

आयकर अपीलीय अधिकरण, 'एस.एम.सी' 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL ,
'SMC' 'D' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष
Before Shri A. Mohan Alankamony, Accountant Member

आयकर अपील सं./I.T.A.No.3253/Mds/2016
(निर्धारण वर्ष / Assessment Year: 2012-13)

Shri T. Gunasekaran, Door No.3, A.E. Koil South Mada Street, Tondiarpet, Chennai – 600 081.	Vs	The Income Tax Officer, Corporate Ward 4(4), Chennai.
PAN: AFDPG3687D		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri Anand Babunath, CA
प्रत्यर्थी की ओर से/ Respondent by	:	Shri B. Sagadevan, JCIT

सुनवाई की तारीख/Date of hearing	:	06.09.2017
घोषणा की तारीख /Date of Pronouncement	:	04.10.2017

आदेश / ORDER

This appeal by the assessee is directed against the order passed by the Ld. Commissioner of Income Tax (Appeals)- 5, Chennai dated 23.09.2016 in ITA No.80/CIT(A)-5/15-16 for the assessment year 2012-13 passed u/s.250(6) r.w.s.143(3) of the Act.

2. The assessee has raised the following two grounds in his appeal:-

- (i) The Ld. CIT(A) has erred in upholding that the disallowance of depreciation to the tune of Rs.4,54,500/- without considering the submissions of the appellant and the remand report of the AO.
- (ii) The Ld.CIT(A) has erred in confirming the additions made u/s.68 of the Act to the tune of Rs.24,07,000/- without considering the submissions of the appellant and the remand report of the AO.

3. The brief facts of the case are that the assessee is an individual earning income from lorry transport and brokerage from commodity exchanges, filed his return of income for the assessment year 2012-13 on 31.03.2014 declaring total income of Rs.9,77,480/-. Initially the return was processed U/s.143(1) of the Act and subsequently the case was selected for scrutiny under CASS and finally assessment order was passed U/s.143(3) of the Act on 27.03.2015, wherein the Ld.AO made several additions/disallowance as well as with the above mentioned additions/disallowance.

4. **Ground No. 2(i) : Disallowance of depreciation**
Rs.4,54,500/-:-

The assessee has disclosed addition of assets to the tune of Rs.41,14,500/- in his balance sheet. When queried, he could produce bills and vouchers only to the extent of Rs.36,60,000/-. Hence the Ld.AO disallowed depreciation for the balance amount of Rs.4,54,500/- which works out to Rs.1,36,350/-. Accordingly the amount of Rs.1,36,350/- was added to the income of the assessee. On appeal, the Ld.CIT(A) obtained remand report from the Ld.AO. The assessee had submitted the invoices for Rs.4,54,500/- being the amount incurred for additional fittings in the motor trucks. However the Ld.CIT(A) rejected the invoices submitted by the assessee due to the following reasons:-

- (i) The Ld.AO in his remand report did not mention that he has verified the genuineness of the invoice.
- (ii) The invoice submitted by the Ld.AR was dated 03.08.2011 and it was related to '12 wheel lorry body building'.
- (iii) Though the invoice was in the name of T. Gunasekaran, the assessee did not mention that the registration number of the lorry.

- (iv) Further there was no sufficient evidence to show that the assessee has used the “12 wheel lorry” for his business during the relevant assessment year.

4.1 Before us the Ld.AR submitted that the assessee has submitted sufficient evidence to establish that the total investment on the motor trucks was Rs.41,14,500/-. It was therefore pleaded that the depreciation may be granted on the entire amount. The Ld.DR on the other hand argued in support of the orders of the Ld.Revenue Authorities.

4.2 After hearing both the parties, I find the actions of the Ld.Revenue Authorities not appropriate. Both the Ld.AO and the Ld.CIT(A) had granted the benefit of depreciation to the extent of Rs.36,60,000/- with respect to the purchase of the motor trucks. They had withdrawn the benefit of depreciation for Rs.1,36,340/- only for the reason that the assessee has not furnished the invoice for the balance amount of Rs.4,54,500/-. However, when the matter was remanded to the Ld.AO by the Ld.CIT(A), the assessee had furnished the invoice for the balance amount of Rs.4,54,500/-. The genuineness of the invoice is not disputed by the Ld.AO. In this situation, the observation made by the

Ld.CIT(A) does not have any merits. Therefore, I hereby direct the Ld.AO to grant depreciation benefit to the assessee for the entire amount of Rs.41,14,500/- towards purchase of motor truck. Accordingly the addition made for Rs.1,36,340/- stands deleted.

5. Ground No. 2(ii) : Addition U/s.68 of the Act for Rs.24,07,000/-.

During the course of scrutiny assessment the Ld.AO observed from the cash book produced by the assessee that the assessee had introduced cash in its business for Rs.24,07,000/-. Since the assessee could not offer any explanation with respect to the source of the cash introduced, the Ld.AO added the entire amount of Rs.24,07,000/- as unexplained cash credit U/s 68 of the Act. When the matter cropped up before the Ld.CIT(A), the Ld.CIT(A) obtained a remand report from the Ld.AO. In the remand report, the Ld.AO has stated as follows:

“it is seen that the assessee has two proprietary concerns and there is no fresh introduction of capital into the accounts of M/s. Adventures India but the cash deposits every month into its cash book is actually withdrawal from M/s. Lakshmi Raja Transport for the payment of expenses of M/s. Lakshmi Raja Transport. In view of the above the assessee’s claim of cash deposit is acceptable”

Subsequently when the Ld.CIT(A) examined the matter it was observed that the books of accounts were not produced before the Ld.AO during the remand proceedings. The Ld.CIT(A) further observed that the Ld.AR was not able to substantiate the cash entries made in the ledger accounts of the assessee before him. Therefore the Ld.CIT(A) sustained the addition made by the Ld.AO.

5.1 Before us the Ld.AR submitted that the Ld.AO had accepted the source of cash deposit of the assessee and has specifically stated so in his remand report. But the Ld.CIT(A) without examining the issue in detail hastily came to a conclusion that the cash entries made in the ledger accounts of the assessee is not substantiated. He therefore pleaded that due weightage may be given to the remand report and the addition made for Rs.24,07,000/- in the hands of the assessee may be deleted. The Ld.DR on the other hand argued in support of the order of the Ld.CIT(A) and pleaded for sustaining the same.

5.2 After hearing both the parties, I find merit in the submission of the Ld.AR. In the remand proceedings, the Ld.AO had vividly examined the issue and had accepted the claim of cash deposit

to be genuine. The Ld.CIT(A) has not given any specific findings in his Order as to which accounting entry in the ledger account of the assessee remain unexplained. It establishes the fact that the Ld.CIT(A) has come to the conclusion without properly examining the books of accounts of the assessee. Therefore, relying on the findings of the Ld.AO in the remand proceedings, I hereby direct the Ld.AO to delete the addition made for Rs.24,07,000/- U/s.68 of the Act towards unexplained credit.

6. In the result, appeal of the assessee is allowed.

Order pronounced on the 04th October, 2017 at Chennai.

Sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 04th October, 2017

RSR

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 |