

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'C' (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. 2806/Mds/2016

निर्धारण वर्ष /Assessment year : 2008-2009

M. Saravana Kumar,
No.11A, New No.16,
Sri Krishna, Nagar,
Brindha Layout,
Chokkampudur Road,
Coimbatore 641 001.

Vs. The Income Tax Officer,
Ward III(3)
Coimbatore.

[PAN AVMP5 8371H]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. S. Sathyaraj, Advocate
प्रत्यर्थी की ओर से /Respondent by : Shri.S. Netherpal, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 30-05-2017

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

आदेश / ORDER

Assessee in this appeal is aggrieved on an addition of ₹21,04,000/- made by the Id. Assessing Officer under Section 69 of the Income Tax Act, 1961(in short "the Act").

2. Facts apropos are that original assessment on the assessee was completed u/s. 144 of the Act on 15.12.2010, assessing an income of ₹25,76,370/-. Relevant portion of this assessment order dealing with the additions made by the Id. Assessing Officer, is reproduced hereunder:-

"In the absence of any explanation from the assessee and also supporting documents for examination and non-co-operation of the assessee, - the credit card bill of ₹2,99,860/- is added to the returned income u/s-68 of the Income-tax Act, and investment for acquiring bonds/debentures at ₹21,04,000/- shown in the Individual Transaction Statement reported through AIR is added to the total income returned by the assessee as unexplained investment u/s-69 of the Income-tax Act, 1961. Further the assessee had claimed deduction under chapter VIA deduction. In the absence of any evidence, the assessee's claim was rejected."

Though assessee filed an appeal before Id. Commissioner of Income Tax (Appeals), he was not successful. The matter was carried by the assessee in further appeal before this Tribunal. This Tribunal in an order dated 25.09.2012 in ITA No.626/Mds/2012 remitted the issue back to the file of the Id. Assessing Officer, directing him to consider the evidence filed by the assessee and to decide the matter afresh. In the fresh proceedings, based on the directions of the Tribunal, assessee was required to explain the investments in bonds done through M/s. Kotak Mahindra Bank. Assessee stated before the Id.

Assessing Officer that he had made no such investments. Thereupon, Id. Assessing Officer addressed a letter to the Branch Manager, M/s. Kotak Mahindra Bank, Coimbatore seeking confirmation. The Manager informed the Id. Assessing Officer that assessee had not made any investments in bonds/debentures through their bank but had cash deposits aggregating ₹21,04,000/- in his account during the relevant previous year. Id. Assessing Officer required the assessee to explain the source of the deposits. Thereupon, the assessee made the following submissions.

"With reference to the above assessment year, I was assessed with an income of ₹21,04,000 u/s-69 as investment for acquiring bonds/debentures in Kotak Mahindra Bank. I am having an SB A/c with Kotak Mahindra Bank and I have not invested in any bonds/debentures in the said bank. I was engaged in trading of old television sets on commission basis and the said amount of ₹21,04,000 was remitted into my savings bank account as sale proceeds. I have also withdrawn ₹20,12,650 from the same bank account for the purchases effected by me. I request you to adopt a reasonable profit margin for the cash remittance of ₹21,04,000/- to estimate my income and complete the assessment".

However, it seems assessee was not able to produce evidence in support of its claim of business of old television sets. Id. Assessing Officer thereafter, completed the assessment assessing the income at which as done in the original assessment.

3. Assessee's appeal before Id. Commissioner of Income Tax (Appeals), in the second round also did not meet with any success. As per the Id. Commissioner of Income Tax (Appeals), assessee could not produce any evidence in trading in old TV sets.

4. Now before me, Id. Authorised Representative strongly assailing the order of the Id. Commissioner of Income Tax (Appeals) submitted that assessee was having evidence in the nature of purchase bills and sales bills for proving the existence of business of old TV sets. Further, according to him, there were withdrawals of ₹20,12,650/- from the very same bank account, but the addition was made considering only the deposits.

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

6. I have considered the rival contentions and perused the orders of the authorities below. It is true that assessee could not produce any evidence for the business of trading in old TV sets claimed to have been conducted by him. Assessee was given more than enough opportunities by the lower authorities to produce evidence for such business that too in two rounds of proceedings. Assessee having failed to utilize any of these opportunities, I am not inclined to accept the contention of the Id. Authorised Representative,

that assessee was having evidence to prove existence of a business at this stage of the proceedings. However, when cash deposited in a bank account is considered for addition, it is only fair that withdrawals are also taken into account for set off. In other words, Id. Assessing Officer should have considered only the peak credit in the bank account for making an addition. Since the peak credit has not been worked out by any of the lower authorities, I remit the issue back to the file of the Id. Assessing Officer for working out the peak credit. The Id. Assessing Officer shall consider for addition only the peak credit in the bank account of the assessee with M/s. Kotak Mahindra Bank, Coimbatore for the relevant previous year. Ordered accordingly.

7. In the result, appeal of the assessee is treated as partly allowed for statistical purpose.

Order pronounced on Wednesday, the 31st day of May, 2017, at Chennai.

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 31st May, 2017

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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 |