

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI**

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

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

आयकर अपील सं./ITA No.29/Mds/2017
निर्धारण वर्ष /Assessment Year: 2013-14

The Income Tax Officer,
Non-Corporate Ward-16(1),
Room No.523-B, 5th Floor,
Wanaparthy Block, Aayakar Bhawan,
121, Mahatma Gandhi Road,
Chennai-600 034.

Vs. Shri Anand Rajagopal,
AKSHYA, 3-412,
14th Street,
Venkateswara Nagar,
Kottivakam,
Chennai-600 041.

[PAN: AAIPA 9632 Q]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Mr.R.Durai Pandian, JCIT
प्रत्यर्थी की ओर से /Respondent by	:	Mr.Saroj Kumar Parida, Adv.
सुनवाई की तारीख/Date of Hearing	:	27.02.2017
घोषणा की तारीख /Date of Pronouncement	:	19.04.2017

आदेश / O R D E R

PER D.S.SUNDER SINGH, ACCOUNTANT MEMBER:

This is an appeal filed by the Revenue against the Order dated 19.10.2016 of Commissioner of Income Tax (Appeals)-4, Chennai, in ITA No.137/2015-16/AY 2013-14/CIT(A)-4 for the AY 2013-14 and raised the following grounds:

1. *The order of the Ld. Commissioner of Income-tax (Appeals) is contrary to law and facts of the case.*
2. *The Ld.CIT(A) has erred in deleting the disallowance made by the AO to the tune of Rs.80,00,000/- u/s 69 of the I.T Act, 1961.*
3. *The Ld.CIT(A) erred in deleting the addition based on the additional details produced by the assessee during the appeal proceedings which were not produced before the AO during the assessment proceedings.*
4. *The Ld.CIT(A) erred in deleting the impugned addition, without affording an opportunity to the AO under Rule 46A(3) of the I.T Rules in respect of the additional details submitted before the CIT(A).*
5. *For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.*

2.0 All the grounds of the appeal are related to the addition of Rs.80.00 lakhs made by the Assessing Officer (in short 'AO') in the Assessment Order u/s.69 of Income Tax Act (in short 'the Act'). During the course of assessment proceedings, the AO found that the assessee has made investment in house property to the tune Rs.70.00 lakhs and paid a sum of Rs.10.00 lakhs to M/s.Metallic Bellows Pvt. Ltd. The AO compiled the statement of sources of funds and application of funds of the assessee and his wife and arrived at the unexplained investment of Rs.80.00 lakhs, which was brought to tax.

3.0 Aggrieved by the order of the AO, the assessee went on appeal before the Learned Commissioner of Income Tax(Appeals) (in short 'Ld.CIT(A)') and the Ld.CIT(A) allowed the assessee's appeal placing reliance on the additional evidence in the form of cash flow statement evidences for additional sources were furnished by the assessee. The CIT(A) allowed the assessee's appeal on the basis of explanation offered by the assessee and the additional sources of income brought to the notice of the Ld.CIT(A) during the appellate proceedings.

4.0 Appearing for the Revenue, the Learned Departmental Representative (in short 'Ld.DR') argued that the Ld.CIT(A) has allowed the assessee's appeal without affording the opportunity to the AO as required under Rule 46A even though the assessee has claimed the new source of funds for explaining the investment. The Ld.DR stated that the cash flow statement, new sources of income relating to the assessee's wife for the AY 2003-04, long term capital gains, etc., were placed before the Ld.CIT(A) as source of investments and to cover the deficiency but the same evidences were not made available to the AO and the Ld.CIT(A) failed to give opportunity to the AO under Rule 46A(3). Therefore, he argued that the case should be remitted back to the file of the AO to examine the additional evidences. On the other hand, the Learned Authorized Representative (in short 'Ld.AR') relied on the orders of the Ld.CIT(A).

5.0 We heard the rival submissions and perused the material placed on record.

It is evident from the Ld.CIT(A)'s Order that the assessee has claimed new sources of funds before the Ld.CIT(A) as per the discussion in Page No.11 of the Ld.CIT(A) Order. The assessee brought the additional sources such as sale of properties and the relevant documents which constitute additional evidence before the Ld.CIT(A) to cover the deficiency of funds which were not placed before the AO. For the sake of reference, we extract the relevant part of CIT(A) Order as under:

iii) The appellant while furnishing the application of funds for Rs.1,99,59,840/- vide his letter dated 23.01.2016 has informed the AO that the personal expenses relating to the relevant period was Rs.95,11,037/-. The appellant wish to submit that the above personal expenses included payment of taxes also which amounts to Rs.42,15,384/- for which the breakup details are furnished vide (Annexure-IV). As against the above facts, the AO has separately considered the tax payments made both by the appellant and his wife amounting to Rs.36,31,831/- as application funds over and above the personal expenses (wrongly denoted by the AO as house hold expenses) of Rs.1,00,00,000/- unilaterally determined by him for the purpose of computing the deficiency of funds which is not in order. As the tax payment of Rs.42,15,384/- has already been included in the personal expenses of Rs.95,11,037/- furnished by the appellant, the same has to be deducted from that amount and the balance of Rs.52,95,653/- alone has to be considered as personal expenses while computing the surplus deficiency of funds.

iv) The appellant wish to submit that the following additional sources of income have to be also considered while computing the surplus deficiency of funds.

- a) The appellants total income for the assessment year 2012-13 included a long term capital gain of Rs.11,87,712/- arising out of the disposal of an asset for a sale consideration of Rs.17,42,231/-. The difference between the long term capital gain and the sale consideration amounting to Rs.5,54,519/- also constitutes a source of income at the hands of the appellant which has to be considered at the time computing the sources of income.
- b) The appellant submits that he had disposed of an immovable property in the form of a residential building on 4-4-2005 for a sale consideration of Rs.13,00,000/- and the said sale was registered as document No.2481 of 2005 on the files of Joint Sub Registrar, South Chennai. This residential property was acquired by the appellant on 21-11-1995 from the Tamil Nadu, Housing Board, Thiruvannamiyur Division, Chennai. As there was no long term capital gain arising to the assessee in this transaction on account of indexed cost of acquisition, the relevant income did not find place in the total income returned by the appellant for the assessment year 2006-07. The sale consideration of Rs.13,00,000/- is also to be considered as an additional source of income.
- c) While the Assessing Officer has considered the closing bank balance of Rs.8,41,983/- for computing the deficiency/surplus funds, he has omitted to consider the opening balance of Rs.4,09,187 as on 1.4.2001 as a source of income. A copy of the bank statement for the month of April 2001 evidencing the above opening balance is enclosed for kind perusal (Annexure-V). The above source of income is also to be considered for computing the surplus deficiency in funds.
- d) The Assessing Officer has erroneously considered an amount of Rs.2,15,000/- towards appellants investment in mutual funds while computing the application of funds which actually relates to the investment made by his father Thiru. R.Rajagopal. A copy of the proof of investment made by the father of the appellant is enclosed (Annexure-VI). Therefore, this amount is liable to be deleted while computing the application of funds.
- e) While computing the Chapter VI A deductions vide page no.4 of the order, the Assessing Officer has erroneously determined the same at Rs.14,73,298/- instead of at Rs.10,86,088/-. The AO has considered Rs.1,23,000/- as Chapter VIA deduction for the assessment year 2010-11 for the spouse of the appellant against which no taxable income was returned by the assessee. For the assessment year 2004-05, the appellant has claimed only Rs.10,000/- as Chapter VIA deduction against which the AO has considered a deduction of Rs.1,00,000/-. Further an amount of Rs.1,74,210/- representing payments made by the appellant towards mediclaim policy and tuition fee which is already included in the personal expenses of Rs.52,95,653/- was additionally considered by AO under Chapter VIA deduction. Therefore, an amount of Rs.3,87,210/- has to be deducted from the Chapter VIA deduction of Rs.14,73,298/- considered by the AO while computing the surplus /deficiency in funds.

6.0 The Ld.CIT(A) in his Appellate Order considered the submissions made by the assessee along with the additional evidences without giving an opportunity to the AO as required under Rule 46A(3) of IT Act. For a query from the bench, the Ld.AR stated that there is no cash flow statement available with the Ld.AR for explaining the sources and application of funds and did not object for sending the matter back to AO. Therefore, we are of the considered opinion that the issue should go back to the file of the AO to examine the additional evidences and additional sources of income placed by the assessee before the Ld.CIT(A) and decide the issue afresh on merits. Accordingly, we set-aside the orders of the lower authorities and remit the issue back to the file of AO.

7.0 In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the Open Court on 19th April, 2017, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S.SUNDER SINGH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 19th April, 2017.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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