

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' 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.389/Mds/2017

निर्धारण वर्ष / Assessment Year : 2011-12

Shri R. Kishore Kumar,
"Rajkumar's Cottage" Flat No.7,
4th floor, Arcadia Apartments,
Akshaya Homes, Door No.19&21,
Kamaraj Avnue, 1st Street,
Kasturba Nagar, Adyar,
Chennai - 600 020.

v. The Income Tax Officer,
Non Corporate Ward - 16(4),
Chennai - 600 034.

PAN : AAKPK 6881 B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Smt. Pushya Sitharaman, Sr. Advocate

प्रत्यर्थी की ओर से/Respondent by : Smt. Sumathi Venkatraman, JCIT

सुनवाई की तारीख/Date of Hearing : 27.03.2017

घोषणा की तारीख/Date of Pronouncement : 31.05.2017

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 15.12.2016 and pertains to assessment year 2011-12.

2. The first issue arises for consideration is addition of ₹2,92,88,600/- towards unexplained cash credit.

3. Smt. Pushya Sitharaman, the Ld. Sr. counsel for the assessee, submitted that the Assessing Officer made an addition of ₹77,72,867/- as unexplained cash credit. On appeal by the assessee, the CIT(Appeals), however, enhanced the assessment by making addition of ₹4,14,18,840/-. According to the Ld. Sr. counsel, the assessee has furnished all the details of credits before the Assessing Officer. The Ld. Sr. counsel further submitted that one Shri Nandlal Pokardas arranged funds from various persons. In fact, by letter dated 15.11.2016, Shri Nandlal Pokardas furnished the entire details to the assessee. In fact, the name and address of the creditors, PAN number and address are furnished by Shri Nandlal Pokardas to the assessee. The same were submitted before the Assessing Officer on 15.11.2016. The CIT(Appeals) without considering the details furnished by the assessee with regard to names of the creditors, PAN number, address, etc. confirmed the addition made by the Assessing Officer. Therefore, the Ld. Sr. counsel submitted that an opportunity may be given to the assessee.

4. On the contrary, Smt. Sumathi Venkatraman, the Ld. Departmental Representative, submitted that the letter of Shri Nandlal Pokardas itself was dated 15.11.2016. The Assessing Officer passed the order on 29.03.2010. Therefore, these details were not available before the Assessing Officer. This was apparently filed before the CIT(Appeals) on 15.11.2016. In fact, the CIT(Appeals) passed the order on 15.12.2016. Therefore, according to the Ld. D.R., it may not be correct to say that the details were available before the lower authorities. Since the assessee has not filed any details with regard to credits, the CIT(Appeals) found that the assessee has credit of ₹2,92,88,600/- and added the same as unexplained cash credit under Section 68 of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. D.R., the CIT(Appeals) further found that there are other credits in the name of Christo Packiadurai and R. Gopala Krishnan to the extent of ₹30 lakhs. There are other unexplained cash deposits to the extent of ₹19,50,000/-. The CIT(Appeals) also found that there was undisclosed bank transaction to the extent of ₹54 lakhs. By taking all the transactions, according to the Ld. D.R., the

CIT(Appeals) enhanced the assessment to ₹4,14,18,840/-, therefore, there is no merit in the appeal of the assessee.

5. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the letter dated 15.11.2016 said to be written by Shri Nandlal Pokardas and the assessee filed the same before the CIT(Appeals) on 15.11.2016. This contained certain names of so-called creditors, their PAN number and address. When the assessee claims that Shri Nandlal Pokardas arranged funds from these people, this Tribunal is of the considered opinion that the matter needs to be examined by the Assessing Officer. Since the assessee has furnished names and PAN numbers of respective persons, it is obligatory on the part of the Assessing Officer to examine the respective creditors and find out whether they in fact advanced money to the assessee. It is also necessary to examine whether any special reason for advancing the funds to the assessee. Since such an exercise was not done, this Tribunal is of the considered opinion that the matter needs to be re-examined by the Assessing Officer. Accordingly, the orders of the lower authorities are set aside and the entire addition made by the

Assessing Officer and as enhanced by the CIT(Appeals) is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the issue afresh and examine the creditors, including the middleman Shri Nandlal Pokardas, and thereafter decide the issue afresh, in accordance with law, after giving a reasonable opportunity to the assessee.

6. It is made clear that when the assessee claims cash credit or loan, it is obligatory on the part of the assessee to establish the identity of the creditors, creditworthiness of creditors and genuineness of transaction. The Assessing Officer also needs to summon those creditors and examine them in order to establish the fact of advancing loan to the assessee.

7. With the above observation, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 31st May, 2017 at Chennai.

sd/-

(अब्राहम पी.जॉर्ज)

(Abraham P. George)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 31st May, 2017.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

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.