

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

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

श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 1138/Mds/2017

निर्धारण वर्ष / Assessment Year : 2007-08

The Deputy Commissioner of  
Income Tax,  
Corporate Circle – 2,  
63-A Race Course Road,  
Coimbatore.

v. Shri K.C. Ramaswami,  
New No.67/Old No.34-A, 2<sup>nd</sup> Street,  
Dr.Jagannathan Nagar,  
Civil Aerodrome,  
Coimbatore – 641 014.

(अपीलार्थी/Appellant)

PAN : ACQPR 8376 Q

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Ms. S. Vijayaprabha, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri A. Arjunaraj, CA

सुनवाई की तारीख/Date of Hearing : 27.09.2017

घोषणा की तारीख/Date of Pronouncement : 13.10.2017

### **आदेश /O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) -18, Chennai, dated 10.02.2017 and pertains to assessment year 2007-08.

2. Ms. S. Vijayaprabha, the Ld. Departmental Representative, submitted that the Assessing Officer made an addition of ₹40,00,000/- on the basis of material found during the course of survey operation. According to the Ld. D.R., the material found and seized during the course of survey operation shows payment of ₹65,00,000/- in cash, therefore, the Assessing Officer found that the assessee has paid ₹40,00,000/- from his unaccounted source. According to the Ld. D.R., the assessee being promoter of the company and acknowledging payment of ₹25,00,000/-, balance of ₹40,00,000/- has to be necessarily emanated from unaccounted source of the assessee. Therefore, according to the Ld. D.R., the addition of ₹40,00,000/- was made under Section 69 of the Income-tax Act, 1961 (in short 'the Act'). However, according to the Ld. D.R., the CIT(Appeals) found that the material was found during the course of survey operation, therefore, there cannot be any addition in a proceeding under Section 153A of the Act. According to the Ld. D.R., when the material was found during the course of survey operation, which discloses the payment of ₹65,00,000/- and assessee himself accepted the payment of ₹25,00,000/-, the balance has to be necessarily added under Section 153A of the Act

in the block period. Therefore, according to the Ld. D.R., the CIT(Appeals) is not justified in allowing the claim of the assessee.

3. On the contrary, Shri A. Arjunaraj, the Ld. representative for the assessee, submitted that a sum of ₹40,00,000/- has been accounted as advance in the books of M/s Vangalamman Health Services Limited. However, according to the Ld. representative, there was no evidence to show that the payment was made to the vendor. Since no evidence of payment of ₹40,00,000/- was found, the CIT(Appeals) deleted the addition. Moreover, no material was found during the course of search operation. The Assessing Officer admittedly relied upon the material found during the course of survey operation. Therefore, according to the Ld. representative, the CIT(Appeals) by placing reliance on the decision of Mumbai Bench of this Tribunal in All Cargo Logistics Ltd. v. DCIT (2012) 137 ITD 287, rightly deleted the addition made by the Assessing Officer.

4. We have considered the rival submissions on either side and perused the relevant material available on record. The Assessing Officer made addition of ₹40,00,000/- on the basis of material found during the course of survey operation. The contention of the Revenue is that the material found during the course of survey

operation discloses the payment of ₹65,00,000/- in cash. Therefore, the Assessing Officer found that the assessee has paid ₹40,00,000/- from his unaccounted source. From the material available on record it appears that the assessee, being the promoter of the company, acknowledged the payment of ₹25,00,000/-. The dispute is with regard to payment of balance amount of ₹40,00,000/- A sum of ₹40,00,000/- appears to have been accounted in the books of M/s Vangalamman Health Services Limited. The Assessing Officer found that even though ₹40,00,000/- was claimed to be made by M/s Vangalamman Health Services Limited, there is no material to link the payment made to the seller Shri D. Ramachandran. The fact remains that there is no evidence to show that ₹40,00,000/- was paid to Shri D. Ramachandran, the vendor of the property. The property was also purchased by the company, namely, M/s Vangalamman Health Services Ltd. In the absence of any evidence to show that Shri D. Ramachandran, the vendor received ₹40,00,000/- over and above the sale consideration disclosed in the sale deed and the property itself was admittedly purchased by the company, namely, M/s Vangalamman Health Services Ltd., this Tribunal is of the considered opinion that the CIT(Appeals) has rightly deleted the addition made by the

Assessing Officer. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

5. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 13<sup>th</sup> October, 2017 at Chennai.

sd/-  
(ए. मोहन अलंकामणी)  
(A. Mohan Alankamony)  
लेखा सदस्य/Accountant Member

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

चेन्नई/Chennai,  
दिनांक/Dated, the 13<sup>th</sup> October, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-18, Chennai-34
4. Principal CIT, Central-2, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.