

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI

श्री चंद्र पूजारी, लेखा सदस्य एवं
श्री वी. दुर्गा राव, न्यायिक सदस्य के समक्ष
BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER &
SHRI V. DURGA RAO, JUDICIAL MEMBER
आयकर अपील सं./ **I.T.A. No.2667/Mds/2014**
(निर्धारण वर्ष / Assessment Year : 2010-2011)

The Deputy Commissioner of Income Tax,
Company Circle V (4),
Chennai 600 034

M/s. R.R. Constructions and
Vs Infrastructure Pvt. Ltd,
No.1, Dorai Arasan Street,
Saligramam,
Chennai 600 093.

(अपीलार्थी/Appellant)

[PAN:AADCR 6735R]
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri. S. Dasgupta, IRS, JCIT.
प्रत्यर्थी की ओर से / Respondent by : None

सुनवाई की तारीख/Date of hearing : 27.04.2015.
घोषणा की तारीख /Date of Pronouncement : 30.04.2015

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

This appeal by Revenue is directed against the order of the
Commissioner of Income Tax (Appeals)-V, Chennai , dated 21.07.2004,
for the assessment year 2010-11.

2. None appeared for assessee inspite of issue of notice for hearing. We take up the appeal to adjudicate after hearing the Id. Departmental Representative.

3. The first ground for our consideration is with regard to deletion/addition made u/s.40(a)(ia) of the Act.

3.1 The Assessing Officer disallowed a sum of ₹1,11,507/-, 34,77,878/-, ₹1,65,450/- and ₹25,55,982/- respectively u/s.40(a)(ia) of the Act being payments made by the assessee to the sub-contractors namely M/s.Shakthi Enterprises, M/s.Piyus Enterprises, M/s.Raman Associates and M/s.Phita Site on the ground that no TDS was made by the assessee as required u/s.194C of the Act. On appeal, the Commissioner of Income Tax (Appeals) deleted the same for the reason that provisions of section 40(a)(ia) of the Act are applicable only to the amount which was outstanding at the close of the accounting year. In the assessee's case, it was not outstanding as on the last day of previous year. Being so, provisions u/s.40(a)(ia) of the Act are not applicable and placing reliance on the order of the Special Bench in the case of *Merilyn Shipping & Transports Vs. Addl. CIT (2012) 136 ITD 23(Visakhapatnam)*, the Commissioner of Income Tax (Appeals) deleted the addition. Against this, the Revenue is in appeal before us.

4. We have heard the Id. Departmental Representative and perused the material on record. In this case, the Commissioner of Income Tax (Appeals) deleted the addition made u/s.40(a)(ia) of the Act by placing reliance on the Special Bench order of the Tribunal in the case of *Merilyn Shipping and Transports vs. ACIT (2012) 136 ITD 23 (Visakhapatnam)* and judgment of Gujarat High Court in the case of *CIT vs. M/s. Vector Shipping Services (P) Ltd in ITA No.122 of 2013 dated 09.7.2013*. However, there is no findings given by the Commissioner of Income Tax (Appeals) whether the impugned amount is outstanding at the end of the close of the previous year relevant to the assessment year in the name of these parties or not. Hence, we are inclined to remit the issue back to the file of the Assessing Officer to find out from the balance sheet/schedule of sundry creditors whether the impugned amount is outstanding at the end of the close of the previous year relevant to the assessment year in these parties name. With these observations, we are remitting the issue back to the file of the Assessing Officer for fresh consideration.

5. The next ground for our consideration is with regard to invoking of provisions u/s.40A(3) of the Act.

5.1 The brief facts of the case are that the Assessing Officer disallowed sum of ₹2,53,894/-, ₹8,22,960/- and ₹8,87,681/-

respectively made by the assessee to M/s. Sri Kripa Highways, M/s. Udhan Krushi Services and M/s. Ambika Engineering Works u/s. 40A(3) of the Act. The Assessing Officer observed that the payments were made by the assessee in a remote place where there is no banking facility and the assessee had to make the payments in cash to M/s. Sri Kripa Highways, M/s. Udhan Krushi Services and M/s. Ambika Engineering works towards transport charges of bringing the material to the site and towards crushing charges of stone for construction purpose and these payments were made on the request of the transport operators to be paid by cash since there is no banking facility in that remote place. According to the Assessing Officer, this instance of payments would not fall under the exempted provisions of Rule. Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) was of the view that this instance of payment would fall under the exempted provisions of Rule 6DD and deleted the additions made by the Assessing Officer. Against this, the Revenue is in appeal before us.

6. We have heard the Id. Departmental Representative. The Commissioner of Income Tax (Appeals) deleted the additions in this case on the reason that there is no banking facility and payments

were paid in remote places. There is no mention about the place and date where the payments were made. Hence, it is not possible for us to express any opinion on the applicability of Rule 6DD. Hence, we remit the issue back to the file of the Assessing Officer to reconsider the issue after bringing all relevant facts to decide the issue. This issue is remitted back to the file of the Assessing Officer for fresh consideration.

7. The next ground is with regard to deletion/addition of ₹6,88,800/- made u/s.68 of the Act.

7.1 The facts of the case are that the Assessing Officer disallowed an amount of ₹6,88,800/- on account of a negative cash balance of ₹6,88,800/- for the whole year thereby considered the same as deemed income u/s.68 of the Income Tax Act, and added to the income of the assessee. Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). It was the contention of the assessee before the Commissioner of Income Tax (Appeals) that the additions of the negative cash balance of ₹6,88,800/- u/s.68 of the Act by stating that Sec.68 would be applicable only if credits are found in the books of an assessee and the negative cash balance does not represent credits. The Commissioner

of Income Tax (Appeals) observed that once it is negative cash balance the same cannot be treated as unexplained cash credit u/s.68 of the Act and hence no disallowance can be made as there is no unexplained credit as per the books of accounts of the assessee. The Commissioner of Income Tax (Appeals) thus deleted the addition. Against this, the Revenue is in appeal before us.

8. The Id. Departmental Representative submitted that there is negative cash balance of ₹6,68,800/-. The explanation given by the assessee is not satisfactory. Being so, the income of the assessee should be treated under Rule 69(C) of the Act rather than Sec.68 of the Act and mentioning of wrong section cannot be considered as fatal in view of the provisions of sec.292B of the Act.

9. We have heard the Id. Departmental Representative. In this case there is actually negative cash balance in the books of accounts of the assessee during the accounting year relevant to the assessment year. It is not in the normal course of business and it is very strange event. Neither law nor human experience guarantee that assessee can make payments with negative cash balance. The assessee is bound to explain with material evidence suggesting availability of cash and there is no unaccounted or concealment income. In the present case the

assessee not able to explain with reference to the negative cash balance in the books of accounts. The assessee's only argument before the Commissioner of Income Tax (Appeals) was that there is wrong application of section 68. In our opinion, addition to be made u/s.69C of the Act. The mentioning of Sec.68 by Assessing Officer is not fatal and it cannot make negative cash balance as positive. In these circumstances, negative cash balance is to be considered as unexplained income and addition to be made towards this account as payments were made by unexplained sources. Accordingly, we sustain the addition.

10. In the result, the appeal of the Revenue in ITA No.2667/Mds/2014 is partly allowed for statistical purposes.

Order pronounced on Thursday, the 30th day of April, 2015, at Chennai.

Sd/-

(वी. दुर्गा राव)

V. DURGA RAO

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई/Chennai.

दिनांक/Dated:30.04.2015.

KV

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.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य/ ACCOUNTANT MEMBER

