

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.1599/Mds/2015
निर्धारण वर्ष /Assessment year : 2011-2012

R.Krishnamoorthy,
69, Karumarampalayam,
Uthukuli Main Road,
Mannarai. P.O.
Tirupur 641 607.

Vs. The Joint Commissioner of
Income Tax,
Tirupur Range,
Tirupur.

आयकर अपील सं./I.T.A. No. 2005/Mds/2015
निर्धारण वर्ष /Assessment year : 2011-2012

The Deputy Commissioner
of Income Tax,
Circle -1,
Tirupur.

Vs. R.Krishnamoorthy,
69, Karumarampalayam,
Uthukuli Main Road,
Mannarai. P.O.
Tirupur 641 607.

[PAN AGEPR 2757B]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Assessee by
Department by

: Shri. T. Banusekar, C.A.
: Shri. Sankaralingam, IRS,CIT.

सुनवाई की तारीख/Date of Hearing : 13.10.2016
घोषणा की तारीख /Date of Pronouncement : 09.11.2016

आदेश / O R D E R**PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER**

These are cross appeals filed by the assessee and Revenue respectively directed against an order dated 31.03.2015 of Id. Commissioner of Income Tax (Appeals)-3, Chennai.

2. Facts apropos are that assessee engaged in the business of real estate, iron and scrap, had filed return of income for the impugned assessment year disclosing income of ₹7,04,16,930/-. Assessee had filed its return of income alongwith audited profit and loss account, Balance sheet and audit reports in form No.3CB, 3CD. During the course of assessment proceedings, it was noted by the Assessing Officer that assessee had shown unsecured loan of ₹3,00,00,000/- as due to one Shri. S. Martin. There also appeared in the accounts of the assessee, sum of ₹9,21,58,106/- as advance received from one Martin S.CBE. The aggregate of these two amounts came to ₹12,21,58,106/-. Assessing Officer obtained a copy of the assessee's account in the books of Shri. S. Martin by issuing summons u/s.133(6) of the Act. Confirmation was received only for ₹7,85,00,000/-. Id. Assessing Officer required the assessee to explain the difference of ₹4,36,58,106/-. In reply, assessee stated that a sum of ₹1,36,58,106/- was transferred from the account one M/s. Kothari

Industrial Corporation, in the books of the assessee, to the account of Shri. S. Martin, through a journal entry dated 04.05.2010. As per assessee, the said entry was not reflected in the books of Shri. S. Martin. Further as per assessee a sum of ₹3,00,00,000/- was received Shri. S. Martin on 19.06.2006 but this was not appearing in the books of Shri. S. Martin. However, the Assessing Officer was not satisfied with the above reply. According to him, assessee was not able to substantiate the difference of ₹4,36,58,106/-. An addition was made accordingly.

3. Assessing Officer also found that there were cash payments exceeding ₹20,000/- in a single day, aggregating to ₹3,39,578/- during the relevant previous year. Explanation of the assessee was that such payments were made to dealers supplying diesel. As per assessee such payments had to be done in cash since the transactions were after banking hours. However, Assessing Officer did not accept this reply. He applied Sec.40A(3) of the Act and disallowed a sum of ₹3,39,578/-.

4. Assessing Officer also noted from the books of the assessee, that there were certain cash credits, as given here under:-

Date	Amount
04.4.2010	27,33,000
12.01.2011	37,84,000

13.01.2011	7,21,000
31.03.2011	29,05,000
Total	1,01,43,000

Explanation of the assessee was sought for the source of the above credits. Assessee stated that sum of ₹27,33,000/- was sale proceeds of one Hitachi Excavator received on 04.04.2010. For ₹29,05,000/- remitted on 31.03.2011, explanation of the assessee was that it was not a cash receipt but a cash payment. As per the assessee such payments reflected refund of earlier advances received from various parties, for purchase of land. For the sum of ₹37,84,000/- dated 12.01.2011 and ₹7,21,000/- dated 13.01.2011 explanation of the assessee was that aggregate of these two amounts after deducting ₹29,05,000/- refunded on 31.03.2011, was offered by it as income.

5. Assessing Officer after going through the reply of the assessee accepted its explanation, in so far as credit of ₹27,33,000/- dated 4.04.2010 was concerned. He also accepted the explanation of the assessee that entry of ₹29,05,000/- dated 31.03.2011 was not a receipt but a payment. However, for ₹37,84,000/-, credited on 12.01.2011 and ₹7,21,000/- credited on 13.01.2011, Assessing Officer was of the opinion that assessee could not give any reasonable explanation for the source. An addition of ₹45,05,000/- was made.

6. Assessing Officer also found from the books of account of the assessee that following advances were shown as received from its customers.

1. M/s. Sri Chakra Builders	:	₹25,00,000/-
2. Shri. K.K. Mani	:	₹25,00,000/-
3. M/s. Lanson Ventures	:	₹10,00,000/-
4. Murugan Enterprises	:	₹37,00,000/-

Total	:	₹97,00,000/-

Assessing Officer sent letters to these persons which it seems were returned unserved with the remarks "No such addressee". When explanation of the assessee was sought, it was stated that these amounts were still due and were arising from transactions of earlier years. Assessing Officer did not accept these contentions. He made an addition of ₹97,00,000/-.

7. Aggrieved by the above, assessee moved in appeal before Id. Commissioner of Income Tax (Appeals). Viz-a-viz addition of ₹4,36,58,106/-, submission of the assessee before Id. Commissioner of Income Tax (Appeals) was that ₹3,00,00,000/- was received by assessee from a proprietary concern called M/s. Best & Co. owned by Shri. S.Martin. As per assessee this was paid by them for meeting the cost of a property owned by M/s. Madura Coats. Assessee also stated that the transaction was reflected in the books of M/s. Best & Co.

through a entry dated 19.06.2006. As per assessee, on 15.07.2008, a demand draft for ₹3,00,00,000/- was provided by one Shri. P.K. Ganeshwar, based on an MOU entered with assessee. Submission of the assessee was that he had lodged the original documents of the said property with Shri. S. Martin, when the sum of ₹3,00,00,000/- was received on 19.06.2006. Shri. P.K. Ganeshwar as per assessee had made direct payment of ₹3,00,00,000/- through a Demand Draft, to M/s. Best and Co. for releasing the above document. As per the assessee, it had strained its relationship with Shri. P.K. Ganeshwar and therefore the entry that should have been passed in the books of accounts, when the payment of ₹3,00,00,000/- was made by Shri. P.K. Ganeshwar to M/s. Best and Co. was not done. However, as per the assessee, in the books of M/s. Best and Co., assessee's account was credited with said amount on 15.07.2008. Assessee also pointed out that Shri. P.K. Ganeshwar had filed a criminal complaint against the assessee for getting back the sum of ₹3,00,00,000/- paid by him to Shri. S. Martin on 15.07.2008. In so far as balance of ₹1,36,58,106/- was concerned, contention of the assessee was that there was a journal entry passed on 04.05.2010, through which account of M/s. Kothari Industrial Corporation was debited and account of Shri. S. Martin was credited. As per assessee, this journal entry through which M/s. Kothari Industrial Corporation was debited

and Shri. S. Martin was credited by a sum of ₹1,36,58,106/- did not appear in the books of S. Martin. Argument of the assessee was that the difference of ₹4,36,58,106/- thus stood fully explained.

8. As for the addition of ₹3,39,578/- submission of the assessee before the Id. Commissioner of Income Tax (Appeals) was that circumstances under which the payments were effected in cash was explained in the confirmation letters received from the recipients. As per the assessee, the payments in cash were for purchase of diesel from pumps and section 40A (3) could not be applied.

9. Coming to the disallowances of ₹45,05,000/- considered as unexplained cash credits, submission of the assessee before Id.CIT(A) was that out of the said sums, a sum of ₹16,00,000/- was offered by itself in his Profit and loss account as income. As per the assessee balance amounts were refunded to the concerned parties.

10. With reference to the disallowance of ₹97,00,000/- disbelieving the claim of advance received from customers, argument of the assessee before Id. Commissioner of Income Tax (Appeals) was that these amounts were brought forward from earlier years and were not of the relevant previous year.

11. The Id. Commissioner of Income Tax (Appeals) after considering submissions of the assessee held as under:-

- (i) ₹3,00,00,000/- out of ₹4,36,58,106/- added by the Assessing Officer for difference in accounts of Shri. S. Martin, stood explained by the assessee through payment of demand draft for ₹ 3,00,00,000/- by Shri. P.K. Ganeshwar to Shri. S. Martin.
- (ii) Sum of ₹1,36,58,106/- out of addition ₹4,36,58,106/- stated by the assessee as through journal entry, could not be accepted since M/s. Kothari Industrial Corporation had not recorded the transaction in their books.
- (iii) Disallowance of ₹3,39,578/- u/s.40A(3) of the Act was rightly made by the Assessing Officer since assessee had paid for diesel through cheques on many days and had made cash payments without any reasonable cause.
- (iv) Out of ₹ 45,05,000/- added as unexplained cash credit ₹16,00,000/- was shown by the assessee itself in profit and loss account and only the balance of ₹29,05,000/- stood unexplained.
- (v) Addition of ₹97,00,000/- disbelieving the claim of advance received from four customers was rightly done by the Assessing Officer.

12. Effectively, Id. Commissioner of Income Tax (Appeals) deleted the addition of ₹3,00,00,000/- out of ₹4,36,58,106/- considered by the Assessing Officer as difference in accounts of Shri. S. Martin, while confirming the addition of ₹1,36,58,106/-.

Disallowance of ₹3,39,578/- made by the Id. Assessing Officer u/s.40A of the Act was confirmed. Relief of ₹16,00,000/- was given out of the addition of ₹45,05,000/- for cash credit. Addition disbelieving the claim of advance of ₹97,00,000/- received from four customers was confirmed.

13. Now, before us, the Id. Authorised Representative, strongly assailing the order of the Id. Commissioner of Income Tax (Appeals), confirming the addition of ₹1,36,58,106/- submitted that findings of the Id. Commissioner of Income Tax (Appeals) in this regard was wrong. According to him, the said amount was debited in the accounts of M/s. Kothari Industrial Corporation in the books of the assessee on 04.05.2010 and corresponding credit given in the accounts of Shri. S. Martin. As per Id. Authorised Representative, if this entry was not considered, then the closing credit balance of Shri. S. Martin in the books of accounts of the assessee would be reduced by an equivalent sum. According to him, the addition could not have been made based on a journal entry, since there was no actual cash receipt from Shri. S. Martin. Justifying the order of the Id. Commissioner of Income Tax (Appeals) in so far as he deleted the addition of ₹3,00,00,000/- out of ₹4,36,58,106/-, Id. Authorised Representative submitted that assessee had furnished copy of the demand draft

given by Shri.P.K. Ganeshwar to M/s. Best & Co. As per Id. Authorised Representative assessee's account in the books of M/s. Best & Co. clearly reflected the credit of ₹3,00,00,000/- dated 15.07.2008, with a narration that demand draft was received from Shri. R. Krishnamoorthy.

14. Coming to the addition of ₹ 3,39,578/- made by Id. Assessing Officer which was confirmed by the Id. Commissioner of Income Tax (Appeals), Id. Authorised Representative submitted that these cash payments were made in a petrol pump which was not accepting cheques.

15. As for the addition of ₹ 29,05,000/- sustained out of a cash credit addition of ₹45,05,000/-, Id. Authorised Representative submitted that this was repayment of money for earlier received by the assessee and not a cash credit.

16. Coming to the last addition of ₹97,00,000/- on advance received from customers for want of confirmation, Id. Authorised Representative submitted that this pertained to earlier years and ought not have been considered for the impugned assessment year.

17. Per Contra, and in support of its own appeal, Id. Departmental Representative submitted that Id. Commissioner of

Income Tax (Appeals) had given a relief of ₹ 3,00,00,000/- out of total addition of ₹ 4,36,58,106/- based on evidence which was not produced by the assessee before Assessing Officer. In so far as additions sustained by the Id. Commissioner of Income Tax (Appeals), Id. Departmental Representative strongly supported the order of the Id. Commissioner of Income Tax (Appeals).

18. We have considered the rival contentions and perused the orders of the lower authorities below. Coming to the first addition of ₹4,36,58,106/- made by the Id. Assessing Officer, for difference in the account of Shri. S. Martin, Id. CIT(A) had deleted ₹3,00,00,000/-, considering a payment of ₹3,00,00,000/- made by Shri. P.K. Ganeshwar to M/s. Best & Co., through a demand draft on 14.07.2008, as genuine. Contention of the assessee was that Shri. P.K. Ganeshwar had paid the sum directly to M/s. Best and Co., a proprietary concern of Shri. S. Martin, for release of documents in relation to a property called Madura Coats property. As per the assessee said sum was earlier received from Shri. S. Martin on 19th June, 2006. It may be true that Shri. P.K. Ganeshwar had paid a sum of ₹3,00,00,000/- through demand draft to M/s. Best & Co. on 14.07.2008. However, the reasons why Shri. P.K. Ganeshwar made such a payment on behalf of assessee to M/s. Best & Co has not been

verified by any of the lower authorities. If Shri. P.K. Ganeshwar had indeed paid the sum on behalf of the assessee to M/s. Best & Co., assessee should have shown the entry in the books of accounts by crediting the account of Shri. S. Martin and debiting the accounts of M/s. Best & Co., This aspect also has not been verified. Thus, in so far as deletion of addition of ₹ 3,00,00,000/- is concerned, we are of the opinion that the matter requires fresh look by the Id. Assessing Officer. We, therefore set aside the order of the Id. Commissioner of Income Tax (Appeals) in this regard and remit the issue regarding addition of ₹3,00,00,000/- out of ₹4,36,58,106/- for difference in the account of Shri. S. Martin, back to the file of the Id. Assessing Officer for consideration afresh, in accordance with law.

19. In so far as ₹1,36,58,106/- is concerned, Id. Commissioner of Income Tax (Appeals) had given clear finding that M/s. Kothari Industrial Corporation had not given confirmation for any such journal entry passed by the assessee. We cannot accept the contention of the Id. Authorised Representative that journal entries had to be ignored while calculating difference in credit balance. We are therefore of the opinion that the Id. Commissioner of Income Tax (Appeals) was justified in confirming addition of ₹ 1,36,58,106/- out of

the total sum of ₹4,36,58,106/-. Order of the Id. Commissioner of Income Tax (Appeals) is confirmed to this extent.

20. Coming to the addition of ₹3,39,578/- u/s.40A(3) of the Act, it was not denied by Id. Authorised Representative that the payments were effected by cash and each of the payment exceeded ₹20,000/-. The Id. Commissioner of Income Tax (Appeals) had given a clear finding that assessee had effected payments through cheques to the very same vendor and there was no compelling reason to effect payments in cash. We do not find any reason to interfere with the order of the Id. Commissioner of Income Tax (Appeals) in this regard. The addition is therefore confirmed.

21. Coming to the addition of ₹29,05,000/- sustained by the Id. Commissioner of Income Tax (Appeals) out of total addition of ₹ 45,05,000/-, total cash credits considered by the Id. Assessing Officer aggregated to ₹1,01,43,000/-. Assessing Officer had accepted the credit of ₹27,33,000/- on 04.04.2010. He also accepted the contention of the assessee that the entry of ₹29,05,000/- on 31.03.2011 was not a payment but a cash receipt. For the others two cash credits, viz ₹37,84,000/- on 12.01.2011 and ₹7,21,000/- on 13.01.2011, Assessing Officer had given a clear finding that assessee had not

produced any evidence in support. Ld. Commissioner of Income Tax (Appeals) had given relief of ₹16,00,000/-, for a reason that assessee had credited a sum of ₹16,00,000/- in its profit and loss account as income. However, the fact remains that assessee was not able to show the source of these two credits. Ld. Commissioner of Income Tax (Appeals) had given relief of ₹16,00,000/- finding that credit of ₹ 16,00,000/- was offered by the assessee in its profit and loss account suo-motu. Hence, the addition to the extent of ₹ 29,05,000/- was rightly sustained by the Id. Commissioner of Income Tax (Appeals). since assessee had made an entry in profit and loss account presuming We do not find any reason to interfere with the order of the Id.CIT(A) in this regard.

22. Coming to the addition of ₹97,00,000/- for unconfirmed advances received from the customers, it is not disputed that the amounts were brought forward from earlier years. Assessee has also produced copy of ledger which clearly indicate that these were brought forward balance from earlier years. Ld. Commissioner of Income Tax (Appeals) had taken a stand an addition could be made even for earlier years balances, if no confirmations were filed. We are not able to accept this view of the Id. Commissioner of Income Tax (Appeals). When the amounts were brought forward from earlier

years, the addition if at all it was to be made ought have been made in those years where the credit was first shown by the assessee. We therefore, delete the addition of ₹97,00,000/-.

23. In view of the above discussion, ground Nos.1 to 4 in assessee's appeal are dismissed, whereas its ground nos. 5 & 6 are allowed. Coming to the appeal of the Revenue its grounds 2 & 3 treated as allowed for statistical purpose. All other grounds raised by both the parties are general in nature.

24. In the result, the appeal of the assessee is partly allowed whereas that of the Revenue is allowed for statistical purpose.

Order pronounced on Wednesday, the 9th day of November, 2016, at Chennai.

Sd/-

(एन.आर.एस. गणेशन))

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:9th November, 2016

KV

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

3. आयकर आयुक्त (अपील)/CIT(A)

5. विभागीय प्रतिनिधि/DR

2. प्रत्यर्थी/Respondent

4. आयकर आयुक्त/CIT

6. गार्ड फाईल/GF