

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' (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.1446/Mds/2016
निर्धारण वर्ष /Assessment year : 2009-2010.

Income Tax Officer,
Ward 5,
Tuticorin

Vs. Shri. N. Rajasekaran,
B/6/2A, First floor,
East Car Street,
Tuticorin 628 002.

[PAN ABLPR 2690B]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. M.S. Nethrapal, IRS, JCIT.
प्रत्यर्थी की ओर से /Respondent by : Shri.V.S. Jayakumar, Advocate

सुनवाई की तारीख/Date of Hearing : 29-05-2017
घोषणा की तारीख /Date of Pronouncement : 31-05-2017

आदेश / ORDER

This is an appeal filed by the Revenue directed against an order dated 23.02.2016 of Commissioner of Income Tax (Appeals)-1, Madurai.

2. The appeal has been filed with a delay of thirteen days. Revenue has filed a condonation petition. Though the appeal has

been filed with a delay of thirteen days, condonation petition is only for twelve days. Nevertheless the reasons shown in the condonation petition seems to be justified. Ld. Authorised Representative of the assessee did not raise any serious objection. Therefore delay is condonation and the appeal is admitted.

3. Ld. Departmental Representative submitted that Revenue was aggrieved on a cancellation of the reassessment by the Id. Commissioner of Income Tax (Appeals), holding the reopening u/s. 147 of the Income Tax Act, 1961 (in short 'the Act') as bad. Further, as per the Id. Departmental Representative, Revenue is also aggrieved that Id. Commissioner of Income Tax (Appeals) held rejection of the books of accounts of the assessee to be not justified.

4. Facts apropos are that assessee a Civil Contractor had filed his return of income for the impugned assessment year declaring income of ₹7,95,180/- on 30.09.2009. Upon receipt of a notice u/s. 143(2) of the Act, assessee filed a revised return on 14.10.2010 declaring income of ₹9,43,560/-. The assessment was thereafter completed under section 143(3) of the Act on 29.12.2011 after a number of hearings. In such assessment Id. Assessing Officer made the following additions.

Income returned	₹9,43,560
Add:1) A sum of Rs.15,11,493 has been debited to Profit and Loss account towards Flooring Wages. During the course of hearing, the bills and vouchers produced in support of the claim were examined with reference to the L.F.45 to 50. It is seen that a bill worth Rs.95,305 in the name of Arumugam dated in March 2008 is incorporated in the ledger. When this defect was pointed out to the Authorised Representative, he agreed to add a sum of Rs.95,305/- to the total income. Hence, this expenses is disallowed and added to the total income.	₹95,305
Add: 2) A sum of Rs.5,24,485 has been debited to Profit and Loss account towards Plumbing wages. During the course of hearing, the bills and vouchers produced in support of the claim were examined with reference to the L.F.108 to 114. It is seen that two bills worth ₹105580 in the name of Edison dated in March 2008 and Rs.52150/- in the name of Anand dated in March 2008 are incorporated in the ledger. When this defect was pointed out to the Authorised Representative, he agreed to add a sum of Rs.157730 to the total income. Hence, this expenses is disallowed and added to the total income.	₹1,57,730
Add: 3) A sum of Rs.28,21,976 has been debited to Profit and Loss account towards Centering Wages. During the course of hearing, the bills and vouchers produced in support of the claim were examined with reference to the L.F.11 to 15. It is seen that a bill worth Rs.79,090 in the name of Siva dated in March 2008 is incorporated in the ledger. When this defect was pointed out to the Authorised Representative, he agreed to add a sum of Rs.79,090 to the total income. Hence, this expenses is disallowed and added to the total income.	₹79,090
Total income	----- ₹12,75,685 or 12,75,690 -----

In this assessment it was specifically noted by the Id. Assessing Officer that assessee had produced books of accounts, bank account copy, bills and vouchers for perusal.

5. Thereafter on 22.01.2014, a notice for reopening u/s. 148 of the Act was issued to the assessee. As per Id. Assessing Officer assessee had received contract receipts of ₹1,55,39,607/- from one M/s. Pitchandi Pooranamalai Ammal Trust on which TDS of ₹3,20,229/- was deducted at source which was not disclosed by the assessee. According to the Id. Assessing Officer this was reflected in form 26AS which was the annual tax statement u/s. 203AA of the Act. Further, as per the Id. Assessing Officer, contract receipts from M/s. Pitchandi Pooranamalai Ammal Trust was not admitted by the assessee in his original return. In addition to this as per Id. Assessing Officer, assessee had contract receipts of ₹24,00,000/- from one M/s. Simla Agencies but in the table called "tax deducted/collected at source" given under the computation of total income filed alongwith the return, what was admitted as contract receipt from M/s. Simla Agencies was only ₹2,40,000/-. Thus according to him, there was omission to account ₹21,60,000/- of contract receipts from M/s. Simla Agencies.

6. Pursuant to the notice u/s. 148 of the Act, assessee filed another return on 26.04.2014 declaring very same income which was shown by him in the revised return filed on 14.10.2010. Assessee also objected to the reopening through a letter dated 26.09.2014. As per

the assessee receipt of ₹1,55,39,607/- from M/s. Pitchandi Pooranamalai Ammal Trust was an item which was verified by the Id. Assessing Officer during the course of original assessment proceedings and explanation given by the assessee in this regard was accepted. In so far as contract receipts from Shri. Simla Agencies was concerned, contention of the assessee was that ₹24,00,000/- was correctly as shown part of its contract receipts, and the sum of ₹2,40,000/- mentioned in the list given under the computation of statement was only a clerical mistake, which had no effect whatsoever on the income. As per the assessee, he had not suppressed any material facts at the time of regular assessment and no new document had come to the Id. Assessing Officer for coming to an opinion that there was any escapement of income.

7. However, Id. Assessing Officer was not impressed by the above reply. According to him, there was on record, a letter filed by the assessee on dated 25.07.2012 subsequent to regular assessment dated 29.12.2011, which revealed certain contract receipts not accounted by the assessee. As per Id. Assessing Officer, the Id. Assessing Officer, in the original assessment, had not considered the contract receipts received by the assessee from M/s. Pitchandi Pooranamalai Ammal Trust correctly. Further, according to him in

Schedule "TDS 2" of the revised return, assessee had admitted contract receipts of ₹2,40,000/- only from M/s. Simla Agencies. Thus, according to him, reopening was done on valid grounds.

8. Thereafter, Id. Assessing Officer completed the reassessment rejecting the books of accounts of the assessee. He considered contract receipts for the relevant previous year at ₹5,62,89,789/- against a sum of ₹5,57,89,789/- shown by the assessee in his revised return. Difference of ₹5,00,000/- was on account of contract receipts to this extent, received from M/s. Simla Agencies which was omitted by the assessee. Thereafter, he applied 8% on such contract receipts to arrive at and completed the assessment. Reasons why Id. Assessing Officer rejected the books of accounts and applied a GP rate were as under:-

- (i) In the books of M/s. Simla Agencies, assessee was shown as a creditor for ₹2,00,000/- whereas in the books of the assessee M/s. Simla Agencies was a debtor for ₹19,25,600/-.
- (ii) In the books of M/s. Pitchandi Pooranamalai Ammal Trust assessee was shown as a debtor for ₹1,47,77,977/- whereas in the assessee's books, they were a creditor for ₹1,47,72,977/-.
- (iii) In the original assessment itself, a number of defects were picked out by the Assessing Officer in the books for which additions were made.

- (iv) There were substantial differences between balance sheet filed by the assessee alongwith original return and the one filed with the revised return.

9. Aggrieved, assessee moved in appeal before the Id. Commissioner of Income Tax (Appeals). Argument of the assessee was that the sum of ₹1,55,39,607/- received from one M/s. Pitchandi Pooranamalai Ammal Trust was only an advance and hence not shown as part of contract receipts. As per the assessee when the re-assessment was finally concluded, Id. Assessing Officer did had not made any additions for this. For the difference in contract receipts from M/s. Simla Agencies, submission of the assessee was that only ₹19,00,000/- was received as contract receipts during the relevant previous year. Contention of the assessee was contractors were liable to deduct TDS even on advance payments, but a contractee could account for such advance payments as its income only when the work was done. As for the differences in the balance sheets, contention of the assessee was that Id. Assessing Officer had made no addition on this aspect also. In any case as per the assessee, Id. Assessing Officer during the course of original assessment had verified all these aspects and therefore the reopening was based on a change of opinion and not on any tangible material. Further, as per the

assessee, the Id. Assessing Officer had rejected the books of accounts in the reassessment without any valid reasons.

10. Ld. Commissioner of Income Tax (Appeals) after considering the submissions of the assessee held that Id. Assessing Officer had not pointed out any specific defects in the books of accounts and therefore could not have resorted to an estimation of profits. Ld. Commissioner of Income Tax (Appeals) also noted that there was no addition made by the Id. Assessing Officer on any of the issues for which the assessment was reopened. The difference of ₹5,00,000/- in the contract receipts of M/s. Simla Agency, as per the Id. Commissioner of Income Tax (Appeals) resulted only in corresponding increase to the turnover and not to the income. Thus, he held the reopening to be invalid and also set aside the order of the Id. Assessing Officer rejecting the books of accounts.

11. Now before me, Id. Department Representative strongly assailing the order of the Id. Commissioner of Income Tax (Appeals) submitted that there was a letter filed by the assessee 25.07.2012 before the Id. Assessing Officer, after the completion of the original assessment, wherein it made a further claim of refund of ₹3,20,229/- being TDS not claimed by it earlier during the course of the original assessment proceedings. As per Id. Departmental Representative

such letter clearly went to show that assessee had contract receipts, beyond what it had stated in the return. As per Id. Departmental Representative there was substantial difference in the balance sheets and audit reports filed by the assessee alongwith original return and alongwith the revised return and this clearly indicated that the books of accounts were not reliable. Contention of the Id. Departmental Representative was that for reopening an assessment prime facie reasons were enough, and it was not necessary for the Id. Assessing Officer to reach a final conclusion regarding escapement of income. As per Id. Departmental Representative observation of the Id. Commissioner of Income Tax (Appeals) that were no additions made on any the specific items for which reopening was resorted to, was incorrect. According to him, books were rejected for proper and correct reasons. Additions was made in the turnover for suppressed contract receipts of ₹5,00,000/- from Shri. Simla Agencies. Further, according to him, in the original assessment Id. Assessing Officer had not considered the differences in the balance sheets and therefore never reached any opinion. Contention of the Id. Departmental Representative was that reopening was not done due to any change of opinion but only based on tangible material which was with the Id. Assessing Officer. Reliance was placed on the decision of Co-ordinate Bench in the case of *ACIT, Chennai vs. Tube Investments of India Ltd.*

(2011) 133 ITD 79 and the judgment of Apex Court in the case of *Ess Kay Engineering Co. P. Ltd vs. CIT 247 ITR 818*.

12. Ld. Authorised Representative, in reply, submitted that Id. Assessing Officer during the course of original assessment proceedings verified the books of accounts and made an assessment making disallowances wherever he found it necessary. Thus, as per Id. Authorised Representative difference between two balance sheets could not be considered as a reason for reopening or for rejecting the books. In any case as per Id. Authorised Representative there was no addition made by the Id. Assessing Officer on any of the items for which reopening was resorted to. Further, according to him, letter filed by the assessee on 25.07.2012 cited by the Id. Departmental Representative even if considered as a fresh material could at the best be a reason to suspect and not a reason to believe. Thus, according to him, Id. Commissioner of Income Tax (Appeals) was justified in holding the reassessment proceedings invalid, as well as deleting the additions on merits.

13. I have considered the rival contentions and perused the orders of the authorities below. Disallowance made by the Id. Assessing Officer during the course of original assessment proceedings has been reproduced by me at para 4. It is clearly mentioned by the

Id. Assessing Officer in the such assessment order that books of accounts and other documents including bank account copy, bills and vouchers were produced by the assessee and verified by him. It is also true that Id. Assessing Officer had not mentioned anything regarding any difference between the balance sheets filed by the assessee on 30.09.2009 and 14.10.2010. However, the assessment order clearly mentions admitted income of the assessee as ₹9,43,560/-, which was the income shown by the assessee in the revised return. Thus there can be no doubt that Id. Assessing Officer had considered the revised return while doing the original assessment. Since Id. Assessing Officer did not mention anything regarding the return originally filed on 30.09.2009 which reflected an income of ₹7,95,180/-, it is obvious that he did not consider the balance sheet filed by the assessee alongwith with such original return. It is not disputed by the assessee that on 25.07.2012, it had filed a letter claiming refund of TDS ₹3,20,229/- made by M/s. Pitchandi Poornamalai Ammal Trust. Therefore in my opinion, Id. Assessing Officer while issuing notice u/s. 148 of the Act on 22.01.2014, was having tangible material in the nature of letter dated 25.02.2012 from the assessee reflecting receipt of ₹1,55,39,607/- from M/s. Pitchandi Poornamalai Ammal Trust. It may be true that when reassessment was finally completed, Id. Assessing Officer had

accepted the claim of the assessee that the said amount was an advance and not a part of its contract receipts. However, in my opinion, there was a fresh tangible material in the nature of the letter written by the assessee, with the Id. Assessing Officer, justifying the reopening. Further as already noted by me in the original assessment, Id. Assessing Officer had not considered the original return and the balance sheet filed by the assessee alongwith such return. There were considerable differences in these balance sheets as depicted in the table hereunder:-

<i>Particulars</i>	<i>As per original return</i>	<i>As per revised return</i>
<i>Total of Balance sheet</i>	<i>1,98,18,028</i>	<i>75,51,689</i>
<i>Propr's capital</i>	<i>11,79,268</i>	<i>12,47,075</i>
<i>Sundry Creditors</i>	<i>1,85,97,260</i>	<i>58,68,175</i>
<i>Turnover</i>	<i>5,22,05,315</i>	<i>1,57,89,789</i>
<i>Closing stock</i>	<i>1,10,17,765</i>	<i>1,04,15,123</i>

In such circumstances, Id. Assessing Officer cannot, also be faulted for rejecting the books of accounts. In any case, a sum of ₹5,00,000/- being contract receipts from M/s. Simla Agency was admittedly omitted by the assessee from the contract turnover, in his original as well revised return. Thus, in my opinion reasons for which reopening was resorted to by the Id. Assessing Officer were relevant. Id.

Assessing Officer was also justified in rejecting the books of accounts and estimating the contract receipts at 8%. There was omission on the part of the assessee in correctly showing its contract receipts in the return of income. I therefore have no hesitation in setting aside the order of Id. Commissioner of Income Tax (Appeals). I hold that the reassessment was validity initiated and the rejection of books was justified. I reinstate the order of the Id. Assessing Officer.

14. In the result, the appeal of the Revenue stands allowed.

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

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 |