

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री चंद्र पूजारी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.296/Mds/2015

निर्धारण वर्ष / Assessment Year : 2007-08

Shri V. Babu,  
7, R.K. Nagar  
2<sup>nd</sup> Cross Street, Mandaveli,  
Chennai - 600 028.

v. The Deputy Commissioner  
of Income Tax,  
Non-Corporate Range 3,  
Chennai - 600 034.

PAN : AAKPB 2530 Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. N.V. Balaji, Advocate

प्रत्यर्थी की ओर से/Respondent by : Sh.S. Balasubramanian, CIT

सुनवाई की तारीख/Date of Hearing : 15.07.2015

घोषणा की तारीख/Date of Pronouncement : 21.08.2015

### **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)-V, Chennai, dated 07.10.2014 and pertains to assessment year 2007-08.

2. The only issue arises for consideration is with regard to addition of ₹10 Crores under Section 68 of the Income-tax Act, 1961 (in short 'the Act'). The assessee has also raised a ground with regard to reopening of assessment under Section 147 of the Act.

3. Shri N.V. Balaji, the Ld.counsel for the assessee, submitted that the assessee is an individual engaged himself in the business of civil contract in the name and style of "Babu Associates". During the assessment year under consideration, a sum of ₹10 Crores was credited in the bank account of the assessee on 09.02.2007. The assessee explained before the Assessing Officer that one Shri K.R. Elangovan, an old friend of him, contacted two days before 9.2.2007 over phone and clarified whether the assessee would be interested in accommodating transaction of ₹10 Crores. The said Shri Elangovan has also clarified that the amount should be transferred immediately to another account for which the assessee would be paid a commission of ₹3 lakhs. The assessee agreed accordingly and an amount of ₹10 Crores was transferred to the assessee's account in State Bank of India by M/s Commercial Builders Pvt. Ltd. The Ld.counsel clarified that the assessee has no relationship or any business connection with M/s Commercial Builders Pvt. Ltd. Immediately, after transfer of ₹10 Crores, Shri K.R. Elangovan

contacted the assessee and gave his account number to transfer the funds immediately. Accordingly, the assessee issued a cheque with written instruction to transfer the funds by RTGS to the extent of ₹9,97,01,500/-.

4. The Ld.counsel for the assessee further submitted that the Assessing Officer examined Shri K.R. Elangovan on 12.03.2010 and Shri K.R. Elangovan told the authorities that he does not know anything about the transaction and he does not have any role in this transaction. Referring to a copy of the sale deed, which is available at page 17 of the paper-book, the Ld.counsel submitted that "Babu and Associates" was shown as partnership firm represented by one Shri C. Karthikeyan. It was also described as "Confirming Party". The said sale deed was executed in favour of Commercial Builders Private Limited. Referring to payment schedule, which is available at page 25 of the paper-book, the Ld.counsel submitted that the sale consideration of the property was ₹14 Crores out of which, ₹ 4 Crores were paid by way of demand draft to Shri M.P. Samsudheen, who is the power of attorney executor of sale deed, and another sum of ₹10 Crores was transferred by way of RTGS to Account No.10624892066 with State Bank of India, CIT Nagar Branch, Chennai, on 09.02.2007 in favour of M/s Babu and

Associates. The Ld.counsel submitted that the assessee is not doing business as partnership concern in the name of “Babu Associates”, and what was referred as “Babu and Associates” is a partnership firm represented by Shri C. Karthikeyan. Therefore, the assessee, according to the Ld. counsel, is nothing to do with this transaction. On a query from the Bench, whether the Account No. mentioned in the sale deed, held with State Bank of India, CIT Nagar Branch, belongs to the assessee or anybody else, the Ld.counsel had fairly submitted that the bank account belongs to the assessee. The Ld.counsel has also clarified that the amount of ₹10 Crores by RTGS were credited to the account of the assessee. However, the Ld.counsel clarified that the assessee does not know who is Shri Karthikeyan. The Ld.counsel has also clarified that the land, which was subject matter of transfer by the sale deed, does not belong to the assessee. When a query was raised as to when the land does not belong to the assessee, under what capacity a sum of ₹10 Crores was credited in the account of the assessee, the Ld.counsel submitted that the assessee does not know under what capacity it was credited. The Ld.counsel has also clarified that there is no partnership firm “Babu and Associates” in existence. Therefore, according to the Ld. counsel, “Babu and Associates” is a fictitious partnership firm.

5. Shri N.V. Balaji, the Ld.counsel for the assessee, further submitted that on verification, the Assessing Officer found that an amount of ₹9,97,01,500/- was transferred to Mohan Lal Jewellers, 139/141, NSC Bose Road, Chennai. The revenue authorities have also examined Mohan Lal Jewellers. The revenue authorities found that gold bullion was delivered to the assessee on receipt of ₹9,97,01,500/-. Referring to the sworn statement recorded from Mohanlal Khatri, the proprietor of Mohan Lal Jewellers, a copy of which is available at page 5 of the paper-book, the Ld.counsel submitted that as per the statement of Shri Mohanlal Khatri, the gold was delivered to Babu and Associates. In fact, the assessee has nothing to do with Babu and Associates. According to the Ld. counsel, since the money was received by the assessee through banking channel and it was immediately transferred to Mohan Lal Jewellers for a commission of ₹3 lakhs, the entire addition cannot be sustained. The Ld.counsel has also clarified that it cannot be subjected to capital gains also since the land in question does not belong to the assessee. The Ld.counsel clarified that the assessee may not have any objection to bring the amount for capital gain tax in respect of the owners of the land. However, the amount of ₹10

Crores cannot be subjected to tax in the hands of the present assessee.

6. On the contrary, Shri S. Balasubramanian, the Ld. Departmental Representative, submitted that admittedly a sum of ₹10 Crores was credited to the bank account of the assessee. Though a reference was made in the sale deed that Babu and Associates was represented by Shri C. Karthikeyan, the Account No. referred in the sale deed belongs to the assessee. In fact, ₹10 Crores were credited to the account of the assessee. Out of the said amount, a sum of ₹9,97,01,500/- was transferred to Mohan Lal Jewellers for purchase of gold bullion. Therefore, the entire money was received by the assessee and utilized by the assessee. Referring to the assessment order, the Ld. D.R. submitted that the onus is on the assessee to explanation how the money, which is credited in his account, does not belong to him. The claim of the assessee that he is eligible only for a commission of ₹3 lakhs, is not substantiated since the entire money was transferred to Mohan Lal Jewellers for purchase of jewellery. Therefore, the CIT(Appeals) has rightly confirmed the addition made by the Assessing Officer.

7. We have considered the rival submissions on either side and perused the relevant material on record. Admittedly, a sum of ₹10

Crores was credited in the bank account of the assessee in the Account No.10624892066 held in State Bank of India, CIT Nagar Branch, Chennai, on 09.02.2007. Apparently, this amount was transferred on the basis of copy of the sale deed, which is available at page 17 of the paper-book. The fact remains that in order to mislead the authorities, "Babu and Associates" was described as a partnership firm represented by Shri Karthikeyan. However, the bank account of the assessee is correctly mentioned in the payment schedule. In fact, a sum of ₹10 Crores was credited in the account of the assessee. The assessee claims that it was transferred to Mohan Lal Jewellers on the instruction of Shri Elangovan and he retained only a sum of ₹3 lakhs. On examination, Shri Elangovan disowned the entire transaction and he went to the extent of saying that he does not know anything at all. The said amount was transferred to Mohan Lal Jewellers and owner of the Mohan Lal Jewellers, on examination, clarified that he delivered gold bullion on receipt of ₹9,97,00,000/-. Shri Mohanlal Khatri, the owner of Mohan Lal Jewellers clarified that the gold bullion was delivered to Babu and Associates. Now the assessee contends that there is no partnership firm by name "Babu and Associates" and it is a fictitious concern. The fact remains that the assessee transferred the funds of ₹9.97,00,000/-. Gold bullion was delivered by Mohan Lal

Jewellers on receipt of funds. Therefore, the assessee in fact received the gold bullion on payment of ₹9,97,00,000/-. In the sale deed in which the payment was received, was shown as if the “Babu and Associates” is “Confirming Party”. The fact remains that the assessee is not the owner of the land and he has nothing to do with the land which was subject matter of transfer by the sale deed dated 27.02.2007. Therefore, it is for the assessee to explain why an amount of ₹10 Crores should not be treated as his income. The explanation of the assessee that he was accommodating on the request of Shri Elangovan for a commission ₹3 lakhs is not substantiated. The material available on record suggests that the assessee has received the gold bullion to the extent of ₹9,97,00,000/-. Therefore, this Tribunal do not find any infirmity in the order of the lower authority treating the entire amount of ₹10 Crores as income of the assessee. This Tribunal do not find any reason to interfere with the orders of the lower authorities.

8. Even though the assessee has raised a ground regarding reopening of assessment, no argument was advanced during the course of hearing either by the assessee or by the Revenue.

9. On going through the orders of the lower authorities, it appears that the assessee filed a return of income on 13.11.2007

declaring a total income of ₹16,27,456/-. Initially, the return was processed under Section 143(1) of the Act. Consequent to a survey under Section 133A of the Act, the assessment was reopened by issuing a notice on 12.02.2010 and the same was completed on 31.12.2010. Consequently, the case was again reopened by issuing a notice under Section 148 of the Act on 22.07.2011. Since the Assessing Officer has not considered the credit of ₹10 Crores in the bank account and it is also not the case of the assessee that there was change of opinion, this Tribunal is of the considered opinion that the Assessing Officer has rightly reopened the assessment. We do not find any reason to interfere with the order of the lower authority and accordingly, the same is confirmed.

10. In the result, the appeal of the assessee is dismissed.

Order pronounced on 21<sup>st</sup> August, 2015 at Chennai.

sd/-  
(चंद्र पूजारी)  
(Chandra Poojari)  
लेखा सदस्य/Accountant Member

sd/-  
(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)  
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 21<sup>st</sup> August, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-V, Chennai
4. आयकर आयुक्त/CIT-V, Chennai-34
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.