

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

“D” BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.926/Mds/2014

निर्धारण वर्ष / Assessment Year : 2005-06

The Assistant Commissioner
of Income Tax,
Company Circle – III(4),
Chennai - 600 034.

v. M/s Vivek Ltd.,
68, Luz Church Road,
2nd floor,
Mylapore, Chennai – 600 004.

(अपीलार्थी/Appellant)

PAN : AAACV 1186 V
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri N. Madhavan, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri M.C. Srikanth, CA

सुनवाई की तारीख/Date of Hearing : 21.04.2015

घोषणा की तारीख/Date of Pronouncement : 01.05.2015

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)-III, Chennai, dated 17.12.2013 and pertains to assessment year 2005-06.

2. Shri N. Madhavan, the Ld. Departmental Representative, submitted that the first issue arises for consideration is with regard to depreciation on temporary structures. The assessee claimed at 100% depreciation, however, the Assessing Officer allowed only 10%. According to the Ld. D.R., in fact, in the earlier assessment year, this Tribunal remitted back the matter to the file of the Assessing Officer. Now coming to the claim of bad debt, the Ld. D.R. submitted that the CIT(Appeals) deleted the addition by following the order of this Tribunal in I.T.A. No.1751 to 1754/Mds/2005. The CIT(Appeals) has not discussed the facts. He simply deleted by referring to the order of this Tribunal. According to the Ld. D.R., the CIT(Appeals) has to apply his mind to the facts, which arise for consideration, has to be referred in the order and has to be made clear how the Tribunal order is applicable. Without doing so, merely referring to the order of the Tribunal and deleting the addition cannot be justified. Similarly, in respect of other additions with regard to Pooja expenses, vehicle maintenance expenses, depreciation, goodwill have also been deleted by the CIT(Appeals) by making a reference to the order of this Tribunal without any discussion. Therefore, according to the Ld. D.R., the CIT(Appeals) is not justified in deleting the additions.

3. On the contrary, Shri M.C. Srikanth, the Ld. representative for the assessee, submitted that the CIT(Appeals) has relied on the order of this Tribunal. Of course, there is no much of discussion. However, it is apparent from the order of the CIT(Appeals) that he has followed the order of this Tribunal for deleting the additions. Therefore, there is no error in the order of the CIT(Appeals).

4. We have considered the rival submissions on either side and perused the relevant material on record. The CIT(Appeals) has followed the order of this Tribunal since this Tribunal is above the CIT(Appeals) in hierarchy. However, the facts, the issues arise for consideration and how the order of this Tribunal is applicable to such facts have to be discussed in appellate order. The application of mind by the CIT(Appeals) has to be reflected in the order itself. Making a reference to the order of this Tribunal and simply deleting the additions without any discussion is not justified. This Tribunal is of the considered opinion that the CIT(Appeals) is bound to discuss the facts and record reason for the conclusion reached therein. Of course, the CIT(Appeals) may take a decision by relying on the order of this Tribunal, however, there should be discussion. Since there is no such discussion as pointed out by the Ld. D.R., this Tribunal is of the considered opinion that the CIT(Appeals) has to

reconsider the appeal. Therefore, we set aside the order of the CIT(Appeals) and entire issues remitted back to his file. The CIT(Appeals) shall consider the same afresh in the light of the material available on record and thereafter, pass a speaking order referring to the facts and discussing the reason for applying the present law in the subject including the order of this Tribunal.

5. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced on 1st of May, 2015 at Chennai.

sd/-
(A.Mohan Alankamony)
(ए. मोहन अलंकामणी)
लेखा सदस्य/Accountant Member

sd/-
(N.R.S. Ganesan)
(एन.आर.एस. गणेशन)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 1st May, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-III, Chennai-34
4. आयकर आयुक्त/CIT, Chennai-III, Chennai-34
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.