

आयकर अपीलीय अधिकरण, D/'SMC' न्यायपीठ, चेन्नई ।

IN THE INCOME TAX APPELLATE TRIBUNAL
D/"SMC" BENCH, CHENNAI

श्री. चंद्र पूजारी लेखा सदस्य, के समक्ष ।

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

I.T.A.No.40/Mds./2015

(Assessment Year : 2010-11)

Mr.G.Karthik,

Prop: M/s.K.G.K.Constructions,
87/A,Kangeyam Road,
Near Telephone office,
Kodumudi 638 151. Erode
district.

PAN AKGPK 2255 H

(अपीलार्थी /Appellant)

Vs. The ACIT,
Circle-II,
Tiruchirapalli.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by

: Mr.G.Stanly,Advocate

प्रत्यर्थी की ओर से/Respondent by

: Mr.B.Sagadevan, JCIT, D.R

सुनवाई की तारीख/ Date of hearing

: 09.11.2017

घोषणा की तारीख /Date of Pronouncement

: 21.11.2017

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal is filed by the assessee, aggrieved by the order of the Learned Commissioner of Income Tax(A), Tiruchirapalli dated 04.09.2014 pertaining to assessment year 2010-11.

2. The assessee raised the following grounds for consideration.

1. The Order passed by the Commissioner of Income Tax (Appeals) is against the principle of natural justice, law and facts of the case.
2. The Commissioner of Income Tax (Appeals) has erred in confirming the housing loan interest claim of ₹1,50,000/- U/s. 24 of the Act out of the total interest payment of ₹2,20,732/- paid to the State Bank of India, Kodumudi Branch without considering the period of completion of construction as the property has been self occupied by the Appellant.
3. The Commissioner of Income Tax (Appeals) erred in confirming the entire amount of ₹25,18,778/- received as a loan from various creditors as unexplained cash credits U/s. 68 of the Act and also interest payment made on the above credit of ₹1,74,845/-.
4. The Commissioner of Income Tax (Appeals) ought to have noted that the details of the creditors list filed by the Appellant during assessment proceedings and the Learned Assessing Officer has merely relied on the report of the Inspector without giving opportunity to the Appellant.
5. The Commissioner of Income Tax (Appeals) has erred in confirming the sum of ₹5,00,000/- being the gift received from Appellant's wife Smt.G. Kirthika as income of the Appellant U/s. 68 of the IT Act without bringing to the knowledge of the Appellant.
6. The Commissioner of Income Tax (Appeals) erred in confirming that a sum of ₹3,00,000/- being the gift received by the Appellant at the time of marriage without pointing out this issue during the assessment proceedings and without considering the facts, habits prevailing in the community and society.

3. At the outset, it was noticed that there was a delay of 68 days in filing the appeal before the Tribunal. However, there was no delay as it was clarified by the Id. Assessing Officer that order of Id.CIT(A) was actually served on the assessee only on 10.11.2014 and to that effect, revised Form No.36 was filed by the assessee Accordingly, I notice that there is no delay in filing the appeal, which was filed in time.

4. The brief facts of the case are that the assessee is an individual and derives income from the following business / sources.

- i. Income from House Property
- ii. Carrying on the business of civil contractor under the name and style of M/s.K.G.K Construction and deriving income from the said business
- iii. Income from other sources

The assessee filed his return of income for the AY 2010-11 on 14.02.2011 electronically admitting a total income of ₹17,42,070/- and agricultural income of ₹1,72,000/-.The assessee has also filed tax audit report as required U/s.44AB of the I.T Act. The Assessing Officer during the course of assessment proceedings called for various details such as list of bank accounts, sundry debtors/creditors, details of loans from friends and relatives along with their addresses, confirmation letters, copy of home loan sanction letters,

proof for agricultural income and details of marriage gifts and gift received from the assessee's wife. The assessee has not produced or filed details as called for. The assessee has claimed loan creditors to the tune of ₹99,51,553/- (all below ₹20,000) including fresh loan creditors during the year to the tune of ₹25,18,778/- and marriage gift received at ₹3 lakhs and gift from his wife at ₹5 lakhs. Later on the Authorised Representative of the Assessee appeared on 04.12.2012 and filed a list of 521 unsecured loan creditors with addresses. All the loans taken are below ₹20,000/-. No confirmation letters or source of the creditors identity of the loan creditors have been filed. Later on there was a survey u/s 133A conducted in the business premises of the assessee. The assessee has agreed that the loan credits are not real and genuine. Even during the random verification of addresses given by the loan creditors by the Inspector of the department none of them were existed in the given addresses and accordingly the Assessing Officer has finalized the assessment by making various additions at ₹36,43,623/-.

Nature of additions	Amount(₹)
Disallowance of housing loan interest paid to SBI on the ground that construction is not yet completed	1,50,000/-

Assessment of loan creditors U/s.68 of the IT Act for the want of genuineness and credit worthiness of the creditors	25,18,778!/-
Disbelieving the receipt of gift of Rs.5,00,000/- from appellant's wife Smt.G.Kirthika	5,00,000/-
Disbelieving the receipt of gift by the appellant at the time of his marriage	3,00,000/-
Disallowance of Interest claimed on the alleged creditors assessed as income	1,74,845/-
Total	36,43,623/-

Aggrieved by the above addition, the assessee carried the appeal before the Ld.CIT(A).

4.1 Before Ld.CIT(A), the Id.A.R objected to the addition of housing loan interest claim of Rs.1,50,000/- u/s. 24 of the Act, out of the total interest payments of ₹2,20,732/- paid to the State Bank of India, Kodumudi branch without considering the period of completion of construction as the property has been self occupied by the assessee. It was submitted that the Assessing Officer made an addition of Rs.25,18,778/- received as loan from various creditors as unexplained cash credits u/s. 68 of the Act and interest payments made to them at ₹1,74,845/-. Similarly, the Id.A.R objected for the addition of ₹5 lakhs as gift received from assessee's wife Smt.G.Krithika as well as a sum of ₹.3 lakhs being the gift received by

the assessee at the time of his marriage. According to Ld.CIT(A), the above additions are made by the Assessing Officer as the assessee had not furnished any details during the course of assessment proceedings as well as the additions were made on the basis of survey findings and subsequent enquiry by the department officials.

4.2 Further, the Assessing Officer made an addition of ₹1,50,000/- towards interest paid on housing loan for self occupied house. As the house was still under construction during the previous year relevant to the assessment year under consideration the assessee is not eligible for claiming the interest. Ld.CIT(A) observed that the Assessing Officer has correctly disallowed the interest claim at ₹1,50,000/-. Hence the same was confirmed by Ld.CIT(A). Similarly the assessee failed to prove the identity and genuineness and creditworthiness of the loan creditors and the assessee himself agreed that the loan creditors are not real and even the Inspector's report establishes the fact that none of the creditors are existing in the addresses given. Therefore the amount introduced in the name of the loan creditors during the year under consideration at ₹.25,18,778/- has been confirmed by the Ld.CIT(A) as the assessee

failed to prove the genuineness of the loan creditors. Hence the same was confirmed by Ld.CIT(A).

4.3 Similarly, the assessee could not produce any evidence of gift of ₹5 lakhs stated to have been received by the assessee from his wife Smt.G.Krithika, who being a housewife has no independent source of income also not an income tax assessee to verify the claim of the assessee. Over and above, the assessee has failed to establish the genuineness of the gift transaction between him and his wife at ₹.5 lakhs. According to Ld.CIT(A), the addition made by the Assessing Officer deserves to be confirmed. Accordingly the same is confirmed by the Ld.CIT(A).

4.4 As far as another amount of Rs.3 lakhs stated to have been received by the assessee as marriage gift from his blood relatives, the assessee could not produce any details to prove the claim made by the assessee. Hence the addition made by the Assessing Officer at ₹3 laths on account of marriage gift received by the assessee was confirmed dismissing the claims of the assessee.

4.5 The Assessing Officer has also disallowed an amount of ₹1,74,842/- attributed to the interest paid to the new creditors which

are unproved to the tune of ₹25,18,778/- and accordingly the same is confirmed.

4.6 On appeal, Ld.CIT(A) endorsed the action of Id. Assessing Officer and confirmed all the additions made by Id. Assessing Officer. Against the order of Ld.CIT(A), now the assessee is in appeal before us.

5. Before me, the Authorised Representative of assessee made a plea that as the assessee was not able to file requisite details due to lack of opportunities provided by the lower authority, the assessee seeks one more opportunity to place necessary evidence in support of the above grounds raised in this appeal before the lower authorities.

6. On the other hand, Id.D.R submitted that in spite of giving various opportunities to the assessee by Id. Assessing Officer as well as by Ld.CIT(A) , the assessee has not placed any evidence in support of his claim. Further, Id.D.R submitted that even at this stage, there is no iota of evidence for the assessee to produce before this Tribunal and pleaded that the appeal may be dismissed.

7. After hearing both the parties and examining the orders of lower authorities, as rightly pointed out by the Id.D.R that there was no iota evidence in support of the claim of the assessee in support of various disallowances made by the Id. Assessing Officer and sustained by Ld.CIT(A). In the absence of any materials placed by the assessee before me, I am not in a position to remit the issue to the file of Id. Assessing Officer for fresh consideration. Accordingly, I have no option to confirm the order of lower authorities. Hence, the grounds raised by assessee relating to various additions made by the AO stand dismissed and the additions sustained.

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

Order pronounced on 21st November, 2017.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Chennai,

Dated the 21st November, 2017.

K s sundaram.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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