

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **2244/CHNY/2018**
निर्धारण वर्ष /Assessment Year: 2008-09

**The Assistant Commissioner of
Income Tax,**
Non-Corporate Circle -15,
Chennai.

Shri. Mohamed Hassan,
v. No. 37/28, Nowroji Road,
Chetpet,
Chennai – 600 031.
PAN: AAKPM-0909-L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri. M. Abhishek, CA
: Shri G. Johnson, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 01.03.2022

घोषणा की तारीख/Date of Pronouncement

: 04.03.2022

आदेश /O R D E R

PER GIRISH AGRAWAL, AM:

This appeal by the Department is arising out of the order of Commissioner of Income Tax (Appeals)-15, Chennai dated 27.04.2018 against the assessment order passed by ACIT, Non-Corporate Circle - 15(1), Chennai dated 21.03.2016 u/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (herein after referred to as "the Act"). The main issue involved in this appeal by the Department relates to the power of Ld.

CIT(A) u/s. 251(1)(a) of the Act to set aside the matter before the Ld. AO and also relating to affording an opportunity to the Id. AO in respect of evidences produced in the first appellate stage as per provisions of Rule 46A of the Income Tax Rules, 1962 (herein after referred to as "the Rules").

2. The facts briefly stated from the records are that the assessee is an individual who earned income from salary, house property and other sources and filed the return of income on 26.02.2016 declaring the total income of Rs. 27,43,766/-. Later, the case was re-opened u/s. 147 of the Act vide notice u/s. 148 of the Act issued on 27.03.2015. Statutory notices were issued and the assessment was completed by making addition u/s. 68 towards gift for Rs. 3,62,50,000/-, u/s. 69C for unexplained expenses of Rs. 15,58,456/- and disallowance made u/s. 14A r.w.r.8D of the Act for Rs. 4,04,395/-. The total income was assessed at Rs. 3,99,56,617/-. From the impugned assessment order it is noticed that the Ld. AO called for the details to substantiate the claims of the assessee for which assessee failed to submit the required details and documents which led to the additions and disallowances. Aggrieved, assessee went into appeal before the Ld. CIT(A).

3. Before the Ld. CIT(A), the assessee made the submissions along with relevant documents and details based on which the Ld. CIT(A) gave partial relief to the assessee.

4. In respect of the addition made by the Ld. AO of Rs. 3,62,15,000/- u/s. 68 for the gift received by the assessee from his brother-in-law, Ld. CIT(A) noted in para 4.3.2, the documentary evidences furnished by the assessee which is reproduced as under:

"4.3.2 The AR has furnished all the relevant particulars as mentioned below:

(a) Confirmation letter from Mr. Syed Mohammed Bukhari.

b) NRE account of Mr. Syed Mohammed Bukhari in which the amounts are reflected

(c) Account statement of the appellant.

(d) Confirmation letter from M/s Amana Investment Ltd. as mentioned above.

(e) Bank statement from Bank of Baroda, Dubai of Mr. Syed Mohammed Bukhari, where the aforesaid amount is credited.

(f) NRE account of Mr. Syed Mohammed Bukhari from account, the gift was credited to the appellant's account"

Based on these evidences, the Ld. CIT(A), prima facie, accepted the explanation for the gift and directed the Ld. AO to verify the particulars and to delete the addition if the assessee's submission is factually correct with supporting documents. Further, in respect of disallowance made u/s. 14A of the Act, the Ld. CIT(A) while giving his finding noted the contention of the assessee that the AO had included the interest payment towards housing loan of Rs. 4,20,000/- while complying Rule 8D, whereas, said interest payment was not related to the investment which yielded dividend income, but it was related to the house

property. Considering the contention of the assessee, Ld. CIT(A) gave partial relief on the disallowance. Aggrieved by the relief given by the Ld. CIT(A) without affording reasonable opportunity of being heard to the Ld. AO in terms of calling for a remand report in respect of documentary evidence and details furnished by the assessee for the first time before the Ld. CIT(A), the Revenue is in appeal before the Tribunal.

5. We have heard the rival contentions, perused the material on record and noted the findings given by the Ld. CIT(A). From the perusal of the findings given by the Ld. CIT(A) and the appellate proceedings recorded in the impugned order, it is observed that the assessee has furnished the relevant particulars and documentary evidences for the first time before the Ld. CIT(A) which ought to have been filed in compliance to Rule 46A of the Rules. Further, the Ld. CIT(A) ought to have given an opportunity to the Ld. AO for making his submissions and explanations in respect of these particulars and documentary evidences by way of remand report. We also note that Ld. CIT(A) while partly allowing the ground of the assessee in respect of addition made u/s. 68 of the Act of Rs. 3,62,50,000/- for the gift received has given a direction to the Ld. AO to verify the particulars and delete the addition if the appellate submissions is factually correct with supporting documents. The said finding is re-produced as under:

"4.3.4 I have considered both the points of view. In view of the above remarks and in line with the CIT(A)'s decision under similar facts and circumstances in the earlier AY 2007-08, **the AO is directed to verify the above particulars and to delete the addition if the appellant's submission is factually correct with supporting documents.** In view of the above remarks the appellant's ground on this issue is partly allowed."*[emphasis supplied]*

6. In respect of the above finding, we note that section 251(1)(a) of the Act does not provide power to the Ld. CIT(A) for setting aside the matter to the file of the Ld. AO. The power given to the Ld. CIT(A) in terms of section 251(1)(a) of the Act relates to confirming, reducing, enhancing or annulling the assessment. The relevant portion of the section is extracted as under:

"251(1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers:

(a) In an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment

*.....
....."*

Considering the facts on record, observations made by the Ld. CIT(A) in the appellate proceedings and the findings given thereby, we set aside the order of the Ld. CIT(A) with a direction to adjudicate on the matter in accordance with provisions of section 251(1)(a) after giving reasonable opportunity of being heard to the Ld. AO by calling remand report in respect of documentary evidences and details furnished by the assessee and comply with the provisions of Rule 46A of the Rule. Needless to say, the assessee will co-operate and attend the appellate proceedings before the Ld. CIT(A) as and when the notices are issued.

In terms of above, the appeal of the Revenue is allowed for statistical purposes.

7. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the court on 04th March, 2022 at Chennai.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

Sd/-

(गिरीश अग्रवाल)

(GIRISH AGRAWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 04th March, 2022

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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