

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं डॉ एम एल मीना, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
Dr. M.L. MEENA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.:1481 & 1482/CHNY/2018
निर्धारण वर्ष /Assessment Years: 2012 - 13 & 2014-15

M/s. Talent Engineering
(Coimbatore) Pvt. Ltd.,
No.43, Vivekananda Road,
Ramnagar,
Coimbatore - 641 009.

The DCIT / ACIT,
v. Corporate Circle - 2,
Coimbatore.

PAN: AACCT 5120F

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./ITA Nos.:1487 & 1639/CHNY/2018
निर्धारण वर्ष /Assessment Years: 2014-15 & 2012 - 13

The DCIT / ACIT,
Corporate Circle - 2,
Coimbatore.

M/s. Talent Engineering
v. **(Coimbatore) Pvt. Ltd.,**
No.43, Vivekananda Road,
Ramnagar,
Coimbatore - 641 009.

PAN: AACCT 5120F

निर्धारिती की ओर से/Assessee by : Shri T. Banusekar, CA
राजस्व की ओर से /Revenue by : Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 15.03.2022
घोषणा की तारीख/Date of Pronouncement : 04.05.2022

आदेश / O R D E R**PER BENCH:**

These cross appeals are arising out of the orders of Commissioner of Income Tax (Appeals)-1, Coimbatore in ITA No.62/15-16, & 271/16-17 vide orders dated 12.02.2018 & 13.02.2018. The assessments were framed by the DCIT / ACIT, Corporate Circle-2, Coimbatore u/s.143(3) r.w.s. 144 of the Income Tax Act, 1961 (hereinafter the 'Act') vide orders dated 12.03.2015 & 29.12.2016 for the assessment years 2012-13 & 2014-15 respectively.

2. The first issue in the appeal of assessee in ITA No.1481/Chny/2018 is as regards to the order of CIT(A) confirming the action of AO in upholding the addition of share application money of Rs.69,81,191/- as unexplained credit u/s.68 of the Act.

3. Brief facts are that the assessee received share application money amounting to Rs.69,81,191/-. The AO required the assessee to explain the sources of receipt of share application money from 15 parties. The AO has narrated that confirmations were received from the following six parties

(i)	K.M. Arunkumar, Pollachi	Rs.5,00,000
(ii)	K.P. Kaleeswaran	Rs.5,00,000
(iii)	C.K. Shanmugavelyatham	Rs.5,00,000
(iv)	M.T. Ramesh Kumar	Rs.5,00,000
(v)	P. Subbathal	Rs.5,00,000
(vi)	D. Rajiv Mohan	Rs.2,40,594
	Total	<u>Rs.27,40,594</u>

According to AO, the assessee has filed stereotyped letters but no PAN number or other details including identity, date of advancing the said amount, mode of payment, source of share application money, etc., were not filed and hence, genuineness of claim could not be verified. The AO noted that notice was returned as unserved from the following two parties:-

(i)	N. Senthil Kumar, Pollachi	Rs.5,00,000
(ii)	P.S. Vimalkumar, Coimbatore	Rs.5,00,000
	Total	<u>Rs.10,00,000</u>

The AO also noted that from the following seven parties, no reply has been received:-

1	D. Prubhu Srikanth, Coimbatore	Rs.2,40,596
2	D. Deepak, Salem	Rs.5,00,000
3	K. Arunkumar, Vellure	Rs.5,00,000
4	C. Nareshkumar, Coimbatore	Rs.5,00,000
5	S. Sureshkumar Johnson, Chennai	Rs.5,00,000
6	P. Sivaganesh, Pollachi	Rs.5,00,000
7	L. Vinoth, Vellure	Rs.5,00,000
	Total	<u>Rs.32,40,596</u>

Therefore, the AO added the credit appearing in the books of accounts of the assessee in the form of share application money

amounting to Rs.69,89,191/- to the total income of the assessee u/s.68 of the Act. Aggrieved, assessee preferred appeal before the CIT(A).

4. The assessee before CIT(A) could not file any proof, hence in the absence of any proof the CIT(A) confirmed the action of AO vide para 5.1 as under:-

5.1 In the course of appellate proceedings, the appellant produced some confirmation letters from some parties. On a scrutiny of the same, it can be seen in these letters that there is no mention of PAN, nature of payment and source from which it is paid. Hence, the appellant has not discharged the onus of proving the credit by establishing the genuineness of the transaction nor the credit worthiness of the creditor. Hence, I find that the order of the Assessing Officer was correct and there is no reason why his conclusion needs to be disturbed. Therefore, the addition of Rs.69,81,191/- made u/s 68 of the Act which are credit of unproven share application advance is confirmed.”

Aggrieved, now assessee is in second appeal before the Tribunal.

5. Now before us, assessee filed application under Rule 29 of the Income Tax Appellate Tribunal Rules, 1963 filing additional evidences in the form of confirmation letters along with copy of PAN card, Aadhar card, Voter card from 12 parties, from whom the assessee has received share application money. The Id.AR for the assessee also stated that the assessee is ready to prove the sources

of these share application money. The Id.AR requested for admission of these evidences and requested that matter may be sent back for examination by lower authorities in regard to genuineness of transaction and creditworthiness of the share applications for which assessee will comply with the requirements as per the provisions of section 68 of the Act before the lower authorities.

6. When this was put to Id. Senior DR, he relied on the assessment order and that of the CIT(A). He argued that these evidences were not filed before the lower authorities and hence, AO as well as CIT(A) was constrained to make addition because assessee has not proved the genuineness of transaction nor the source of credit. The assessee has not discharged its onus as casted u/s.68 of the Act. But, the Id.DR could not controvert regarding admissibility of additional evidences.

7. After hearing both sides and going through the facts of the case and the evidences filed before us by assessee, we noted from the evidences that the assessee has filed complete ledger copies of share applicants and also filed other details including confirmations.

According to us, these additional evidences filed by assessee will go to the root of the matter and it will help in adjudicating the issue and hence, keeping in mind the principles of natural justice, we admit these evidences and remand the matter back to the file of the AO for fresh adjudication. Accordingly, this issue of assessee's appeal is allowed for statistical purposes.

8. The next common issue in both the appeals of Revenue and assessee is as regards to the order of CIT(A) restricting or upholding the addition of Rs.2,58,80,414/- by invoking the provisions of section 41(1) of the Act, as against addition made by the AO on sundry creditors amounting to Rs.10,67,68,912/-.

9. We noted that the very ground of Revenue is as regards to violation of provisions of Rule 46 of the Income Tax Rules, 1962 that the evidences adduced during appellate proceedings by the assessee has been considered without giving opportunity to the AO.

The first ground of Revenue reads as under:-

1. The learned Commissioner of Income tax (Appeals)-I, Coimbatore has erred in allowing the claim of the assessee on Sundry Creditors amounting to Rs.8,08,88,498/- restricting the disallowance to Rs.2,58,80,414/- and held that this has be treated as disallowance u/s 41(1) of the Act. The additional evidences adduced during the appellate proceedings by the assessee has been considered without giving opportunity to the Assessing

Officer thereby violating the provisions of Rule 46A of the Income Tax Rules, 1962.

10. Similarly, the assessee has also raised the ground that the CIT(A) has confirmed the addition by invoking the provision of section 41(1) of the Act, having concluded that the provisions of section 68 of the Act is not invocable in respect of sundry creditors and according to assessee, ought not to have invoked the provisions of section 41(1) of the Act. The Id.AR for the assessee took us through para 6.2 of CIT(A) order, which reads as under:-

6.2 I agree with the appellant that the AO was wrong in making the assessment u/s 68 of the Act. He has not concluded that the purchases have not happened. Hence, I hold that the assessment made by the AO u/s 68 of the Act was wrong.

The CIT(A) after considering additional evidences and even remand report from the AO restricted the addition at Rs.2,58,80,414/- to be assessed u/s.41(1) of the Act as against addition made by AO of Rs.10,67,68,912/- assessed u/s.68 of the Act as cash creditors. The CIT(A) recorded his finding in para 6.4 & 6.5 as under:-

6.4 A detailed analysis was done on the ledger accounts furnished by the appellant during the appellate proceedings. Considering the argument that the subsequent payments are an indication of the life of the accounts, these accounts which remain dormant were separated and tabulated as Annexure-I. There is another set of accounts where some efforts are seen to show that the transactions are squared-up by making a journal entry

‘advance to supplier’. These are also separated and identified as Annexure-II.

6.5 These two categories of creditors do not have any activities in the subsequent year. In the course of assessment or during the Remand proceedings, they have neither submitted confirmation of balances nor appeared in person and produced evidences. No evidences were produced to explain the quality issues as submitted during appellate proceedings. These purchases were debited in the year in which purchases were made and are part of the P&L A/c of the respective years. Hence, these credits are believed to be not in existence. In other words, the liability has ceased to exist and the amount of Rs.1,71,12,670/- (as per Annexure-I) and Rs.87,67,735/- (as per Annexure-II) totaling Rs.2,58,80,414/- are to be assessed u/s 41(1) instead of Rs.10,67,68,912/- assessed u/s.68 of the Act.

11. Now before us the Id.Senior DR stated that the CIT(A) has adjudicated the issue deleting addition of Rs.8,08,88,498/- being addition u/s.68 of the Act, holding the same as sundry creditors without confronting the same to the AO. On the other hand, the Id.AR for the assessee stated that the AO has added these sundry creditors to the extent of Rs.10,67,68,912/- u/s.68 of the Act is wrong whereas actually the AO concluded that the purchases have happened. But CIT(A) came to the conclusion that several parties did not respond or confirmed the balance liability to pay has ceased to exist. The Id.AR now before us stated that based on ledger accounts filed by the assessee that subsequent payments are an indication of the life of the accounts, the CIT(A) confirmed the following additions u/s.41(1) of the Act:-

- (i) Accounts which remain dormant - Rs. 1,71,12,670
(As per Annexure I to CIT(A) order)
- (ii) Transactions squared up by making a journal
Entry "Advance to Supplier" - Rs. 87,67,735
(As per Annexure II to CIT(A) order)

The Id.AR for the assessee also requested that the matter can go back to the file of the AO to decide the issue whether the additions are to be made u/s.68 of the Act or u/s.41(1) of the Act after considering the facts of the case, whether the sundry creditors are arising out of sales or not. According to him, the AO can consider the applicability of provisions of section 41(1) of the Act.

12. After hearing both the sides and going through the facts of the case, we are of the view that in the above given facts and arguments, let the matter go back to the file of the AO for fresh adjudication as argued by both the sides. Hence, we set aside this issue in both the appeals i.e., Revenue as well as assessee, to the file of AO to re-adjudicate. Hence, both the appeals are allowed for statistical purposes.

ITA Nos. 1482 & 1487/Chny/2018, AY 2014-15:

13. The only common issue in these cross appeals is as regards to the order of CIT(A) restricting the addition u/s.41(1) of the Act as

against the addition made by the AO u/s.68 of the Act being sundry creditors arising out of purchase transactions of the assessee.

14. The facts and circumstances are exactly identical to what was in assessment year 2012-13, as discussed above in paras 9 to 11 and arguments are exactly identical, hence on the same lines we restore the issue raised by both i.e., the assessee as well as the Revenue to the file of the AO for re-adjudication. Both the appeals are allowed for statistical purposes.

15. In the result, the appeals filed by the assessee as well as the Revenue for the assessment years 2012-13 & 2014-15 are allowed for statistical purposes.

Order pronounced in the court on 4th May, 2022 at Chennai.

Sd/-

(डॉ एम एल मीना)

(Dr. M.L. MEENA)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 4th May, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|-------------------------|------------------------------|
| 1. निर्धारिती/Assessee | 2. राजस्व/Revenue | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |