनवाई की तारीख/Date of Hearing : 27.10.2016

घोषणा की तारीख/Date of Pronouncement : 23.11.2016

आदेश /O R D E R

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

This appeal of the assessee was disposed of earlier by an order dated 01.04.2016. However, the assessee filed a Miscellaneous Petition in M.P. No.200/Mds/2016 on the ground that the ground Nos. 8 and 10 were not disposed of. Accordingly, the appeal was reopened only for the purpose of adjudicating the

ground raised by the assessee in ground Nos.8 and 10. Accordingly, the appeal was posted today.

2. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that ground Nos.8 and 10 are identically one and same. Referring to ground No.8, the Ld.counsel for the assessee submitted that the Assessing Officer disallowed ₹4,42,885/-. Referring to the order of the Assessing Officer, the Ld.counsel submitted that the addition of ₹4,42,85/- was made because of difference between the realizable value of closing stock and the value of closing stock disclosed in the balance sheet. It is not a real payment as claimed by the Revenue. Therefore, according to the Ld. counsel, the addition made by the Assessing Officer is not justified.

3. On the contrary, Shri Shiva Srinivas, the Ld. Departmental Representative, submitted that the assessee explained before the Assessing Officer that the cash deposit of ₹13,00,000/- was from realization of fixed assets over the liabilities. The assessee has filed confirmation of sale to the extent of ₹6,17,720/-. However, genuineness of confirmation letter was not established either before the Assessing Officer or before the CIT(Appeals). Since the burden of proof was not discharged by the assessee, the CIT(Appeals)

confirmed the addition made by the Assessing Officer towards undisclosed business income.

4. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee admittedly filed confirmation letters from 7 purchasers of the closing stock. The balance sheet discloses the closing stock valued at ₹1,74,835/- As per the confirmation letter filed by the assessee, the sale proceeds were out of sale of closing stock. Therefore, it is not a case of difference between the realizable value and the value of closing stock which were disclosed in the balance sheet. The assessee claims that the stock was sold and sale proceeds remain outstanding on the last day of the financial year. Therefore, the Assessing Officer found that the confirmation letter filed by the assessee was in the letter head of the assessee's business concern itself. Therefore, it creates a doubt. This Tribunal is of the considered opinion that when the assessee claims that the stock was sold and the sale proceeds were outstanding on the last day of the financial year, the same ought to have been examined by the Assessing Officer by giving an opportunity to the assessee. In this case, while rejecting the confirmation letter filed by the assessee,

the Assessing Officer has not taken any step to examine the purchasers. Had the Assessing Officer examined the purchases on the basis of so-called confirmation letter filed by them, the real fact of the case might have come out. Since the Assessing Officer has not done such an exercise, this Tribunal is of the considered opinion that the matter needs to be reconsidered. Accordingly, the orders of the authorities below are set aside and the addition of ₹4,42,885/- is remitted back to the file of the Assessing Officer. The Assessing Officer shall reconsider the issue after examining the so-called 7 purchasers and thereafter decide the same in accordance with law after giving a reasonable opportunity to the assessee.

5. Now coming to ground No.10, Shri S. Sridhar, the Ld.counsel for the assessee, submitted that an addition was made towards unexplained investment to the extent of ₹7,00,000/-. The assessee claims before the Assessing Officer that she sold gold jewellery to 6 persons. The assessee has also filed confirmation letter from these 6 persons. However, the Ld.counsel claimed before the Assessing Officer that the jewellery was given to the assessee by her mother. Therefore, there was a contradictory claim made by the assessee and her representative. Therefore, the Assessing Officer disallowed

the claim of the assessee to the extent of ₹7,00,000/- and made an addition under Section 69 of the Act.

6. On the contrary, Shri Shiva Srinivas, the Ld. Departmental Representative, submitted that there was unexplained investment in the Savings Bank account of the assessee to the extent of ₹7,00,000/-. Since the assessee made contradictory claim before the Assessing Officer, the Assessing Officer disbelieved the claim of the assessee and made addition under Section 69 of the Act. No documentary evidence was filed either before the Assessing Officer or before the CIT(Appeals) with regard to source for owning the gold jewellery. Therefore, the CIT(Appeals) found that since there was no confirmation from the 6 persons for purchase of gold jewellery, the claim of the assessee could not be accepted. Therefore, the CIT(Appeals) has rightly confirmed the addition.

7. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that there was deposit in the Savings Bank account of the assessee to the extent of ₹7,00,000/-. The assessee claims that she sold her jewellery to 6 persons and also filed confirmation letters. The Ld.counsel for the assessee claimed before the

Assessing Officer that the source of jewellery is the jewellery given by the assessee's mother. It is not known how the statement made by the assessee before the Assessing Officer is contradictory to each other. When the assessee's mother gave jewellery to the assessee and the same was, in turn, sold by the assessee, it cannot be said the assessee is giving contradictory statement. What is to be seen is whether the assessee sold the jewellery to so-called 6 persons. The confirmation letters were filed before the Assessing Officer, the Assessing Officer did not take any pain to verify the sale of the jewellery to the so-called 6 persons. Therefore, this Tribunal is of the considered opinion that the Assessing Officer has to examine the purchasers of jewellery on the basis of so-called confirmation letters filed by the 6 persons. Accordingly, the orders of the authorities below are set aside and the addition of ₹7,00,000/- is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh after examining the so-called purchasers, who filed confirmation letters, and thereafter decide the issue in accordance with law after giving a reasonable opportunity to the assessee.

8. It is made clear that the other part of the order of this Tribunal dated 1st April, 2016 remains as such.

9. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on 23rd 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 23rd November, 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
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.