

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.2558/Mds/2014

निर्धारण वर्ष /Assessment year : 2007-2008.

The Income Tax Officer,
Business Ward X(4)
Chennai 600 006

Vs. Shri. Govind Kumar Chordia,
No.342, Mint Street,
Sowcarpet,
Chennai 600 079.

(अपीलार्थी/Appellant)

[PAN AAFPC 9022R]
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri. P. Radhakrishnan, IRS, JCIT.
: Shri. D. Anand, Advocate.

सुनवाई की तारीख/Date of Hearing

: 06-06-2016

घोषणा की तारीख /Date of Pronouncement

: 17-06-2016

आदेश / ORDER

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the Revenue is directed against order of the Commissioner of Income-tax (Appeals)-IV, Chennai in ITA No.779/13-14, dated 02.04.2014 for the assessment year 2007-2008

passed u/s.271(1) (c) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The Revenue has raised the following grounds of appeal:-

"2.1. The learned CIT(A) failed to appreciate that though the loan amount of ₹1,07,00,000/- had been sanctioned, only ₹66.21 lakhs had been disbursed till 31/3/2007 and hence the source of investment of ₹40.78 lakhs made in the financial year 2006-07 has not been proved.

2.2 The Ld.CIT(A) failed to appreciate that the assessee himself had submitted that the source of investment to be the lean of ₹1,07,00,000/- and has claimed the above sum as secured loan in the balance sheet as on 31/3/2007.

2.3. The Ld.CIT(A) failed to appreciate that if the existing loan amount of ₹49,03,162/- was dosed out of the initial disbursement, then the assessee would have had only ₹17,18,606/- for the development of the property as against ₹1,07,00,000/- spent by him.

2.4 The Ld.CIT(A) failed to appreciate that the remaining loan amount of ₹40.78 lakhs ad not been disbursed as on 31/3/2007 However the same has been claimed to have b en spent by the assessee and hence constitutes concealment of the income out of which the investment has been made".

3. The Brief facts of the case is that the assessee is in the business of money lending and filed return of income on 27.12.2007 declaring total income of ₹1,03,412/- for the assessment year 2007-2008 and the return of income was processed u/s.143(1) of the Act and the case was selected for scrutiny under CASS and notices

u/s.143(2) and 142(1) of the Act were issued. In compliance to notices, the Id. Authorised Representative of assessee appeared from time to time and filed information. The Id. Assessing Officer in the assessment proceedings found that assessee is deriving income from money lending business and has disclosed House property at Bangalore under Fixed Assets in Balance Sheet at ₹1,24,45,907/- as on 31.03.2007 and the value of Fixed Asset as at 31.03.2006 is ₹49,03,162/-. The Id. Assessing Officer sought clarifications on increase in value of property. The Id. Authorised Representative explained that the assessee is developing House property at Bangalore and has borrowed loans from bank being ₹1,07,00,000/- from Standard Chartered Bank and furnished copy of sanction letter dated 15.03.2007. The Id. Assessing Officer found from the loan sanction letter, the assessee alongwith three other applicants had borrowed loan and requested to produce the ownership details of property, approved plan and construction cost. On 29.12.2009, the Id. Authorised Representative produced assessee saving bank account in Karnataka Bank, Bangalore and explained that out of sanctioned amount, the bank has disbursed ₹66,21,768/- on 30.03.2007. The Id. Assessing Officer was suspicious as the assessee obtained loan from Standard Chartered Bank ₹1,07,00,000/- and disclosed in Balance Sheet but bank has disbursed ₹66,21,768/- in the previous year 2006-

2007. The Id. Assessing Officer wanted clarifications on the Balance loan amount of ₹40,78,232/-. Since there was no reply and details are not furnished, the Id. Assessing Officer made addition of ₹40,78,232/- to the returned income as unexplained investments and assessed total income ₹41,81,644/- and passed order u/s.143(3) of the Act dated 29.12.2009. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Commissioner of Income Tax (Appeals) dismissed the appeal for non prosecution and assessee has accepted the decision of the Commissioner of Income Tax (Appeals)-IV, Chennai dated 29.12.2011 and paid the disputed taxes. Subsequently, the Id. Assessing Officer initiated penalty proceedings and issued notice. In compliance to notice, the Id. Authorised Representative appeared and the case was discussed. The Id. Assessing Officer considered the findings of the assessment order and order of Commissioner of Income Tax (Appeals) in dismissing the quantum appeal. The Id. Authorised Representative reiterated the submissions of assessment and appellate proceedings and filed a detailed letter dated 22.03.2012 explaining that there is no concealment of income on the part of the assessee and assessee has fully co-operated with the Department and paid disputed taxes. But Id. Assessing Officer has not accepted the submissions as the assessee

could not prove the addition of unexplained investments in assessment proceedings or in appellate proceedings and relied on the judicial decisions and expressed categorical findings that the assessee has failed to discharge the onus placed on him to substantiate the Addition and levied minimum penalty of ₹11,73,470/-. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

5. In the appellate proceedings, the Id. Authorised Representative argued the grounds and reiterated the submissions with evidence placed in assessment and in quantum appeal and penalty proceedings. The Id. Authorised Representative further substantiated his arguments with written submissions referred at para 9 & 10 by Id. Commissioner of Income Tax (Appeals). Prime facie, the Id. Commissioner of Income Tax (Appeals) considered the findings of the Id. Assessing Officer in assessment and penalty proceedings were the Id. Assessing Officer has made an observation that the assessee could not explain the remaining loan amount of ₹40,78,232/- and raised the doubts. In the absence of any explanation by the assessee, the Id. Assessing Officer has treated the disputed amount as unexplained investments and the Id. Commissioner of Income Tax (Appeals) emphasized loan liability cannot be a source of income for

addition and is of the opinion that the levy of penalty is unwarranted and deleted the penalty referred at para 13 of his order as under:-

'13. Further, the AO has not countered the basic reasoning of the AR that the loan account with Karnataka Bank was closed out of the initial advances made by Standard Chartered Bank. The loan amount from Standard Chartered Bank of ₹1,07,00,000/- was sanctioned on 15-3-2007 for a period of 108 months and as per the AO himself an amount of ₹66,21,768/- was disbursed to the assessee on 30-8-2007 leaving aside ₹40,78,232/- which was disbursed later in the next financial year as per the terms of the loan sanction order. Hence, the remaining loan amount of ₹40,78,232/- would by no means constitute concealment of income or inaccurate particulars of income within the meaning of Sec. 271(1)(c) and hence the penalty imposed is held to be untenable, and therefore directed to be deleted''.

and allowed the appeal of the assessee. Aggrieved by the Commissioner of Income Tax (Appeals) order, the Revenue has assailed an appeal before Tribunal.

6. Before us, the Id. Departmental Representative argued that Id. Commissioner of Income Tax (Appeals) has erred in deleting the penalty without considering the facts that out of ₹1,07,00,000/- sanctioned amount only ₹66,21,768/- lakhs was credited to the assessee bank account before 31.03.2007 and the assessee could not substantiate with the source of investment of ₹40,78,232/- though the assessee has disclosed in the Balance sheet ₹1,07,00,000/-. The fact that the assessee has a existing loan and was closed after initial disbursement by the Standard Chartered Bank. The Id. Commissioner

of Income Tax (Appeals) has further erred in not appreciating the facts that remaining loan amount of ₹40,78,232/- was not disbursed before 31.03.2007, which was claimed to be spent by the assessee in the construction and prayed for set aside of the order of Commissioner of Income Tax (Appeals).

7. Contra, Id. Authorised Representative submitted the genuine facts and loans obtained by the assessee in development of House property, the Id. Assessing Officer has disallowed ₹40,78,232/- as unexplained investments as the same was not disbursed before 31.03.2007. Further to substantiate the arguments, the Id. Authorised Representative submitted copy of certificate from Karnataka Bank Ltd dated 19.02.2010 certifying ₹40,29,328/- was disbursed on 22.03.2007 and the loan account was closed alongwith the sanction copy letter of Standard Chartered Bank dated 15.03.2007, and further explained that ₹1,07,00,000/- was disbursed in two installments i.e ₹66,21,768/- was disbursed and credited to assessee's saving bank account with Karnataka Bank Ltd on 30.03.2007 and ₹40,29,328/- was disbursed by Standard Chartered Bank on 22.03.2007 and the said amount was credited to the assessee's loan account with Karnataka Bank Ltd, so total sanctioned loan amount of ₹1,07,00,000/- credited before 31.03.2007. The findings of the Id. Assessing Officer in the penalty proceedings and Revenue's arguments before the Tribunal

that Balance amount was not disbursed before 31.03.2007 is without any verification and authentic report and the assessee has substantial evidence to support the disbursement of loan amount and prayed for dismissal of appeal.

8. We heard the rival submission, perused the material on record and evidence filed. The crux of the issue in appellate proceedings which Id. Departmental Representative is pressing that the assessee has disclosed the loan from Standard Chartered Bank as on 31.03.2007 as ₹1,07,00,000/- but substantiated only to the extent of ₹66,21,768/- as referred by the Id. Assessing Officer in the assessment proceedings. The Id. Authorised Representative drew our attention to the certificate dated 19.02.2010 issued by the Karnataka Bank Ltd that ₹40,29,328/- was received from Standard Chartered Bank towards loan account of assessee on 22.03.2007 and the assessee's saving bank account was credited with ₹66,21,768/- on 30.03.2007 and supported the loan transactions with bank statements, certificates and loan against properties letter dated 15.03.2007. Further, we found that on comparison with the value of property disclosed by the assessee as on 31.03.2006 is ₹49,03,162/- and the said value as of 31.03.2007 is ₹1,24,45,907/- and the differential value of construction cost spent during the financial year

is ₹75,42,745/- and the assessee supported the cost with Karnataka Bank loan and disbursement from the Standard Chartered Bank Housing loan amount of ₹1,07,00,000/-. Further, the loan source cannot be treated as income for assessment. Therefore, we are of the opinion that Commissioner of Income Tax (Appeals) has elaborately discussed viz-a-viz considered the assessee submissions and the loan documents and allowed the appeal. We do not find any infirmity in the order of Commissioner of Income Tax (Appeals) and dismiss the grounds of the Revenue.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced on Friday, the 17th day of June, 2016, at Chennai.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:17.06.2016

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 |