

आयकर अपीलुीय अधलकरण, 'बी' नुयायपीठ, चेंनुई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

शुी रमित कुओर, लेखल सदसुय एवं
शुी धुवुवरु आर.एल. रेडुडी, नुयायलक सदसुय के समकुष

BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER AND
SHRI DUVVURU R.L.REDDY, JUDICIAL MEMBER

ITA No.31/Chny/2020

नुलरुधरण वरुष / **Assessment Year: 2016-17**

HEARD THROUGH VIDEO CONFERENCING

M/s.Nakoda Traders,
No.60A, NSC Bose Road,
Maruti Complex, Sowcarpet,
Chennai-600 079.

v. The Asst. Commissioner of
Income Tax,
Non-Corporate Circle-5(1),
Chennai-600 034.

[PAN: AAMFN 1767 F]

(अपीललरुथुी/ Appellant)

(प्रतुयरुथुी/ Respondent)

अपीललरुथुी कुी ओर से/ Appellant by

: Mr.T.Banusekar, CA

प्रतुयरुथुी कुी ओर से /Respondent by

: Mrs.Anita, JCIT

सुनवलरुई कुी तलरुीख/Date of Hearing

: 09.09.2020

घुुषणल कुी तलरुीख /Date of Pronouncement

: 09.09.2020

आदेश / ORDER

PER RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal filed by assessee is directed against appellate Order dated 21.10.2019 passed by learned Commissioner of Income Tax (Appeals)-5, Chennai (hereinafter called "the CIT(A)"), in ITA No.121/CIT(A)-5/2018-19 for assessment Year (ay) 2016-17, the

appellate proceedings before learned CIT(A) had arisen from assessment order dated 20.12.2018 passed by learned Assessing Officer (hereinafter called "the AO") u/s.143(3) of the Income-tax Act, 1961 (hereinafter called "the Act"). The appellate proceedings are conducted by Income-Tax Appellate Tribunal, Chennai Bench 'B', Chennai through Virtual Court via videoconferencing using webex platform.

2. The grounds of appeal raised by assessee in memo of appeal filed with the Income-Tax Appellate Tribunal, Chennai (hereinafter called "the Tribunal") read as under:-

"1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case and is opposed to the principles of equity, natural justice and fair play.

2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.

3. For that no sufficient opportunity of being heard was provided to the appellant.

4. For that the Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.96,28,152/- being the purported difference in purchase value of gold.

5. For that without prejudice to the above, the Commissioner of Income Tax (Appeals) failed to appreciate that the above difference in purchase value of gold is allowable u/s.37(1) as business expenditure.

6. For that the Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.16,77,666/- being notional interest income in respect of interest free loan.

7. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer erred in bringing to tax the notional income of the appellant which is not real income.

8. For that the Commissioner of Income Tax (Appeals) failed to appreciate that there is no specific provision to tax notional interest in respect of interest free loans.

PRAYER

For these grounds and such other grounds that may be urged before or during the hearing of the appeal it is most humbly prayed that the Hon'ble Tribunal may be pleased to

- a. Delete the addition of Rs.96,28,152/- and / or
- b. Delete the addition of Rs.16,77,666/- and / or
- c. Pass such other orders as the Hon'ble Tribunal may deem fit."

3. The brief facts of the case are that the assessee is a partnership firm. The assessee filed its return of income on 17.10.2016 showing net income of (-)Rs.1,19,23,205/-. The case of the assessee was selected by Revenue for framing scrutiny assessment u/s 143(3) read with Section 143(2) of the 1961 Act, which led to framing of an assessment order dated 20.12.2018 passed by learned Assessing Officer assessing income of (-) Rs.6,17,387/- , vide assessment order dated 20.12.2018 passed by AO u/s 143(3) of the 1961 Act. The AO made two additions to the tune of Rs. 1,13,05,818/- to the returned income of the assessee vide aforesaid assessment order.

4. Aggrieved by an assessment order dated 20.12.2018 passed by AO u/s 143(3) of the 1961 Act, the assessee filed first appeal with learned CIT(A) who was pleased to dismiss the appeal of the assessee , vide appellate

order dated 21.10.2019 , wherein additions as were made by the AO to tune of Rs. 1,13,05,818/- stood confirmed by learned CIT(A).

5. Being aggrieved by an appellate order dated 21.10.2019 passed by learned CIT(A), the assessee has filed second appeal with tribunal. The hearing of this appeal before the Bench was heard through video conferencing. The learned counsel for the assessee submitted before the Bench that the assessee filed written submissions before learned CIT(A) vide email dated 16.10.2019 sent at 3.49 PM from email id account of counsel of the assessee viz . achhasassociates@gmail.com to email id of learned CIT(A)-5, chennai at chennai.cit.apl5@incometax.gov.in , wherein two attachment files (namely 'Nakodaletter.pdf' and 'Note to Assessing Off.pdf') were sent to learned CIT(A) which contained written submissions filed before learned CIT(A) as well note submitted before the AO during the assessment proceedings. It was submitted by learned counsel for the assessee that aforesaid written submissions were not taken cognizance by learned CIT(A) while adjudicating appeal of the assessee and the appellate order dated 21.10.2019 was passed by learned CIT(A) dismissing appeal of the assessee without taking into account aforesaid written submissions dated 16.10.2019 sent by learned counsel of the assessee via email to learned CIT(A). The copy of said email dated 16.10.2019 along with attachment files are filed before the tribunal which are placed on record in file. The prayers were made by learned counsel for the assessee to set aside and restore the matter to the file of learned CIT(A) for fresh

adjudication. The learned DR on the other hand submitted that the learned counsel for the assessee did not appear before learned CIT(A) on several occasions when the appeal of the assessee was called for hearing by learned CIT(A). The learned DR drew our attention to para 3 of learned CIT(A) appellate order dated 21.10.2019. The learned DR submitted that the AR of the assessee namely Mr. T R Achha, FCA entered into appearance before learned CIT(A) on 23.07.2019 wherein learned CIT(A) informed him about the information desired on various aspects of the appeal for adjudicating appeal filed by assessee and next date of hearing was granted by learned CIT(A) for 06.08.2019. It was submitted that the assessee did not enter appearance on the aforesaid date. It was submitted by learned DR that thereafter there was no compliance on the part of the assessee and on several occasions when the appeal was called for hearing by learned CIT(A) viz. on 20.08.2019, 29.08.2019, 13.09.2019, 03.10.2019 and 15.10.2019, there was no compliance by assessee nor any written submissions were filed. Thus, learned DR would submit that it is due to the fault on the part of the assessee that the appeal of the assessee stood dismissed by learned CIT(A) vide appellate order dated 21.10.2019. The learned DR would also contend that the grounds raised by assessee before tribunal did not mention that no opportunity was granted and hence matter should not be restored to learned CIT(A) as prayed by learned counsel for the assessee and the appeal filed by the assessee before tribunal be dismissed.

6. We have heard rival parties and perused the material on record. We have observed that the assessee is a partnership firm. The assessee filed its return of income on 17.10.2016 showing net income of (-)Rs. 1,19,23,2905/-. The case of the assessee was selected by Revenue for framing scrutiny assessment u/s 143(3) read with Section 143(2) of the 1961 Act, which led to framing of an assessment order dated 20.12.2018 passed by learned Assessing Officer assessing income of the assessee at (-) Rs.6,17,387/- wherein additions to the tune of Rs. 1,13,05,818/- were made by the AO, vide assessment order dated 20.12.2018 passed by AO u/s 143(3) of the 1961 Act. The assessee filed first appeal before learned CIT(A) which stood dismissed by learned CIT(A), vide appellate order dated 21.10.2019. We have observed that the assessee entered appearance before learned CIT(A) through AR on 23.07.2019 , wherein learned CIT(A) directed him to file certain information concerning assessee's appeal. Thereafter , the assessee did not appear before learned CIT(A) on several occasions when the appeal of the assessee was called for hearing by learned CIT(A) viz. on 06.08.2019 ,20.08.2019, 29.08.2019, 13.09.2019, 03.10.2019 and 15.10.2019. Now, evidence is placed before the Bench vide email copy sent by learned counsel for the assessee to learned CIT(A)-5, Chennai on 16.10.2019 which is placed on record , wherein it is claimed by learned counsel for the assessee that written submissions were filed before learned CIT(A) along with note submitted before the AO and it claimed that the learned CIT(A) did not took cognizance of the aforesaid written submissions filed via email by

learned counsel for the assessee on 16.10.2019. The learned CIT(A) passed appellate order on 21.10.2019 dismissing appeal of the assessee. The assessee is equally responsible for its woes as the assessee did not entered appearance before learned CIT(A) on several occasions, as detailed above . We have observed that vide ground number 3 raised in memo of appeal filed with tribunal, the assessee has raised ground that sufficient opportunity of being heard was not provided to the appellate. Though, this ground may be general and concise in nature but it could not be said that the assessee has not raised the ground as to infringement of principles of natural justice. The learned counsel for the assessee has prayed before us to grant one more opportunity of being heard by setting aside to the file of learned CIT(A) so that it could place all relevant explanations and evidences before learned CIT(A) in its defense including written submissions as were claimed to be sent vial email on 16.10.2019 which was not considered by learned CIT(A) in the first round of litigation, so that the assessee's appeal can be adjudicated on merits in accordance with law. Be as it may be, keeping in view facts and circumstance of the case in totality and in fairness to both the rival parties ,it is considered fit and appropriate that the appellate order passed by learned CIT(A) dated 21.10.2019 be set aside and the appeal filed by assessee before learned CIT(A) be restored before learned CIT(A) for fresh adjudication on merits in accordance with law. Needless to say that learned CIT(A) shall give proper and adequate opportunity of being heard to the assessee in set aside proceedings in second round of litigation. The assessee shall be

allowed by learned CIT(A) to file evidences in its defense in second round of litigation. We make it clear that the learned CIT(A) shall have all the powers to adjudicate appeal filed by assessee in second round of litigation in set aside proceedings as are enshrined u/s 251 of the 1961 Act, including power of enhancement. The appeal filed by assessee is allowed for statistical purposes. We order accordingly.

Order pronounced on this 09th day of September , 2020 in Chennai in Open Court at the conclusion of the hearing through video conferencing mode .

Sd/-

(धुव्वुरु आर.एल. रेड्डी)

(DUVVURU R.L.REDDY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(रमित कोचर)

(RAMIT KOCHAR)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 09th September, 2020.

TLN

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