

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' (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.2865/Mds/2016
निर्धारण वर्ष /Assessment year : 2004-2005.

Sri Mahalakshmi Shares P. Ltd,
No.85, Armenian Street,
Chennai 600 001.

Vs. The Assistant Commissioner of
Income Tax,
Company Circle VI(4)
Chennai.

[PAN AAACS 9439G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. R.T. Vijayaraghavan, C.A.
प्रत्यर्थी की ओर से /Respondent by : Shri.M. Murali Mohan, JCIT,

सुनवाई की तारीख/Date of Hearing : 25-04-2017

घोषणा की तारीख /Date of Pronouncement : 26-04-2017

आदेश / ORDER

Assessee in this appeal is aggrieved that Id. Commissioner of Income Tax (Appeals) upheld a disallowance of ₹11,85,895/- paid by it to SEBI as turnover charges.

2. Ld. Counsel for the assessee submitted that original assessment was completed on 01.11.2006 u/s. 143(3) of the Income Tax Act, 1961 (in short 'the Act'), accepting the returned income of

Rs.17,09,220/- . As per Id. Authorised Representative Id. Assessing Officer had during the course of such assessment proceedings verified the profit and loss account wherein the sum of Rs.11,85,895/- was debited as SEBI turnover charges and thereafter completed the assessment. According to him, the reopening was done based on a change of opinion, taking a stand that there was an excess claim of ₹5,33,129/-. Further as per Id. Authorised Representative Id. Assessing Officer had disallowed the claim of ₹11,85,898/- citing a reason that it pertained to the period 1996 to 2002 and was not incurred in the relevant previous year. As per Id. Authorised Representative, assessee became liable to SEBI charges only when the Hon'ble Jurisdictional High Court had vacated a stay obtained by the assessee on levy of such turnover charges by SEBI. Contention of the Id. Authorised Representative was that such turnover crystallized only when there was a vacation of stay by Jurisdictional High Court. According to him, if given an opportunity assessee could submit all necessary evidence in support of its contentions.

3. Per contra, Id. Departmental Representative strongly supported the orders of the authorities below.

4. I have considered the rival contentions and perused the orders of the authorities below. Claim of the assessee is that turnover

charges due to the SEBI, crystallized only during the relevant previous year though it pertained to the period 1996 to 2002, since there was a stay of Jurisdictional High Court on such turnover charges which was vacated only during the relevant previous year. Ld. Authorised Representative has also raised additional pleading questioning validity of re-assessment done by the Id. Assessing Officer though no such ground appear in the grounds of appeal filed. Ld. Commissioner of Income Tax (Appeals) had not considered the contention of the assessee for a reason that details of the appeal before High Court, stay order passed by the High Court and vacation of the stay were not made available to him. Considering the facts and circumstances of the case, I am of the opinion that issue requires a fresh look by the Id. Commissioner of Income Tax (Appeals). Assessee is directed to file before Id. Commissioner of Income Tax (Appeals) copies of the judgment of Hon'ble High Court, copy of the stay order issued by the Hon'ble High Court and copy of the vacation of the stay before Id. Commissioner of Income Tax (Appeals) who has to consider it and adjudicate the issue whether turnover charges was allowable or not. Ld. Commissioner of Income Tax (Appeals) may also consider the question regarding validity of re-assessment, if assessee raises such a ground before him. This being a pure question of law, I may hasten

to add that assessee can raise such a ground before Id. Commissioner of Income Tax (Appeals).

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

Order pronounced on Wednesday, the 26th day of April, 2017, at Chennai

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 26th April, 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 |