

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' (SMC) BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।  
[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No. 577/Mds/2017  
निर्धारण वर्ष /Assessment year : 2012-2013.

Shri. Mohan Vasantha  
Kumaresan,  
No.12, Kamaraj Park Street,  
Royapuram,  
Chennai 600 013

**Vs.** The Income Tax Officer,  
Non Corporate Ward 5(1)  
Chennai

[PAN AACPK 6777G]  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. A.S. Sriraman, Advocate  
प्रत्यर्थी की ओर से /Respondent by : Shri. M.S. Nethrapal, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 31-05-2017  
घोषणा की तारीख /Date of Pronouncement : 31-05-2017

**आदेश / ORDER**

Assessee in this appeal against an order dated 30.01.2017 of Id. Commissioner of Income Tax (Appeals)-5, Chennai has taken the following grounds.

"1. The order of The Commissioner of Income Tax (Appeals) 5, Chennai dated 30.01.2017 in 1, T.A.No.33/CIT(A)-5/2015-16 for the above mentioned

*Assessment Year is contrary to law, facts, and in the circumstances of the case.*

*2. The CIT (Appeals) erred in sustaining the gross profit addition of Rs.17,09,688/- in the computation of taxable total income without assigning proper reasons and justification.*

*3. The CIT (Appeals) failed to appreciate that the sustenance of the said addition on technical ground was wholly unjustified and ought to have appreciated that the distinction between the Court of Record and Quasi Judicial Authority was not considered before applying the technical reason to sustain the said addition.*

*4. The CIT (Appeals) failed to appreciate that having extracted the grounds of appeal in the impugned order which clearly indicated the challenge/ground raised to question the technical issue, applying the technical reason to sustain the said addition was bad in law.*

*5. The CIT (Appeals) went wrong in recording the findings in this regard from para 5.1 of the impugned order without assigning proper reasons and justification.*

*6. The CIT (Appeals) erred in sustaining the disallowance of Rs.36,000/- on the consideration of diversion of borrowed funds for personal purposes in the computation of taxable total income without assigning proper reasons and justification.*

*7. The CIT (Appeals) went wrong in recording the findings in this regard in para 6.3 & para 6.4 of the impugned order without assigning proper reasons and justification.*

*8. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.*

*9. The Appellant craves leave to file additional grounds/arguments at the time of hearing”.*

2. A reading of the grounds show that assessee is aggrieved on a gross profit addition of ₹17,09, 688/- and a disallowance of interest of ₹36,000/- for diversion of borrowed fund, which were confirmed by the Id. Commissioner of Income Tax (Appeals).

3. Ld. Counsel for the assessee submitted that the addition on gross profit was done without rejecting the books of accounts and without pointing out any defects therein. As per the Id. Authorised Representative accounts of the assessee were subject to tax audit under Sec. 44AB of the Income Tax Act, 1961 (in short "the Act") and no defects were pointed out by the auditor in his tax audit reports. According to him, the audited financial results ought not have been ignored by the lower authorities. As per the Id. Authorised Representative, just because the assessee agreed to offer a higher profit, the addition should not have been made. According to him agreeing to an addition before a quasi-judicial authority like Assessing Officer will not estop the assessee from assailing such addition before an appellate authority, since proceedings before the Id. Assessing Officer were not akin to proceedings before a Court of Record. Reliance was placed on the decision of a Co-ordinate Bench of this Tribunal in the case of *Shri. S. Velumani vs. ITO* (ITA No.1839/Mds/2013, dated 28.02.2014).

4. Viz-a-viz the second issue, regarding disallowance of interest, Id. Counsel submitted that assessee was a dealer in investment and securities and therefore the shares acquired could not have been considered as personal in nature. According to him, the business loan of ₹24,00,000/- was used for purchasing shares as a part of the business of the assessee.

5. Per contra, Id. Departmental Representative submitted assessee could never be aggrieved on an admitted addition. As per the Id. Departmental Representative the Id. Assessing Officer had not specifically noted the defects in the accounts of the assessee considering the enhanced gross profit accepted by the assessee. Reliance was placed by the Id. Departmental Representative on the judgment of Jurisdictional High Court in the case of *Ramanlal Kamdar vs. CIT, 108 ITR 0073*.

6. I have perused the orders and heard the rival contention. Relevant para of the assessment through which the addition in gross profit was done by the Id. Assessing Officer reads as under:-

*During the course of scrutiny hearing, it is pointed out to the AR regarding low profit compare to huge turnover and called for details on the same. The assessee furnished letter dated 1703.2015 calculating the GP rate at 2.4% taking into account of purchase and sales of sample of a particular period. However the assessee has agreed to offer a gross profit at @ 2.5% over and above the G.P. already*

*admitted(2.12%). Therefore the difference of GP rate 0.38% (2.5-2.12) which works to Rs.17,09,688/- on the total turnover (sales and processing fees) of Rs44,99,17,807/- is added to the total income of the assessee”.*

Ld. Authorised Representative has relied on decision of Co-ordinate Bench in the case of Shri. S. Velumani (supra) for arguing that agreeing to an addition per se will not be enough but Assessing Officer was obliged to show defects in the accounts, more so since assessee's books were subject to tax audit. Para 6 of this order, which has been heavily relied on by the Id. Authorised Representative is reproduced hereunder:-

*"6. We have heard both parties and gone through the case file. The assessee argues that neither he nor his authorized representative had ever made any concession with the CIT(A) agreeing with the addition to the extent of 50%. A perusal of the CIT(A)'s order makes it clear that balance 50% of the addition has been confirmed only on such an agreement by the assessee's authorized representative However, nothing is forthcoming as to whether the same was submitted in writing or not. In our view, such a concession in the absence of specific authorization either by the assessee or authorized representative, carries no value. We quote latest case law of hon'ble supreme court in case of Urviben Chiragbhai Sheth vs Vijaybhai SLP(C) No.896 of 2006 holding that such a statement made only before a 'court of record' is sacrosanct. So, this argument of the Revenue stands rejected”.*

7. What contrasts the above case from the facts here is that assessee here has not contested the claim of the Id. Assessing Officer

that assessee had agreed to the enhanced gross profit rate. In my opinion there is much strength in the argument of the Id. Departmental Representative that, Assessing Officer considering the admission did not find it necessary to point out the defects in the accounts of the assessee. As to the argument of the Id. Authorised Representative, that books of the assessee were subject to a tax audit under section 44AA of the Act, in my opinion, if the assessee was so sure about its account, it would have never agreed to a gross profit addition. Once assessee has agreed to an addition, in my opinion, he cannot have any grievance against the assessment. Hence in my opinion the addition for low gross profit was rightly made by the Id. Assessing Officer, and confirmed by the Id. Commissioner of Income Tax (Appeals). Related grounds of the assessee are dismissed.

**8.** Coming to other issue which is on disallowance of interest, admittedly assessee was in the business of dealing in investments and securities. Assessing Officer has not given any reason why the shares acquired utilizing the business loan of ₹24,00,000/- was considered by him as for personal use. Assessee being a proprietorship such differentiation in my opinion should not have been without spelling out specific reasons. In the circumstances, I am of the opinion that

disallowance of interest of ₹36,000/- was not warranted. Such disallowance is deleted. Related grounds of the assessee are allowed.

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

Order pronounced on Wednesday, the 31<sup>st</sup> day of May, 2017, at Chennai.

Sd/-

(अब्राहम पी. जॉर्ज)

**(ABRAHAM P. GEORGE)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 31st May, 2017

KV

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        |