

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**'A' BENCH, CHENNAI**

श्रीएन.आर.एस. गणेशन, न्यायिकसदस्य 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.2069/Mds/2015**

निर्धारण वर्ष /**Assessment Year : 2010-11**

Shri B.Kamaraj,  
C/o. Mr.S.Sridhar, Advocate,  
112/1, Periyar Street,  
Erode – 638 001.

PAN: BJUPK 9323 G

(अपीलार्थी/Appellant)

v. The Principal Commissioner of  
Income Tax -2,  
Income Tax Office,  
No.63, Race Course,  
Coimbatore.

(प्रत्यर्थी/Respondent)

आयकर अपील सं./**ITA No.2071/Mds/2015**

निर्धारण वर्ष /**Assessment Year : 2010-11**

Shri G.Balakrishnan,  
C/o. Mr.S.Sridhar, Advocate,  
112/1, Periyar Street,  
Erode – 638 001.

PAN: AGDPB 6110 B

(अपीलार्थी/Appellant)

v. The Principal Commissioner of  
Income Tax -2,  
Income Tax Office,  
No.63, Race Course,  
Coimbatore.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri S.Sridhar, Advocate  
Erode

प्रत्यर्थीकीओरसे/Respondent by

: Shri Pathlavath Peerya, CIT

सुनवाईकीतारीख/Date of Hearing : 21.09.2016  
घोषणाकीतारीख/Date of Pronouncement : 28.10.2016

**आदेश / O R D E R**

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

Both the appeal of the two independent assessee are directed against the respective order of the Principal CIT for the assessment year 2010-11.

2. There is a delay of 139 days in filing both the appeals before this Tribunal. Shri S.Sridhar, the learned counsel for the assessee submitted that the assessee handed over the files to the chartered accountant for filing the appeal before this Tribunal. The Chartered Accountant however suffered heart attack and he was stented twice. Therefore, he could not file the appeal within the time prescribed. In the meantime, the chartered accountant's father Shri Thimmi Chetty also expired. Therefore, the chartered accountant could not file the appeal before this Tribunal within the time. After that, the assessee took steps to file the appeal through the present counsel. Hence, the delay was beyond the control of the assessee. Therefore, the learned counsel submitted that the delay of 139 days may be condoned.

3. We heard Shri Pathlavath Peerya, the learned representative for the department also. According to the learned representative, even though the assessee has produced a medical certificate to show that the chartered accountant was suffered heart attack and who was stented twice that cannot be a reason for the assessee for not filing the appeal before this Tribunal. Therefore, there is no reasonable cause on the part of the assessee in not filing appeal within the time provided under the Act.

4. We have considered the rival submissions on either side and also perused the material available on record. After receipt of the order from the CIT(A), the assessee claims that the same was handed over to the chartered accountant for preparing the appeal. Unfortunately, the chartered accountant suffered heart attack. He was stented twice. Moreover, the chartered accountant father also expired in the meantime. This Tribunal is of the considered opinion that the assessee initiated prompt action for filing the appeal before this Tribunal and due to unforeseen incident took place in the family of the chartered accountant and in fact, the chartered accountant himself suffered heart attack and he was stented twice prevented the chartered accountant himself from filing the appeal in time. This Tribunal is of the considered opinion that the assessee was prevented from filing the appeal before this Tribunal within the time prescribed. Therefore, there is no negligence on the part of both

the assessees in taking steps to file the appeal. Accordingly, the delay of 139 days in filing the appeal is hereby condoned and both the appeals of the assessee are admitted.

5. Now coming to the merit of the appeal, Shri S.Sridhar, the learned counsel for the assessee submitted that the assessing officer consequent to the survey operation under Section 133A completed the assessment by making additions to the gross profit at the rate of 12% in the case of Shri G.Balakrishnan. According to the learned counsel, Shri G.Balakrishnan, is the father of Mr.B.Kamaraj, the assessee in ITA No.2069/Mds/2015. The Administrative Commissioner found that the CIT(A) by his order dated 14.11.2014 directed the assessing officer to adopt 6% as gross profit instead of 12% adopted by the assessing officer. The learned counsel further clarified that no books of account was maintained by the assessee. The entire material found during the course of survey operation was impounded by the revenue authorities. The copies of the impounded documents were not furnished to the assessee. In spite of repeated requests, a copy of the impounded document was not produced to the assessee. Therefore, the assessee was not in a position to contest the case either before the assessing officer or before the administrative commissioner. Therefore, the learned counsel submitted that the assessing officer may be directed to furnish copies of the documents impounded during the course of survey operation under

Section 133A within the time limit that may be fixed by this Tribunal and thereafter decide the issue afresh in accordance with law.

6. We heard Shri Pathlavath Peerya, the learned department representative also. The learned department representative very fairly submitted that the copy of the impounded documents can be given to the assessee so that the assessee can respond to the queries raised by the assessing officer. Therefore, the learned department representative very fairly submitted that the matter may be remitted back to the file of the assessing officer for re-consideration.

7. We have considered the rival submissions on either side and also perused the material available on record. Admittedly, consequent to the survey operation under Section 133A, the assessing officer framed the assessment order by estimating the gross profit at 12%. It is not known how the assessing officer estimated the turnover. The assessee has not maintained any books of account. Apparently, the assessing officer estimated the turnover on the basis of the material found during the course of survey operation which was impounded. Therefore, this Tribunal is of the considered opinion that the documents impounded by the assessing officer during the course of survey operation needs to be furnished to the assessee so that the assessee could understand on what basis the turnover and gross profit was estimated.

8. When there was a survey operation under Section 133A and the assessment proceedings were completed on the basis of the materials found during the course of survey operation, this Tribunal is of the considered opinion that the materials, documents which was found during the survey operation has to be furnished to the assessee in the course of the assessment proceedings. Unfortunately, the revenue authorities could not furnish the copies of the impounded documents found during the survey operation. Therefore, the assessee could understand on what basis the turnover and gross profit was estimated. This Tribunal is of the considered opinion that when the impounded documents was relied upon by the revenue authorities for estimating turnover on gross profit, copies of the impounded documents are to be furnished to the assessee. Accordingly, both the authorities below are not justified in estimating the gross profit and the total turnover. Therefore, the orders of both the authorities below are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh and furnish the copies of the material found and impounded during the survey operation under Section 133A to the assessee and thereafter decide the same in accordance with law. It is made clear that the copies of the documents found and impounded during the survey operation and other material available on record shall be furnished to the assessee within four weeks from the date of receipt of

copy of this order by the assessing officer. Thereafter, the assessing officer shall complete the assessment in accordance with law after giving reasonable opportunity to the assessee to respond to the impugned documents.

9. In the result, both the appeals of the assessee are Allowed for Statistical Purposes.

Order pronounced on 28<sup>th</sup> October, 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 28<sup>th</sup> October, 2016.

sp.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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