

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यके समक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A.No. 1011/Mds/2014

निर्धारण वर्ष /Assessment year : 2007-2008

L. Mohana Krishnan,
Old No.35, New No.28,
Thomas Nagar,
Little Mount, Saidapet,
Chennai 600 015.

Vs. The Income Tax Officer,
Business Ward IV(2),
Chennai 600 034

[PAN AGIPM 0599G]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. N. Devanathan, Advocate
प्रत्यर्थी की ओर से /Respondent by : Shri. K. Parashivaih, IRS, CIT

सुनवाई की तारीख/Date of Hearing : 20-01-2016

घोषणा की तारीख /Date of Pronouncement : 03-02-2016

आदेश / ORDER

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the assessee is directed against order of the Commissioner of Income-tax (Appeals)-V, Chennai in ITA No.57/12-13(A)-V, dt 27.01.2014 for the assessment year 2007-2008

passed u/s.144 and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The assessee has raised only one substantive ground in this appeal that Commissioner of Income Tax (Appeals) erred in confirming the order of the Assessing Officer without going into merits and also health condition of the assessee brought on record.

3. The Brief facts of the case that the assessee is an individual and Advocate by profession and has filed return of income on 10.04.2008 declaring total income of ₹98,920/-. Return was processed u/s.143(1) of the Act and selected for scrutiny through CASS. Subsequently, notice u/s.143(2) was issued and the same was returned unserved by the postal authorities and another notice u/s.142(1) was issued on 13.11.2009, was also returned unserved by the postal authorities stating no such person. The Id. Assessing Officer deputed, the Inspector of Income Tax Department to serve the notice, since the door was locked the notice was served by affixture as there was no response from the assessee, the Assessing Officer completed the assessment u/s.144 of the Act and made disallowance of 30% of indirect expenses claimed in the absence of evidence and further, as per AIR information, the assessee has received an amount of ₹68,360/- as interest and made cash deposits in Centurion Bank of

Punjab Ltd, Besant Nagar Branch, Chennai ₹29,00,000/-. Since there are no explanations available prime facie the said amounts were added to the returned income and assessment was completed determining total income of ₹29,89,349/- and raised demand. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

4. Before the Commissioner of Income Tax (Appeals), the assessee raised grounds that the Assessing Officer was erred in disallowing expenditure and also treating the cash deposits of ₹29,00,000/- as income from other sources. Further, the assessee has put on record, that he was suffering from severe paralysis for a longer period. He is an advocate by profession and the Assessing Officer has disallowed indirect expenses without evidence and the cash deposits of ₹29,00,000/- as per AIR information pertains to sale of land at Thiruporur and due to health conditions he was not in a position to substantiate with available information. Further assessee was mentally prepared to compute Capital Gains and offered to pay tax demand. In the Appellate proceedings, the assessee's Id. Authorised Representative appeared and filed explanations referred above and undertake to file additional information. The Commissioner of Income Tax (Appeals) found that subsequent to the appearance of Id. Authorised Representative the case was fixed for hearing for more

than three times and only once Id. Authorised Representative appeared and asked to produce details with evidences. On the said date of hearing, there was no appearance and response. The Id.CIT(A) found that assessee is not interested in pursuing the grounds of appeal and none appeared by applying ratio of *Multiplan (India) Pvt. Ltd vs. CIT 38 ITD 320 and Estate of Late Tukojirao Halkar vs. CWT 223 1TR 480 (MP)* dismissed the appeal and upheld the order of the Assessing Officer. Aggrieved by the order of the Commissioner of Income Tax (Appeals) the assessee assailed an appeal before the Tribunal.

5. Before us, the Id. Authorised Representative reiterated his submissions made before the Commissioner of Income Tax (Appeals) and delay in filing the information was due to health problems as the assessee was paralysis of limbs and was bed ridden of post traumatic stress disorder. The assessee has collected the supporting evidences to establish the deposits in bank accounts and also professional expenditure claimed. The assessee due to health limitation could not give information to the Id. Authorised Representative for furnishing before the Income Tax Department. The Commissioner of Income Tax (Appeals) has dismissed the appeal only on the basis of observations of Assessing Officer and for non prosecuting of appeal. Further, the Id. Authorised Representative pleaded that assessee was in Liaison

business for real estate and infrastructure because of liaison works he used to collect money on behalf of land owners and pay to sellers and deposits in bank account. Due to health issues, books of account could not be prepared as there are no major deals and income received was meager. Hence deposits could not be explained with material evidences and pleaded the Tribunal to decide the issue on merits.

6. On the other hand, the Id. Departmental Representative objected to the submissions. There is no cooperation of the assessee before lower authorities and any information filed should be verified and therefore prayed for dismissing the assessee's appeal.

7. We heard the rival submissions of both the parties, perused the material on record. The facts that the assessee is a professional and due to his health hazards was not able to concentrate on the business transactions. Further, the assessee was not well for a longtime due to blood clot in the brain which led to paralysis of limbs and was bed ridden. The Id. Authorised Representative submitted that there is a evidence to support the case which could not be immediately filed. Due to circumstances of ill health and non appearance, the Assessing Officer has made best judgment assessment u/s.144 of the Act as there is no alternative available for the assessment. The Id.

Commissioner of Income Tax (Appeals) after giving adequate opportunity dismissed the appeal for non prosecution. It is apparent from facts, considering the health condition of the assessee and also the issues were not dealt on merits and has to be examined by lower authorities. We therefore, set aside the order of the Commissioner of Income Tax (Appeals) and remit the file to the Assessing Officer who shall examine the issues and shall provide adequate opportunity of hearing to the assessee and decide the issue on merits.

8. In the result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced on Wednesday, the 3rd day of February, 2016, at Chennai.

Sd/-
(चंद्र पूजारी)
(CHANDRA POOJARI)
लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:03.2.2016

KV

Sd/-
(जी. पवन कुमार)
(G. PAVAN KUMAR)
न्यायिक सदस्य/JUDICIAL MEMBER

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 |