

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

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

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

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

आयकर अपील सं./I.T.A. Nos.1720 /Mds/2015

निर्धारण वर्ष /Assessment years : 2001-02

Shri. S. Ramesh,
Prop. Ramesh Traders,
No.30B, Vellala Street,
Ariyalur 621 713

Vs.

The Income Tax Officer,
Ward IV (2)
Tiruchy,

[PAN AADPR 3870J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./I.T.A. Nos.1722 /Mds/2015

निर्धारण वर्ष /Assessment years : 2001-02

Shri. P. Sivakumar,
Prop. Ramesh Corporation,
No.8, Nadu, Agraharam,
Ariyalur 621 713.

Vs.

The Income Tax Officer,
Ward IV (2)
Tiruchy

[PAN ABFPS 2908D]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri. S. Sridhar, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri. R. Durai Pandian, JCIT.

सुनवाई की तारीख/Date of Hearing

: 29-09-2016

घोषणा की तारीख /Date of Pronouncement

: 30-09-2016

आदेश / O R D E R**PER G. PAVAN KUMAR, JUDICIAL MEMBER:**

These appeals filed by the assesseees are directed against different assessee orders of the Commissioner of Income-tax (Appeals), Chennai for the assessment year 2001-2002 passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act'). Since the issues in these appeals are common in nature, these appeals are clubbed, heard together, and disposed of by this common order for the sake of convenience, first, we take up appeal in ITA No.1720/Mds/2015, assessment year 2001-2002 for adjudication.

2. The assessee has raised grounds on challenging validity of re-assessment proceedings and action of the Id. Commissioner of Income Tax (Appeals) giving directions to reopen the assessment and exceeded his powers while exercising jurisdiction.

3. The Brief facts of the case are that the assessee is a proprietor and in the business of wholesale and retail selling of cycle spare parts, hardware, PVC items and filed Return of income on 09.10.2001 alongwith tax audit report with total income of ₹1,29,680/- and also offered agricultural income of ₹40,000/-. The Return was processed u/s.143(1) of the Act. There was a survey operations u/s.133A of the Act on 04.03.2004 and the assessee has agreed to offer undisclosed income for the assessment years 2001-02 to 2003-04 and

also paid ₹1,50,000/- towards taxes and furnished detailed working and the assessment were completed on 21.05.2004. Aggrieved, the assessee filed an appeal and the Id. Commissioner of Income Tax (Appeals) considered the submissions, grounds and observed on the disclosure of income for three assessment years and further directed the Id. Assessing Officer to reopen the assessment for the assessment year 2001-02 in respect of undisclosed income of previous year of 31.03.2001. So, the Id. Assessing Officer based on Commissioner of Income Tax (Appeals) directions has reopened the assessment u/s.147 of the Act and issued notice u/s.148 of the Act. The assessee filed return of income on 29.03.2006 with the same income as disclosed in the original return and requested for reasons of reopening and the Id. Authorised Representative filed objections for reasons of re-assessment as in valid and no new information or fresh material is available with the Id. Assessing Officer or the Id. Commissioner of Income Tax (Appeals) and relied on the judicial decisions. But the Id. Assessing Officer based on the relevant information and Directions of the Id. Commissioner of Income Tax (Appeals) has relied on the judicial decisions and worked out additions and completed assessment u/s.143(3) r.w.s 147 of the Act dated 27.12.2006 with assessed income of ₹ 5,41,360/-. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Commissioner of Income Tax (Appeals) passed order dated 13.04.2015 upholding the re-assessment proceedings and partly allowed the appeal. Aggrieved by the Commissioner of Income Tax (Appeals) order, the assessee has assailed an appeal before the Tribunal.

5. Before us, Id. Authorised Representative argued the grounds and explained that reopening of assessment by the Id. Assessing Officer based on the directions of the Id. Commissioner of Income Tax (Appeals) is bad in law and also the Id. Commissioner of Income Tax (Appeals) exceeded his powers in issuing of such directions. Further, the Id. Authorised Representative supported his case with the Tribunal order allowed in favor of the assessee on validity of re-assessment proceedings and prayed for allowing the appeal.

6. Contra, the Id. Departmental Representative relied on the orders of the Commissioner of Income Tax (Appeals) and vehemently opposed to the grounds

7. We heard the rival submissions, perused the material on record and judicial decisions. The Id. Authorised Representative contention prime facie that the Id. Commissioner of Income Tax (Appeals) has exceeded his powers in directing the Id. Assessing Officer

for reopening of assessment. In assessee's own case in ITA No.762 & 763/2006, dated 12.08.2008 for the assessment years 2002-03 and 2003-04 were the Co-ordinate Bench of the Tribunal has passed an order as under:-

2. The only issue, requiring adjudication in these four appeals, relates to the directions given by the Id. Commissioner of Income Tax (Appeals) in paragraph (9.1) on his impugned order as under:-

9.1. The income relating to assessment year 2001-02 should be assessed in the same year i.e. Assessing Officer is directed to reopen the assessment for assessment year 2001-02 and assess the income of assessment year 2001-02 in that year only.....”.

3. It was pointed out by Shri.Sridhar, the Id. AR that the above issue was covered in favour of the assessee by the decision of the jurisdictional High Court in the case of CIT vs. T.A. Krishnaswamy (2008) 2 DTR (Mad) 143. In this case, the Court held as under:-

“Commissioner of Income Tax (Appeals) has no power to give direction to Assessing Officer to reopen the assessment of another year.

The facts of the case in the present appeal are identical, and therefore, we respectfully follow the precedent and decide the above issue in favour of the assessee and against the department”.

The present appeal was filed against the order of the Commissioner of Income Tax (Appeals) based on the assessment u/s.143(3) and 147 dated 27.12.2006 where the Assessing Officer has considered the directions of reopening of assessment issued by the Id. Commissioner of Income Tax (Appeals) in his order. Since Co-ordinate Bench of the Tribunal has allowed the appeal in favour of the assessee based on the

jurisdictional High Court decision, we respectfully, follow the same where the Jurisdictional High Court has held that the Id. Commissioner of Income Tax (Appeals) has no power to give direction to the Id. Assessing Officer to re-open the assessment of another year. Considering the apparent facts, Co-ordinate Bench decision, we allow the grounds of the assessee. The appeal of the assessee is allowed .

8. Similarly, the appeal of the assessee in ITA No.1722/Mds/2015 is also allowed.

9. In the result, the appeals of the assessee in ITA Nos. 1720 & 1722/Mds/2015 are allowed.

Order pronounced on Friday, the 30th day of September, 2016, at Chennai.

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

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

चेन्नई/Chennai

दिनांक/Dated: 30.09.2016

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 |