

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

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

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.2759, 2760 & 1870/Mds/2016

निर्धारण वर्ष / Assessment Years : 2008-09, 2012-13 & 2007-08

M/s URC Construction (P) Ltd.,  
#119, Power House Road,  
Erode – 638 001.

v. The Assistant Commissioner of  
Income Tax,  
Circle – 1,  
Erode – 638 001.

PAN : AAACU 2425 Q  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.1871/Mds/2016

निर्धारण वर्ष / Assessment Year : 2007-08

M/s Bharathi Constructions,  
#119, Power House Road,  
Erode – 638 001.

v. The Assistant Commissioner of  
Income Tax,  
Circle – 1,  
Erode – 638 001.

PAN : AABFB 9308 F  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellants by : Sh. Philip George, Advocate

प्रत्यर्थी की ओर से/Respondent by : Dr. Milind Madhukar Bhusari, CIT  
& Shri A.V. Sreekanth, JCIT

सुनवाई की तारीख/Date of Hearing : 14.03.2017

घोषणा की तारीख/Date of Pronouncement : 20.04.2017

**आदेश / O R D E R**

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

The appeals filed by two different assessees are directed against the respective orders of the Commissioner of Income Tax (Appeals)-3, Coimbatore. When the assessee, M/s URC Constructions (P) Ltd., has filed appeals for assessment years 2008-09, 2012-13 & 2007-08, the other assessee, M/s Bharati Constructions, has filed appeal for assessment year 2007-08. Since common issues arise for consideration in all these appeals, we heard these appeals together and disposing of the same by this common order.

2. Both the assessees have raised issue of limitation in their respective appeals in I.T.A. No. 2759, 1870 & 1871/Mds/2016. Therefore, let's take these appeals first for adjudication.

3. Sh. Philip George, the Ld.counsel for the assessee, submitted that for all the assessment years, the assessments were completed under Section 143(3) of the Income-tax Act, 1961 (in short 'the Act'). After expiry of four years from the end of relevant assessment year, the Assessing Officer on the basis of material already available on record, came to a conclusion that the

assesseees have not deducted tax. According to the Ld. counsel, the Assessing Officer has no new information after processing of the assessment order. There was no negligence on the part of the assesseees in furnishing relevant material in completing the assessment. Referring to the orders of the Assessing Officer, the Ld.counsel submitted that it is a change of opinion on the part of the Assessing Officer.

4. Referring to page 52 of the paper-book, the Ld.counsel for the assesseees submitted that this is a copy of reasons recorded by the Assessing Officer for reopening. The assesseees filed entire material, which were available before the Assessing Officer. The Assessing Officer after considering the material filed by the assesseees, considered the issue of deduction of tax and allowed the claim of the assesseees. Referring to the assessment order for the assessment year 2007-08 in the case of both the assesseees, the Ld.counsel submitted that the Assessing Officer, in fact, examined each and every aspect and enquiry was also made through Inspector, therefore, it cannot be said that there was any negligence on the part of the assesseees. Hence, according to the Ld. counsel, the assessment order in both the cases is barred by limitation.

5. On the contrary, Dr. Milind Madhukar Bhusari, the Ld. Departmental Representative, submitted that the assessee failed to deduct tax. No doubt, in the original assessment, the Assessing Officer accepted the claim of the assessee. Subsequently, the Assessing Officer issued notice under Section 148 of the Act for reopening the assessment under Section 147 of the Act. The Ld. D.R. very fairly submitted that for all the three years under consideration, the Assessing Officer has reopened the assessment after expiry of four years from the end of relevant assessment year. However, the Ld. D.R. submitted that there was failure on the part of the assessee in furnishing necessary particulars which were required in completing the assessments.

6. Referring to para 6.4 of the order of the CIT(Appeals), the Ld. D.R. submitted that the audit reports submitted under Section 44AB of the Act do not disclose the full and true particulars. Referring to Explanation 1 to Section 147 of the Act, the Ld. D.R. submitted that by merely providing books of account and other material, it cannot be said that the assessee has furnished all the relevant material. The audit reports do not say that the hire charges have been paid during the relevant assessment years. Since the

audit reports do not disclose the particulars fully and truly, there was negligence on the part of the assessee in furnishing the particulars in completing the assessments. Therefore, the proviso to Section 147 of the Act is not applicable to the facts of the case. Hence, according to the Ld. D.R., the Assessing Officer has rightly reopened the assessments.

7. We have considered the rival submissions on either side and perused the relevant material available on record. A copy of the reasons recorded for reopening of the assessment in the case of the assessee, M/s URC Construction (P) Ltd., is available at page 52 of the paper-book. For the purpose of convenience, the reasons recorded by the Assessing Officer is reproduced hereunder:-

“The assessee is liable to deduct TDS u/s 194I for the payments exceeding ₹1,20,000/- in respect of payments towards machinery hire charges amounting to ₹4,89,06,168/-. As the assessee had failed to deduct TDS on such payments, the expenses are bound to be disallowed u/s. 40(a)(ia) of Income-tax Act. Also it is seen in the Form 3CD, against item No.27 (b) the auditor was required to report the details of non-compliance with the TDS provision in Chapter XVII B of the I.T. Act. The Auditor has quantified only certain items of non-compliance and omitted to mention the other items such as Machinery Hire Charges paid in excess of the prescribed limits. This failure on the part of the assessee resulted in under assessment of income. I have therefore, reason to believe that income chargeable to tax has escaped assessment

within the meaning of Section 147 of the Income-tax Act, due to failure on the part of the assessee to disclose fully and truly all the material facts necessary for the Asst. Year 2007-08”.

Similar reasons have been recorded by the Assessing Officer in the case of other assessee, M/s Bharathi Constructions, also.

8. From the above it appears that the allegation against the assessee is non-deduction of tax at the time of payment. A copy of the assessment order passed under Section 143(3) of the Act in the case of M/s URC Construction Pvt. Ltd. is available at page 68 of the paper-book. The Assessing Officer, after considering the facts that the assessee being civil contractors, asked the assessee to furnish list of shareholders, TDS certificate, details of opening stock, work in progress details, purchase details, details of sub-contract payments, payment of wages, interest, etc. before the Assessing Officer. The Assessing Officer has also called upon the assessee to produce the details of secured loan availed from bank and other financial institutions. The Assessing Officer has also conducted enquiry through Inspector of Income-tax in order to ascertain genuineness of sundry creditors. After examining the material, the Assessing Officer observed as follows at page 2 of the

assessment order, copy of which is available at page 69 of the paper-book in the case of M/s URC Construction Pvt. Ltd.:-

“On a perusal of details filed, it is seen that the assessee has not included TDS receipts of ₹13,57,306 as income. Hence, the same is brought to tax.

(Add: ₹13,57,306)

The assessee has defaulted in TDS payments on audit fees and hire charges paid of ₹44,45,185. Hence the said sum of ₹44,45,185 is disallowed u/s. 40(a)(ia) of the Income-tax Act, 1961.

(Add: ₹44,45,185)”

9. Therefore, it is obvious that the entire TDS certificates, opening stock, gross receipts from contractors, details of purchase, list of shareholders, copy of current account, copy of sales tax, general expenses claimed by the assessee, vehicle hire charges were available before the Assessing Officer.

10. Now the contention of the Revenue before this Tribunal is that the audit reports under Section 44AB of the Act do not disclose correct and full particulars. The assesseees have furnished all the details before the Assessing Officer. The auditor, who prepared the report under Section 44AB of the Act, is expected to examine all the materials and record the same in the report prepared under Section 44AB of the Act. If the auditor fails to record the lapses committed

by the assessee, the assessee cannot be blamed for the same. Auditor being expert in accountancy, he has to examine the material independently and prepare the report as required under Section 44AB of the Act. The assessee, at the best, can produce all the relevant material before the auditor for the purpose of preparing the audit report.

11. Preparation of audit report is the exclusive function of auditor, therefore, if at all there was any negligence and omission to disclose correct fact in the report prepared under Section 44AB of the Act, this Tribunal is of the considered opinion that the assessee cannot be found fault. If the assessee suppresses any material either before the auditor or before the Assessing Officer, then we may say there was negligence on the part of the assessee. In this case, the Assessing Officer himself called upon the entire details of gross receipts, TDS certificates, details of opening stock, work in progress, payment of wages, payment of interest, payment of vehicle hire and machinery charges, copy of sales tax order, etc. Therefore, when the assessee has furnished all the details which are required in completing assessments, this Tribunal is of the considered opinion that mere omission of auditor to mention certain

items in the audit report prepared under Section 44AB of the Act, that alone cannot be a reason to say that there was negligence on the part of the assessee. This Tribunal is of the considered opinion that when the assessee furnished all the details, there was no negligence on the part of the assessee, hence, proviso to Section 147 of the Act would come into operation. In view of the above, the order passed by the Assessing Officer is barred by limitation. Therefore, it cannot stand in the eye of law. Accordingly, the orders of both the authorities below for all the three years are set aside and the appeals of the assessee stand allowed.

12. Now coming to I.T.A. No.2760/Mds/2016, the first ground of appeal is with regard to disallowance of travel expenses to the extent of ₹10,64,857/-.

13. Sh. Philip George, the Ld.counsel for the assessee, submitted that the Managing Director and his wife travelled to Singapore for a business trip. In fact, the Managing Director travelled to Singapore for purchase of machinery. The assessee has also claimed the expenditure incurred by the son of the Managing Director as staff welfare expenses. Therefore, the

Assessing Officer is not justified in disallowing the claim of the assessee.

14. On the contrary, Dr. Milind Madhukar Bhusari, the Ld. Departmental Representative, submitted that the Managing Director Shri Devarajan was said to have travelled to Singapore for purchase of machinery. But, no material was filed before the Assessing Officer or before the CIT(Appeals) or before this Tribunal to support its contention. The assessee has also claimed the expenditure incurred on Shri D. Kabilan, son of Shri Devarajan, for holiday trip. The assessee claimed the same as staff welfare expenses. According to the Ld. D.R., the expenditure incurred for holiday trip cannot be a business expenditure. The assessee has also claimed the flight charges paid to Shri Surendra P. Shah. According to the Ld. D.R., these expenditures are personal nature, therefore, the CIT(Appeals) has rightly confirmed the disallowance of ₹10,64,857/-

15. We have considered the rival submissions on either side and perused the relevant material available on record. The expenditure said to be incurred by the assessee for travelling to Singapore, USA, etc. Even though the assessee claims that the Managing Director's travel to Singapore was for purchase of machinery, no

material was produced either before the lower authorities or before this Tribunal. The travel of Shri Devarajan, MD along with his wife for a holiday cannot be construed as business expenditure at all. The claim of expenditure on Shri Surendra P. Shah cannot be construed as business expenditure at all. Therefore, the CIT(Appeals) has rightly confirmed the disallowance made by the Assessing Officer. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

16. The next issue is disallowance of electricity charges of ₹3,45,210/-.

17. Sh. Philip George, the Ld.counsel for the assessee, submitted that the electricity charges incurred by the assessee in the earlier year was adjusted by the Electricity Board against the deposit during the year under consideration. Since the intimation was sent about adjustment during the year under consideration, the liability was crystalized during this year, therefore, the CIT(Appeals) is not justified in confirming the disallowance made by the Assessing Officer.

18. On the contrary, Dr. Milind Madhukar Bhusari, the Ld. Departmental Representative, submitted that the electricity charges relate to the year 2010. The assessee has not filed any evidence to show that when the liability was crystalized. Since the electricity charges relate to 2010, it cannot be said that it crystalized during the year under consideration. Therefore, the CIT(Appeals) has rightly confirmed the disallowance.

19. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee now claims that the intimation of adjustment of electricity charges against the deposit was received during the year, therefore, the liability crystalized during the year. This Tribunal is of the considered opinion that the liability was for the year 2010. Merely because it was adjusted during the year under consideration, it cannot be said that the liability accrued during this year. This Tribunal is of the considered opinion that the same cannot be allowed during the year under consideration. Therefore, the CIT(Appeals) has rightly confirmed the disallowance made by the Assessing Officer.

20. The next issue arises for consideration is disallowance of ₹4,87,460/-, the expenditure incurred by the assessee for higher education of the employee.

21. Sh. Philip George, the Ld.counsel for the assessee, submitted that that one Shri S. Kathirvel, a Graduate Engineer Trainee, joined the assessee-company on 03.08.2011 and he was paid a salary of ₹12,643/- per month. The assessee-company sponsored the said Shri Kathirvel for Post Graduate Programme in Advance Construction and also paid the fees. Since the employee was sponsored for higher education immediately after appointment, the Assessing Officer doubted the claim. Accordingly he disallowed the same. According to the Ld. counsel, the expenditure incurred by the assessee has to be allowed under Section 37 of the Act.

22. On the contrary, Dr. Milind Madhukar Bhusari, the Ld. Departmental Representative, submitted that Shri S. Kathirvel joined the company on 03.08.2011. Admittedly, he was sponsored for Post Graduate Programme and the assessee also paid the tuition fee. The assessee has not obtained any bond from the said Shri Kathirvel and there was no compulsion on the part of Shri Kathirvel to work for the assessee-company. According to the Ld.

D.R., in the absence of any details regarding the bond or agreement between the employee and the assessee-company, the Assessing Officer has rightly disallowed the claim of the assessee.

23. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that one Shri S. Kathirvel joined the assessee-company on 03.08.2011 and he was sponsored for higher education for the academic year 2012-14. The assessee could not produce any material to show that the said Shri Kathirvel agreed to work for the company even after completion of higher education. No bond was produced either before the Assessing Officer or before the CIT(Appeals) or before this Tribunal and no agreement was also produced. Therefore, as rightly observed by the Assessing Officer, the expenditure incurred by the assessee in the higher education of Shri S. Kathirvel was not for business purpose. When there was no compulsion on the part of Shri S. Kathirvel to serve the assessee after completing higher education, this Tribunal is of the considered opinion that the expenditure cannot be construed as revenue expenditure. Therefore, the CIT(Appeals) has rightly confirmed the disallowance made by the Assessing Officer.

24. The next issue arises for consideration is disallowance of ₹22,36,549/- towards marriage reception of son of Managing Director.

25. We have heard Sh. Philip George, the Ld.counsel for the assessee and Dr. Milind Madhukar Bhusari, the Ld. Departmental Representative. Admittedly, the expenditure was incurred in marriage reception of the son of the Managing Director. It is obligation of the parent to meet the marriage expenditure of the respective children. The marriage expenditure cannot be construed as business expenditure of the assessee-company. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

26. The next issue arises for consideration is disallowance of ₹7,79,899/- for setting up of subsidiary.

27. We have heard Sh. Philip George, the Ld.counsel for the assessee and Dr. Milind Madhukar Bhusari, the Ld. Departmental Representative. The assessee admittedly incurred ₹7,79,899- towards setting up of subsidiary in Oman. Expenditure for setting up of subsidiary is capital expenditure. Therefore, the CIT(Appeals)

has rightly confirmed the disallowance made by the Assessing Officer.

28. The next issue arises for consideration is with regard to the expenditure incurred on water connection.

29. Sh. Philip George, the Ld.counsel for the assessee, submitted that the assessee has incurred ₹2,96,500/- for getting water connection for new office at Bangalore. However, the assessee could not produce any receipt for payment.

30. We have heard Dr. Milind Madhukar Bhusari, the Ld. Departmental Representative also. In the absence of any material evidence / receipt for payment of ₹2,96,500/- for getting water connection for new office at Bangalore, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly confirmed the addition made by the Assessing Officer. This Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

31. The next issue arises for consideration is disallowance of ₹16,59,967/- towards higher education of Vice President (Operations) of the company.

32. Sh. Philip George, the Ld.counsel for the assessee, submitted that the Vice President (Operations) is none other than the son of Managing Director. Since Shri P. Ramprasad is working as Vice President (Operations) with the assessee-company, the assessee claims the expenditure as revenue expenditure. Therefore, according to the Ld. counsel, the CIT(Appeals) is not justified in confirming the addition made by the Assessing Officer.

33. On the contrary, Dr. Milind Madhukar Bhusari, the Ld. Departmental Representative, submitted that admittedly, the assessee incurred the expenditure in higher education of Shri P. Ramprasad, the son of Managing Director. During the period, the assessee did not pay any salary. Therefore, according to the Ld. D.R., it does not mean to say that Shri P. Ramprasad worked as Vice President of the assessee-company. This expenditure was incurred for higher education of the Managing Director's son, therefore, according to the Ld. D.R., the Assessing Officer has rightly disallowed the claim of the assessee.

34. We have considered the rival submissions on either side and perused the relevant material available on record. Even though the

assessee claims that the Managing Director's son Shri P. Ramprasad was working as Vice President of the assessee-company, during the relevant period, he was not allowed to continue as employee of the assessee-company. The matter may stand differently in case Shri P. Ramprasad was granted study leave and salary was being paid during the study period. In this case, admittedly, no salary was paid to him and he was not treated as employee of the assessee-company during that period. This Tribunal is of the considered opinion that it is the responsibility of the respective parent to provide education to his son. Therefore, the Managing Director of the company is personally responsible for meeting the expenditure of his son's education. The expenditure incurred by the assessee for providing higher education to the Managing Director's son cannot be considered as business expenditure. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

35. The next issue arises for consideration is disallowance made by the Assessing Officer under Section 40A(3) of the Act.

36. We have heard Sh. Philip George, the Ld.counsel for the assessee and Dr. Milind Madhukar Bhusari, the Ld. Departmental Representative. The Assessing Officer disallowed the payment made by the assessee-company exceeding ₹20,000/-. However, the CIT(Appeals) restricted the claim of the assessee to 50%. This Tribunal is of the considered opinion that when the payment was made exceeding ₹20,000/- per day, the same has to be disallowed. However, the CIT(Appeals) restricted it to 50%. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

37. In result, the appeals of the assessees in I.T.A. Nos.2759/Mds/2016, 1870/Mds/2016 and 1871/Mds/2016 are allowed. However, I.T.A. No. 2760/Mds/2016 is dismissed.

Order pronounced on 20<sup>th</sup> April, 2017 at Chennai.

sd/-

(डि.एस. सुन्दर सिंह)

(D.S. Sunder Singh)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 20<sup>th</sup> April, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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