

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" 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.1314/Mds/2015.

निर्धारण वर्ष /Assessment year : 2008-2009

Shri. P. Ganesan,
No.53, Satchiapuram Road,
Thiruthangal,
Sivakasi 626 130

Vs. The Deputy Commissioner of
Income Tax,
Central Circle III,
Madurai

[PAN ABYPG 3315R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri. V. Rajasekaran, C.A.

प्रत्यर्थी की ओर से /Respondent by

: Shri.P. Radhakrishnan, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 05-10-2015

घोषणा की तारीख /Date of Pronouncement

: 16-10-2015

आदेश / ORDER

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal is filed by the assessee against the order of the
Commissioner of Income Tax (Appeals)-19, Chennai dated 25.02.2015
in ITA No.578/14-15 for the assessment year 2008-09 passed

u/s.143(3) r.w.s. 153A and 250 of the Income Tax Act (in short "the Act").

2. The assessee has raised only one substantive ground of Addition of advance of ₹5 lakhs to Shri. V. Kannan on 28.03.2008 as per the agreement which was wrongly debited to third party account in the books.

3. The brief facts of the case are that the assessee is an individual and partner of M/s. Sony group concerns. Search operations u/s.132 of the Act was conducted in M/s. Sony Fireworks Private Limited, the main group concern at Sivakasi on 21.10.2008 and also residential premises of the founder of group. Simultaneously, Income Tax Department conducted survey u/s.133A of the Act on the business premises and factories and impounded books of accounts, documents and other incriminating material. A notice u/s.153C read with section 153A(a) dated 30.11.2009 was issued to the assessee to file a return of income within stipulated time

4. In response to notice, the assessee has e-filed return of income on 19.09.2010 with total income of ₹8,74,474/-. In the assessment proceedings, questionnaire was issued for seeking explanations to entries found in the seized material and details of assets, bank accounts, movable and immovable assets owned by the

assessee. The Id. AR appeared alongwith bank account statements and filed clarification and submitted evidences to support the case. The Id. Assessing Officer considering the submissions on record made an addition of ₹5 lakhs paid as per sale agreement alongwith other additions. An agreement dated 31.03.2008 was entered between assessee and Shri. V. Kannan, for transfer of rights and interest over the allotment of Flat No.P-1 in Aaranya Project, Chennai in favour of the assessee for a consideration of ₹14,35,000/-. As part performance of the agreement the assessee paid an amount of ₹5,00,000/- vide Cheque No.023509 dated 28.03.2008 and the balance agreed to be payable on or before 09.04.2008. The assessee has withdrawn the amount of ₹5 lakhs from business concern M/s. Micky Paper Caps Works but wrongly amount was debited to Mohammed Bhai account instead of Shri. V. Kannan. Therefore, it was not reflected in balance sheet as advance for purchase of asset. The Assessing Officer purely on surmises and suspicion treated withdrawal of ₹5 lakhs as unaccounted investment as no evidence or confirmation was filed. Aggrieved by the order of the Assessing Officer the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

5. In the appellate proceedings, the Id. counsel filed details and mentioned that the mistake in the accounts is due to wrong posting

and was rectified subsequently and further submitted bank statement of M/s. Mickey Paper Caps Works as a source of ₹5 lakhs. Whereas the Id.CIT(A) has overlooked the accounting aspects and reconciliation of accounts and confirmed the order of the Assessing Officer. Aggrieved by the order of Id.CIT(A) the assessee filed an appeal before the Tribunal.

6. The Id. counsel argued that, the assessee is having sources and same was submitted in appellate proceedings alongwith the ledge copies and bank account reflecting ₹5 lakhs paid by the assessee vide Cheque No.023509, dated 28.03.2008. The amount of ₹5 lakhs was withdrawn from the business of the assessee M/s. Micky Paper Caps Works and wrongly debited to the account of Mohammed Bhai instead of Shri. V. Kannan. The Id. AR also referred to page no.11 of paper book showing the cheque No. details tallied with finding in assessment order with the ledger of M/s. Micky Paper Caps Works, Sivakasi. On 01.04.2008 rectification entry was passed and the cheque was cleared in SBI Bank account of M/s. Micky Paper Caps Works on 10.04.2008 and filed written submissions and stated that the property was purchased by the assessee for the purpose of group company and rectification entries were passed and due to misunderstanding with the transferee the confirmation letter could not be filed in the assessment

proceedings and prayed the Tribunal to delete the addition of unaccounted investment.

7. On the other hand, the Id. Departmental Representative relied on the orders of the lower authorities and argued that said information was not submitted before the Assessing Officer and prayed the appeal of the assessee be dismissed.

8. We heard both parties and perused the material on record. The Id. AR has submitted the source for investment before the Income Tax authorities and also substantiated the claim before us by submitting ledger copies and bank account details of M/s. Micky Paper Caps Works at page no.13 of paper book evidencing cheque no. cleared from bank account, which tallies with the cheque no referred in the assessment order passed by the Id.AO. There is no dispute about the cheque details, parties of the agreement and clearance of bank. However, it was alleged by the Id. DR that the transaction has to be verified with reference to agreement and considering the genuineness of rectification entries. On the above facts, we are of the opinion that the matter requires further enquiry by the Assessing Officer. Therefore, the issue in dispute is remitted back to the file of Assessing Officer to verify the documents filed in appellate proceedings and

decide the issue afresh after providing adequate opportunity of hearing to the assessee.

9. In the result, the appeal of the assessee in ITA No.1314/Mds/2015 is partly allowed for statistical purposes.

Order pronounced on Friday, the 16th day of October, 2015, 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:16.10.2015

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 |