

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री अब्राहम पी.जॉर्ज, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.606/Chny/2018

निर्धारण वर्ष / Assessment Year : 2014-15

M/s Anjappar Chettinad A/C
Restaurant,
No.7/2, J.P. Towers,
Nungambakkam High Road,
Chennai - 600 034.

v. The Assistant Commissioner of
Income Tax,
Non-Corporate Circle -3(1),
Chennai - 600 034.

PAN : AAIFA 0590 K
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri V. Padmanaban, CA

प्रत्यर्थी की ओर से/Respondent by : Shri R. Clement Ramesh Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 23.07.2018

घोषणा की तारीख/Date of Pronouncement : 06.08.2018

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) -4, Chennai, dated 22.11.2017 and pertains to assessment year 2014-15.

2. Shri V. Padmanaban, the Ld. representative for the assessee, submitted that the Assessing Officer disallowed genuine business expenditures incurred by the assessee during the course of business. Moreover, according to the Ld. representative, the Assessing Officer has also disallowed ₹2,26,00,000/-, which was incurred by the assessee-firm consequent to a family settlement to a partner retired on 31.03.2014. According to the Ld. representative, the assessee M/s Anjappar Chettinad A/C Restaurant was initially established by Shri Anjappan. After the death of Shri Anjappan, his legal heirs Shri A. Rengasamy, Shri A. Kandasamy, Shri A. Maruthupandian, Smt. A. Vellaiammal and Smt. R. Valliammai inherited the restaurant, namely, M/s Anjappar Chettinad A/C Restaurant. A partnership firm was reconstituted by a deed dated 01.04.2002 by which, excluding Shri Anjappan's daughter, all other legal heirs, namely, Shri A. Rengasamy, Shri A. Kandasamy, Shri A. Maruthupandian and Smt. Vellaimmal are partners. A trade mark was also registered in the name of partnership firm with Trade Marks Registry, Mumbai. The assessee-firm permitted third parties to run restaurant in the name of Anjappar Chettinad in the overseas countries on franchise basis and received royalty income from the financial year 2008-09.

3. Shri V. Padmanaban, the Ld. representative for the assessee, further submitted that during the course of business activity, one of the

partners of the firm Shri A. Rengasamy intended to retire from the partnership firm due to disputes/ misunderstanding among the family members over the property and the business of the partnership firm. According to the Ld. representative, the business of the assessee-firm, namely, M/s Anjappar Chettinad A/C Restaurant was established by Shri Anjappan. Therefore, it is a joint family property and all the partners of the assessee-firm are entitled to their right over the property and the business in the partnership firm. According to the Ld. representative, since there was family dispute, to avoid litigation in the family, a family settlement was made on 31.03.2014. Consequent to the family agreement, a sum of ₹2,03,40,000/- was paid to Shri A. Rengasamy, who was a partner in the assessee-firm and also son of Shri Anjappan. According to the Ld. representative, a Memorandum of Understanding was also entered into between the family members on 31.03.2014 with regard to mode of settlement. Since Shri Rengasamy has outstanding loans in some of the banks, it was agreed by the members of the family and Shri Rengasamy that the payment may be made by the partnership firm to the banks directly. Accordingly, the payments were made. According to the Ld. representative, since M/s Anjappar Chettinad A/C Restaurant is a partnership concern of the family of Shri Anjappan and to avoid dispute among family members, an amicable solution was made by way of family settlement. Hence Shri Rengasamy intended to retire from the firm. Consequently, the above said sum of ₹2,03,40,000/- was paid

to him. Therefore, according to the Ld. representative, the above said payment cannot be considered to be royalty, hence, TDS is not to be made. According to the Ld. representative, the distribution of asset and compensation paid by the assessee to one of the family members who agreed to retire from the partnership firm, a family business cannot be construed as transfer, therefore, the expenditure has to be allowed while computing the total income of the assessee.

4. On the contrary, Shri R. Clement Ramesh Kumar, the Ld. Departmental Representative, submitted that the assessee claimed an expenditure of ₹2,26,00,000/- as if it is an expenditure for royalty. According to the Ld. D.R., the Assessing Officer called for explanation regarding the details of royalty expenditure. However, no explanation was offered by the assessee-firm. On repeated reminders, ultimately, the assessee filed explanation on 14.12.2016. According to the Ld. D.R., the assessee explained before the Assessing Officer that the trade mark of the assessee-firm belongs to the entire family. Out of total royalty of ₹3,80,72,106/- received by the assessee-firm from overseas franchisee, according to the Ld. D.R., a sum of ₹2,26,00,000/- was paid by the assessee to Shri Rengasamy and Smt. Vellaiammal. This payment of ₹2,26,00,000/- was not subjected to TDS. Moreover, according to the Ld. D.R., the assessee has made a provision of ₹2,26,00,000/- in the books of account during the assessment year under consideration.

5. Shri R. Clement Ramesh Kumar, the Ld. Departmental Representative, further submitted that the trade mark was registered in the name of partnership firm, therefore, question of transferring the trade name of the partnership firm to retiring partner Shri Rengasamy does not arise for consideration. By way of sharing of profit, according to the Ld. D.R., Shri Rengasamy has already derived benefit from the royalty payments received by the assessee-firm, therefore, the claim of the assessee that the royalty payment has to be settled is not correct. According to the Ld. D.R., a sum of ₹2,03,40,000/- was said to be paid to Shri Rengasamy and another sum of ₹22,60,000/- was said to be paid to Smt. Velliammal. Since the payment of ₹2,26,00,000/- to Shri Rengasamy and Smt. R. Valliammai has no connection with the business of the assessee-firm, according to the Ld. D.R., Assessing Officer found that the same cannot be allowed as business expenditure while computing the taxable income of the assessee. Moreover, according to the Ld. D.R., these payments were made to M/s Sundaram Finance Limited, towards housing loan repayment to Citibank and YES Bank, etc. to settle their dues outstanding in the name of Shri A. Rengasamy. Therefore, according to the Ld. D.R., the so-called expenditure claimed by the assessee-firm as deduction is neither relatable to the business nor their royalty, therefore, the Assessing Officer has rightly disallowed the claim of the assessee.

6. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the assessee-firm was initially established by Shri Anjappan, the father of present partners of the firm. It is also not in dispute that there was some misunderstanding among the family members and they intended to settle the issue. Shri A. Rengasamy, the eldest son of Shri Anjappan, was willing to retire from the partnership firm. Shri Rengasamy inherited right in the firm by way of succession on the death of Shri Anjappan, his father, like other partners. The business of the assessee-firm has to be divided among the legal heirs of Late Shri Anjappan.

7. The assessee-firm received royalty from various third parties for allowing them to run the restaurant in the overseas countries. Instead of dissolving the business of partnership firm, the family members of Shri Anjappan decided to pay monetary compensation to Shri Rengasamy who was willing to retire from the partnership firm as a partner and continue the partnership business of the family. Similarly, Shri Anjappan's wife Smt. Vellaiammal was also paid ₹22,60,000/-. The Assessing Officer disallowed the claim of the assessee on the ground that these payments made to Shri Rengasamy and Smt Vellaiammal are not related to the business and it is also not an expenditure for royalty. The Assessing Officer has also found that no TDS was made. The question arises for consideration is whether the payments of

₹2,03,40,000/- made to Shri A. Rengasamy and ₹22,60,000/- made to Smt. Vellaiammal are deductible from the income of the assessee while computing the taxable income?

8. Admittedly, the business of the partnership firm is a family business. The members of Hindu Undivided Family are the partners. Therefore, when one of the partners was willing to retire from the partnership firm, his share in the capital asset of the firm and profit till retirement have to be paid to him. Under normal circumstances, when the asset of the firm was distributed to the partners on retirement, it is liable for capital gain tax under Section 45 of the Income-tax Act, 1961 (in short 'the Act'). In this case, there was a family settlement by which all the coparceners agreed to pay ₹2,03,40,000/- to Shri Rengasamy and ₹22,60,000/- to Smt. Vellaiammal. This family settlement was to protect the family business among the coparceners of the Hindu Undivided Family. Therefore, this Tribunal is of the considered opinion that there is no transfer of capital asset, hence, it is not taxable for capital gain tax under Section 45 of the Act. Moreover, it is also not a case of the Revenue that capital gain tax is leviable.

9. The Assessing Officer found that it is not an expenditure relatable to the business or the royalty. This Tribunal is of the considered opinion that it is not a payment made towards business expenditure or towards royalty, but it is only a distribution of asset of the partnership firm on

retirement of the partner due to family settlement. Since the business and its assets were kept by the coparceners intact, Shri Rengasamy and Smt. Vellaiammal were compensated by making payment of ₹2,03,40,000/- and a sum of ₹22,60,000/- respectively. Therefore, even though it cannot be construed as expenditure for business or for royalty, certainly it is a division / distribution of partnership firm's asset by way of paying compensation to Shri Rengasamy and Smt. Vellaiammal. Merely because the payment was made to financial institutions and banks at the instructions of Shri Rengasamy and Smt. Vellaiammal, that may not change the character of payment. Since the capital of the assessee was kept intact and the business was continued by other coparceners / partners, this Tribunal is of the considered opinion that this payment made to Shri Rengasamy and Smt. Vellaiammal, consequent to family settlement, is allowable / deductible while computing the taxable income. Hence, we are unable to uphold the orders of the lower authorities. Accordingly, orders of both the authorities below are set aside and the disallowance made by the Assessing Officer as confirmed by the CIT(Appeals) is deleted.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 6th August, 2018 at Chennai.

sd/-
(अब्राहम पी.जॉर्ज)
(Abraham P. George)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 6th August, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-4, Chennai-34
4. Principal CIT-5, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.