

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकरअपीलसं./I.T.A.Nos. 1341 to 1344/Mds/2016
(निर्धारणवर्ष / Assessment Years: 2005-06 to 2008-09)

The Deputy Commissioner of Income Tax, Corporate Circle – 5(2), Chennai	Vs	M/s. Prajit Foundation Private Limited, No.33, Shafee Mohammed Road, Rutland Towers, IV Floor, Greems Road, Chennai – 600 006.
		PAN: AACCP8238Q
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri K.N. Dhandapani, JCIT
प्रत्यर्थीकीओरसे/Respondent by	:	Ms. S. Deepa, CA

सुनवाईकीतारीख/Date of hearing	:	03.02.2017
घोषणाकीतारीख /Date of Pronouncement	:	25.04.2017

आदेश / ORDER

Per A. Mohan Alankamony, AM:-

These appeal by the Revenue are directed against the common order passed by the learned Commissioner of Income Tax (Appeals)-3, Chennai dated 26.02.2016 in ITA No. 51/2013-14, 146/2014-15, 147/2013-14 & 148/2013-14/CIT(A)-3 passed U/s.250(6) r.w.s., 143(3) & 147 of the Act for the assessment years 2005-06, 2006-07, 2007-08, & 2008-09 respectively.

2. The Revenue has raised several grounds in its appeals, however the cruxes of the issues are stated herein below for adjudication:-

i. The Ld.CIT(A) has erred in deleting the addition for the following assessment years:-

Sl.No.	Assessment Year	Additions (Rs.)
1.	2005-06	3,29,74,250
2.	2006-07	11,94,01,134
3.	2007-08	20,26,94,754
4.	2008-09	1,00,00,000
	TOTAL	36,50,70,134

- as against the additions made by the Ld.AO towards undisclosed income on scrutiny assessment U/s 143(3) r.w.s 147 pursuant to survey U/s.133A of the Act detailed herein below:-

Sl.No.	Assessment Year	Additions (Rs.)
1.	2005-06	3,29,74,250
2.	2006-07	11,94,01,134
3.	2007-08	20,26,94,754
4.	2008-09	12,98,65,271
	TOTAL	48,27,44,657

- ii. The Ld.CIT(A) has erred in deleting the addition made by the Ld.AO U/s.41 of the Act, to the tune of Rs.16,52,82,392/- for the AY 2008-09 without considering the facts that it was only cessation of trading liability since the obligation to repay the loan had ceased to exist.
3. The brief facts of the case are that the assessee is a private limited company engaged in the activity of letting out buildings for spiritual discourses and meditation. The assessee company had filed its return of income for the assessment year 2005-06 and 2006-07 declaring Nil income and for the assessment year 2007-08 declaring Rs.4,55,918/- as its income. However all these returns were filed beyond the time limit prescribed U/s.139(1) & 139(4) of the Act, hence they were treated as non-est and was not acted upon by the Revenue. For the assessment year 2008-09 the assessee had filed its return of income on 26.09.2008 admitting income of Rs.79,79,658/- and the assessment was completed U/s. 143(3) of the Act on 08.09.2010 wherein the Ld.AO made addition of Rs.3,98,65,271/-. Subsequently a survey was conducted in the

assessee's premises on 29.03.2012 and 30.03.2012. Consequent to the findings in the course of survey that income chargeable to tax has escaped assessment, the Ld.AO reopened the assessment for the assessment years 2005-06 to 2008-09. During the course of survey it was revealed from the computer installed at the assessee's premises that the assessee had received donations from various devotees against which receipts were drawn out and not from other charitable trust as claimed by the assessee. On further examination it was found that the receipts were actually prepared and signed by two employees of the assessee company from the year 2006 onwards. When queried, Shri N.K.V. Krishna who owns 50% of the shares of the company admitted vide statement recorded at the time of reassessment proceedings on 27/11/2012 that the amount of Rs. 48,27,44,657/- is the undisclosed income of the assessee company as detailed herein below:-

Sl.No.	Assessment Year	Additions (Rs.)
1.	2005-06	3,29,74,250
2.	2006-07	11,94,01,134
3.	2007-08	20,26,94,754
4.	2008-09	12,98,65,271
	TOTAL	48,27,44,657

However on 28/11/2012 Shri N.K.V. Krishna retracted the admission made by him on 27/11/2012 about the undisclosed income mentioned herein above. It was explained by Shri N.K.V. Krishna that the aforesaid amount were received from M/s. Anugraha Trust and from M/s. Nachipur Educational Trust both registered U/s.12A(a) of the Act, who had canvassed donation from various individual devotees. But the Ld.AO rejected the arguments advanced by the assessee's representatives based on the genuineness & creditworthiness of the donors and made addition for all the assessment years detailed herein above. On appeal the Ld.CIT(A) deleted the addition for the AY 2005-06 Rs.3,29,74,250/-, for AY 2006-07 Rs.11,94,01,134/-, for AY 2007-08 Rs.20,26,94,750/- and for the AY 2008-09 Rs.1,00,00,000/- by relying on the decision of the Chennai Bench of the Tribunal in ITA Nos.2063,2064,2065,2066 & 2067/Mds/2014 for the AYs 2004-05 to 2008-09 in the case of DDIT(Exemptions), Chennai vs. M/s. Nachipur Educational Trust and in the case DDIT(Exemptions), Chennai vs. M/s. Anugraha Trust in ITA No.2173/Mds/2012 for the AY 2004-05, ITA Nos.2068,2069,2070&2071/Mds/2014 for the AYs 2005-06 to

2008-09. The relevant portion of the order of the Ld.CIT(A) is reproduced herein below for reference:-

Page 55 to 59:*"It was further argued by the AR of the appellant that the donations received under discussion by the appellant company are in fact have been received from the above mentioned two trusts but not directly from the devotees. It is also said that all the transactions pertain to M/s. Nachipur Educational Trust and M/s. Anugraha Trust are reflected in their respective Balance Sheets for the relevant AYrs. These trusts are assessed to tax and in fact assessments for all these AYrs were completed by the concerned AO. The AO of these trusts have also made an addition which was allowed by the first appellate authority and confirmed by the Hon'ble ITAT.*

In support of the above claim of the AR of the appellant, he has filed a copies of CIT(A)'s orders in the case of M/s. Anugraha and M/s. Nachipur trust and also a copy of consolidated order of Hon'ble ITAT 'C' Bench Chennai vide ITA Nos. 2063, 2064, 2065, 2066 & 2067/Mds/2014, for A.Yrs 2004-05 to 2008-09 in the case of DDIT (Exemptions) Chennai vs. M/s. Nachipur Educational Trust, ITA NO. 2173/Mds/2012 for A.Y. 2004-05, ITA No. 2068, 2069, 2070 & 2071/Mds/2014 for A.Yrs . 2005-06 to 2008-09 in the case of DDIT(Exemptions) Chennai vs. M/s. Anugraha. The relevant part of Hon'ble Income Tax Appellate Tribunal, C Bench Chennai, combined order in the above mentioned two cases, is reproduced as under:

"We have considered the rival submissions on either side and perused the relevant material on record. Admittedly, both the assessee-trusts are registered under Section 12AA of the Act. Both the assessees claim exemption under Section 11 of the Act. However, the Assessing Officer denied the same on the ground that there was violation of Section 13(1)(d) of the Act. In other words, the trust funds were diverted for interested person as provided under Section 13(1)(d) of the Act. We have gone through the orders of the lower authorities and material available on record. The funds of the trusts

were advanced to two companies, namely, M/s Prajit Foundation Pvt. Ltd. and M/s Golden Shelters Pvt. Ltd. for construction of meditation hall at Varadalapalam Mandal, Chittoor District, Andhra Pradesh. One Shri N.K.V. Krishna and his wife Smt. K. Preethi own the entire shares in M/s Prajit Foundation Pvt. Ltd. and M/s Golden Shelters Pvt. Ltd. Shri N.K.V. Krishna is none other than the son of Shri V. Vijaykumar, who was the trustee of both the trusts. However, the said Shri V. Vijaykumar relinquished his trusteeship on and from 08.06.1991. Therefore, for the assessment years under consideration, the said Shri V. Vijaykumar has no relationship with the trusts. The question arises for consideration is when Shri V. Vijaykumar is no longer a trustee of the assessee-trusts, can the funds be advanced to the companies in which the son of Shri V. Vijaykumar and his daughter-in-law are holding shares would amount to diversion of funds to interested person? This Tribunal is of the considered opinion that the moment Shri V. Vijaykumar relinquished his trusteeship, it cannot be said that Shri V. Vijaykumar's son and daughter-in-law are interested persons in the trusts. Therefore, this Tribunal is of the considered opinion that there is no violation of Section 13(1)(d) of the Act.

Now coming to corpus donation, the assessee claim that all the details were furnished before the lower authorities. From the material available on record, it appears that all the details were not furnished. Though certain details were furnished, it is a fact that complete details were not furnished before the lower authorities. Therefore, part of the so-called corpus donation has to be treated as income of the assessee-trusts. However, it is not in dispute that the entire corpus donation and other donations were used for the construction of meditation hall at Varadalapalam Mandal. Therefore, even if the claim of the assessee with regard to receipt of corpus donation is disbelieved, then the so-called donation has to be treated as income of the assessee and it is to be allowed as application for creating infrastructure. Since admittedly the donations were used for construction of meditation hall, this Tribunal is of the considered opinion that the entire income has to be held as application of income. Therefore, the CIT(Appeals) has rightly allowed the claim of the assessee.

Now coming to construction of meditation hall by two companies, the contention of the Ld. D.R. appears to be that the meditation hall forms part of the asset of the two companies. Therefore, it cannot be created as infrastructure of the assessee trusts. The fact that the meditation hall was handed over to the assessee-trusts is not in dispute. The property tax assessment by local body also stands in

the name of two assessee-trusts. Therefore, this Tribunal is of the considered opinion that when the two companies constructed the meditation hall and handed over the same to the assessee-trusts and the property tax assessment stands in the name of assessee-trusts, the assesseees are the owners of the property under the provisions of Income-tax Act. Under the Indian law, a land can belong to one person and the building can be owned by other person. In the case before us, the land in which the meditation hall was constructed belongs to a different person, but the building was constructed by the two companies on the funds advanced by the assessee-trusts. After construction, the building was handed over to the assessee-trusts. Therefore, there was transfer of property within the meaning of Section 2(47) of the Act. Under the common law, registration of document is required when the property value exceeds more than `100/-. However, under Section 2(47) of the Act, registration of the document is not mandatory. When the physical possession of the building is handed over to the assessee-trusts and allowed the assessee-trusts to enjoy the same, this Tribunal is of the considered opinion that the assessee-trusts became the owners of the meditation hall. Therefore, for all practical purpose, the assessee trusts become the owner of the meditation hall constructed by the two companies on the funds advanced by the assessee-trusts. The treatment of the assessee in the accounts of the companies or trusts cannot override the provisions of Income-tax Act. In other words, the provisions of Income-tax Act would prevail over the treatment of the assessee in the accounts. Therefore, this Tribunal is of the considered opinion that there is no violation of any of the provisions of Sections 11, 12 & 13 of the Act. This Tribunal is of the considered opinion that since the assessee-trusts applied their funds for establishing an infrastructure in furtherance of their object, namely, construction of meditation hall, and the meditation hall in fact was completed and the possession was handed over to the assessee-trusts, the CIT(Appeals) has rightly allowed the claim of the assesseees under Section 11 of the Act. This Tribunal do not find any infirmity in the orders of the CIT(Appeals), accordingly, the same are confirmed."

On perusal of order of the Hon'ble ITAT Chennai C bench order, it is found that Tribunal has upheld the contentions of appellant company. Needless to say that Hon'ble ITAT has given fact finding in so far as source, genuineness and creditworthiness of the two trusts namely M/s. Anugraha Trust and M/s. Nachipur Educational trust It has also given a categorical finding that

funds have been advanced to the appellant company by the two trusts for construction of meditation hall, the meditation hall has been transferred to the trusts after completion of construction and subsequently leased out the same to the appellant company. At the cost of repetition, the relevant part of the order is reproduced hereunder:

"We have gone through the orders of the lower authorities and material available on record. The funds of the trusts were advanced to two companies, namely M/s. Prajit foundation Pvt. Ltd. and M/s. Golden Shelters Pvt. Ltd. for construction of meditation hall at Varadalapalam Mandal, Chitoor District, Andhra Pradesh"

It is observed from the order of CIT (A) and Hon'ble ITAT that the receipts stated to have been received by the appellant company have been considered in the respective trusts hands in respective A.Yrs and taxed if any. The balance sheet of the appellant company as on 31.03.2008 is also showing that meditation hall and other assets to the tune of Rs 43,25,35,107. In view of the finding of Hon'ble ITAT, I am left with no option except to follow the Hon'ble ITAT order. Before me, AR of the appellant has filed balance sheets of both the trusts for the relevant A.Yrs. 2005-06 to 2008-09. I have perused Balance sheet in respect of each A.Y and found that the amounts stated to have been received from these two trusts which is given herein above have been shown as infrastructure development fund in respective Balance sheet for all the A.Yrs 2005-6 to 2008-09. Since, identity, creditworthiness and genuineness of the two trusts have been accepted by concerned CIT(A) and Hon'ble ITAT. I hold that said funds have come from two trusts namely M/s. Nachipur Educational Trust and M/s. Anugraha Trust. However keeping in view of appellant's disclosure at the time of survey, nature of transactions, relationship between the two trusts, the appellant company, CIT(A)'s and Hon'ble ITAT order in the case of two trusts and appellant had already admitted an paid tax under the head other sources amounting to Rs.747,35,405. I confirm additionally an amount of

Rs.7,00,00,000 for want of details. These confirmed additions should be considered for A.Y. 2008-09. Respectfully following Hon'ble ITAT's order, I direct the Assessing Officer to delete the additions made in respect of all the A.Yrs i.e 2005-06 to 2008-09 as under:

For A.Y. 2005-06 an amount of Rs.3,29,74,250, for A.Y. 2006-07 an amount of Rs.11,94,01,134, for A.Y. 2007-08 an amount of Rs.20,26,94750 and for A.Y.2008-09 an amount of Rs.1,00,00,000.”

4. Before us, the Ld.DR argued in support of the Ld.AO's Order while as the Ld.AR relied on the order of the Ld.CIT(A) and pleaded that the same may be upheld.

5. We have heard the rival submissions and carefully perused the materials available on record produced before us. The Ld.CIT(A) has arrived at the above decision in favour of the assessee only based on the findings of the Chennai Bench of the Tribunal that the creditworthiness, genuineness and source of the amount received by M/s. Anugraha Trust and M/s. Nachipur Educational Trust as donation which was further advanced to the appellant company for construction of meditation hall is bonafide and the land along with the building/meditation hall is owned by the Trusts and not by the assessee company. Therefore we do

not find any reason to interfere with his orders. **Accordingly Ground No.i is disposed off in favour of the assessee.**

6. Ground No.ii: Addition of Rs.16,52,82,392/- towards remission of liability:-

During the course of scrutiny assessment, it was opined by the Ld.AO that the assessee had transferred unsecured loan standing in the name of Shri N.K.V. Krishna Rs.16,52,82,392/- as on 01.04.2007 to Reserves & Surplus. Since there was no obligation to repay the loan the Ld.AO treated the same as donation received during the year. Further the assessee had also not clarified to the query raised by the Ld.AO during the course of assessment proceedings. Hence the Ld.AO presumed that the assessee had no objection to the proposal for making addition of Rs.16,52,82,392/- by invoking the provisions of Section 41 of the IT Act. During the appellate proceedings the Ld.AR had submitted before the Ld.CIT(A) as follows:

- 1) The amount of Rs.16,52,82,392/- was received from Shri N.K.V. Krishna as unsecured loan by the assessee.
- 2) During the relevant assessment year the same was transferred to infrastructure development fund.

- 3) However the fact remains that the loan amount is to be repaid to Shri N.K.V. Krishna and accordingly the same was shown as debtors in the books of Shri N.K.V. Krishna.
- 4) Therefore there was no remission of liability by the creditor Shri N.K.V. Krishna and hence provisions of Section 41(1) of the Act cannot be invoked.

After analyzing the reply of the Ld.AR and verifying the facts of the case, the Ld.CIT(A) directed the Ld.AO to delete the addition of Rs.16,52,82,392/- made by invoking the provision of Section 41 of the Act by observing as under:

Page 52 to 53: On consideration of stand of both the sides, I found that AR of the appellant arguments has force. Admittedly the amount of Rs.16,52,82,392 is received as unsecured loan from Mr.NKV Krishna, who is a director and shareholder of the appellant company. This amount was given to the appellant company by way of cheque and same is reflected in the balance sheet of appellant company as well as in the balance sheet of Shri NKV Krishna. I have gone through the return of income of Shri NKV Krishna and found that an amount of Rs.15,52,82,392 is found to have been shown under the head investment in his balance sheet as on 31.03.2007. However, details filed by the appellant company with regard to unsecured loan received from Shri NKV Krishna at Rs.16,52,82,392, which is inclusive of Rs.1,00,000 given during the F.Y. 2007-08 relevant to A.Y. 2008-09. I also agree with the AR of the appellant that unsecured loan is not a trading liability, therefore, section 41(1) is not applicable in the appellant's case. In this regard, it is

appropriate to reproduce part of sub section 1 of section 41 which is as under:

"[(1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently during any previous year"

Needless to say that amount under discussion should have been made either deduction or allowance in any A.Y. which subsequently has come to the notice of the AO as cessation of trading liability, then, the said amount can be brought to tax under section 41. In the appellant case, it is neither a deduction nor allowance made in any A.Y, therefore, I hold that A.O has wrongly invoked section 41 in the appellant's case.

Further, appellant company is showing Shri NKV Krishna as creditor in its books of account. It is also a fact that Shri NKV Krishna is still showing in his books, as an investment. In view of the above discussion I hold that there is no cessation of liability by Shri NKV Krishna. Further it is noticed that this amount has been brought forward from 31.03.2007. Therefore AO is directed to delete an amount of Rs.16,52,82,392. All ground taken by the appellant are allowed."

7. Since the Ld.CIT(A) after verifying the facts has made a categorical finding that Shri N.K.V. Krishna has continued to treat the assessee company as his debtor, we do not find any merits in the order of the Ld.AO for making the addition invoking the provisions of Section 41(1) of the Act. Before us the Ld.DR has

also not proved the facts otherwise than what was held by the Ld.CIT(A). Therefore we do not find it necessary to interfere with the order of the Ld.CIT(A).

8. In the result, all the appeals of the Revenue are dismissed.

Order pronounced in the court on the 25th April, 2017.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(Duvvuru RL Reddy)

न्यायिक सदस्य /Judicial Member

Sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 25th April, 2017

JR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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