

आयकर अपीलीय अधिकरण , 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, CHENNAI**

श्री एनगणेशन .एस.आर., न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND**  
**SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A. No. 1692/Chny/2009**

**निर्धारण वर्ष/Assessment Year : 2003-04**

Income Tax Officer,  
Ward –I(2),  
Trichy.

Shri D. Naresh Kumar,  
Vs. No. 110, Raghavendra Garden,  
T.V. Koli,  
Trichy – 5.

**[PAN: AAHPK 6843Q]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./I.T.A. No. 111/Chny/2013**

**निर्धारण वर्ष/Assessment Year : 2003-04**

Income Tax Officer,  
Ward –I(2),  
Trichy.

Vs. Shri. T. Ethiraj,  
No. 110, Ragjavendra Garden,  
T.V. Koil,  
Trichy – 5.

**[PAN: AABPE 7212M]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./I.T.A. No. 112/Chny/2013**

**निर्धारण वर्ष/Assessment Year : 2003-04**

Income Tax Officer,  
Ward –I(2),  
Trichy.

Vs. Shri. K. Mani,  
No. 6, Singar Koil Street,  
Srirangam,  
Trichy – 5.

**[PAN: AGZPM 8785B]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by : Shri. R. Venkatesh, CA  
प्रत्यर्थीकीओरसे/Respondent by : Shri. ARV Sreenivasan, JCIT  
सुनवाईकीतारीख/Date of Hearing : 22.11.2017  
घोषणाकीतारीख/Date of Pronouncement : 16.02.2018

**आदेश/ ORDER**

**PER S. JAYARAMAN, ACCOUNTANT MEMBER:**

The Revenue filed these appeals against the orders of Commissioner of Income Tax (Appeals), Tiruchirapalli in ITA No. 47/2008-09, ITA No. 209/2010-11 & ITA No. 224/2010-11 dated 20.08.2009, 18.10.2012 & 18.10.2012, respectively, for assessment year 2003-04.

2. Shri. D. Naresh Kumar, has been doing fancy store business in the name of Padma Store at Trichy, filed a return of Income for the A.Y.2003-04 belatedly on 30-3-2004 admitting an estimated income of Rs.60,000/. Information was received from the Enforcement Directorate, Chennai, that cash of Rs. 49.50 lakhs was seized from one Shri Sreenivasan, employee of Shri D. Naresh Kumara, at No. 23-A, IV Floor, Sri Chakra Apartments, Egmore, Chennai-8. Shri Naresh Kumar has admitted that he had Rs. 50,91,000/- in connection with placing of persons in Singapore. Consequent to the receipt of communication from the Enforcement Directorate, the Assessing Officer issued a notice u/s 148 to Sri. D. Naresh Kumar and completed the

assessment vide an order dated 10-01-2008 u/s 143(3) r.w.s. 147 of the Act. In which, he added Rs.50,91,000/- u/s 68 to the income as he came to the conclusion that the genuineness of assessee's claim that the said sum was received from sub-agents (who in turn had received it from aspirants seeking jobs abroad) was not proved. Aggrieved with the assessment order, the assessee preferred an appeal before the CIT(A) who by his order in ITA No.47/08-09 dated 20-8-2009 has allowed the appeal and ordered deletion of Rs. 50,91,000/-.

2.1 Based on the same information from the Enforcement Directorate and the affidavit filed by Shri Sreenivasan before the XIV Metropolitan Magistrate, Egmore claiming that the money seized from him actually belonged to Shri Ethiraj, who was doing construction business on large scale at Trichy and the said sum of entrusted to him for purchase of land at Selaiyur, Chennai etc., the Assessing Officer issued noticed u/s. 148 to Shri Ethiraj and posted the case for hearing. Since, he did not comply to various opportunities, he assessed Rs. 49,50,000/- as his income protectively, since he has made the substantial assessment in the case of Shri D. Naresh Kumar, supra.

2.2 Shri Naresh Kumar has admitted that he had Rs. 50,91,000/- in connection with placing of persons in Singapore. In the balance sheet filed by Shri D. Naresh Kumar along with the return of income for the AY 2003-04, it

has been claimed that this amount was received from 5 persons including from Shri K Mani, alleged to be one of his agents, at Rs. 11.43 lakhs. Since, Shri K. Mani did not disclose this amount to the department, the AO issued a notice u/s. 148. Since, he did not comply to various notices issued to him, he completed the assessment ex-parte, assessing Rs. 11,43,000/- as his income, protectively, since the substantial assessment was made in the hands of Rs. D. Naresh Kumar, supra.

2.3 Both Shri Ethiraj and Shri K Mani filed appeals against their assessment orders before the CIT(A), Thiruchirapalli and the CIT(A) by his order in ITA No. 209/2010-11 and ITA No. 224/2010-11 dated 18.10.2012, respectively, deleted the additions.

3. Aggrieved against the above orders of the CIT(A) in respect of all these three persons, the Revenue filed these appeals. Since, the issues are connected inextricably with each other, all these appeals are heard together and disposed by this common order. Since, the substantial assessment is made in the case of Shri D. Naresh Kumar, his case is taken as a lead case and discussed as under. The Revenue filed very elaborate appeal grounds and hence they were required to file concise grounds of appeal which are extracted as under:

*" 1. The order of the CIT (A) is contrary to law, facts and in the circumstances of the case,*

2. *The CIT (A) has failed to appreciate*
  - (i) *The inconsistency in the statement of the assessee before Police, FEMA Authorities and Court regarding source of money.*
  - (ii) *Absence of material evidence for the alleged transfer of money from the creditors.*
  - (iii) *Absence of any books of accounts or other contemporaneous evidence for the alleged manpower recruiting business.*
3. *The CIT(A) has failed to observe the assessee's failure to prove the*
  - (i) *Creditworthiness of the creditor and*
  - (ii) *Genuineness of the transaction to the satisfaction of the AO as envisaged in section 68 of the IT Act.*
4. *The CIT(A) failed to observe that the facts of the case are against human probabilities and realities of life.*
5. *The CIT(A) failed to notice the factual details gathered from the enquiries with 86 applicants who allegedly applied for travel abroad and allegedly gave money to the assessee through 5 sub. Agents.*
  - (i) *Specific denial of 2 persons for giving money*
  - (ii) *In 40 cases letters could not be served as either the addressee was not available or address was incomplete.*
  - (iii) *In 23 cases there was no response.*

*In this context, the CIT(A) could not come to conclusion that assessee has discharged onus of proving genuineness of source of credits.*
6. *For these and other reasons that may be adduced at the time of hearing the order of the CIT(A) may be cancelled and that of the Assessing Officer be restored."*

4. The DR submitted that during May 2002, Rs 49,01,000/- was seized from one Shri S. Sreenivasan of Kapisthalam, Papanasam Taluk Tanjore by the police authorities and the same was taken over by the Directorate of Enforcement, Chennai through 14th Metropolitan Magistrate, Chennai-8. The Deputy Director of Enforcement imposed penalty of Rs. 10 lakh on Sri S. Sreenivasan for the violation of FEMA 1999 and ordered for the release of

balance amount. Against the order of adjudication, the Enforcement Department filed a revision petition before the Appellate Tribunal, New Delhi which is pending. The above facts were communicated to the Income tax Department by letter dated 4.5.07 in F. No T-10/2/SLP/CHN/07 addressed to the Joint Commissioner of Income tax, Trichy. Shri D Naresh Kumar of T.V. Koil, Trichy moved the 14<sup>th</sup> Metropolitan Magistrate claiming the balance amount of Rs. 39,01,000/- as of his and the person Shri S. Sreenivasan from whom the amount was seized was his Manager, Shri. D. Naresh Kumar claimed the above amount received from the following persons as seen from the balance sheet as on 31.03.2003.

|                   | Rs.       |
|-------------------|-----------|
| K. Mani           | 11,43,000 |
| P. Sampath        | 9,47,000  |
| K. Mohana Reddy   | 7,56,000  |
| T. Srinivasan     | 3,62,000  |
| A. Janardhana Rao | 18,83,000 |
|                   | -----     |
|                   | 50,91,000 |
|                   | -----     |

The AO after examining the above persons except Sri K Mani , their statements, circumstantial evidences etc.,, came to the conclusion that the assessee wanted to establish his case that the money belonged to several job seekers but such plea was not accepted by him. In this regard, he invited

our attention to the relevant portion of the assessment order which is extracted as under:

*" Manpower recruitment and Consultancy cannot be commenced all of a sudden. There must be some previous experience and the most important factor is the person should enjoy financial credibility in the market. In the assessee's case, he hails from a upcoming family with not much financial background as seen from his statements. Also for a person who started the business only in the previous year relevant to the impugned assessment year, one cannot expect five different sub-agents, 2 from neighbouring state and 3 from Central. Districts of Tamilnadu to come to Chennai and hand over money which was collected from several persons. It is also strange and looks odd that nobody out of 86 persons preferred a police complaint, either in Tamilnadu or at Andhra Pradesh especially the so called job seekers hail from poor families, The fact that the matter was not brought to press, lacks credibility. Only people with work permit alone can arrange and place people. It Singapore does not come to the rescue of the assessee as there are several such agencies with similar permits available. Therefore, I am of the firm opinion that, genuineness of the sub-agents and their credit worthiness is not established with conclusive proof.*

*It is worth mentioning here that the sub-agents or the assessee have not produced any persons who gave money. Even the independent enquiry undertaken by the enforcement also reveals the same, Therefore, the said credits of Rs 50,91,000/- stated to be sub-agents namely M/s K. Mani, P. Sampath, K. Mohana Reddy, T. Srinivasanand A. JanardhanaRao are not explained satisfactorily and proved and deserves to be assessed as income in the hands of the assessee as unexplained credits u/s 68 of the Income tax Act. Apart from the identity of the creditors, satisfaction has to be with reference to the bundle of facts including the capacity to collect for proving the genuineness of the transaction. The income has to be explained in terms of section 68."*

Since, the assessee has failed to satisfy the requirements, the AO added the amount as unexplained income from other sources.

4.1 The DR further submitted that a communication was received from the Deputy Director of Enforcement Directorate stating that during May 2002, Rs.49,01,000/- was seized by the Police, (pursuant to a FIR filed by Sri. S. Sreenivasan) from certain impersonators, who had defrauded Sri. S. Sreenivasan & walked away with the money available at Egmore residence of Sreenivasan. This amount was taken over by the Directorate through 14th Metropolitan Magistrate, Chennai. The Deputy Director of Enforcement Directorate has imposed a penalty of Rs.10 lakhs vide his adjudication order dated 30-7-2004 for violation of FEMA on the Sreenivasan, which has been adjusted from the amount seized. Sri. S. Sreenivasan admitted in various statements recorded during the course of investigations by the Enforcement Directorate and Police that he was engaged in the business of hawala with one Krishnan of Singapore and money was received from the three persons of Chennai in the course of hawala business. These three persons also admitted to have given the amount as part of hawala transaction. Penalty was also imposed in these accomplices by the Enforcement Directorate. Later, it was noticed that for claiming balance amount from the Metropolitan Magistrate, the assessee has put forward a claim that Sri. S. Sreenivasan, was his Manager and the source for the seized amount was out of the money of Rs.50,91,000/- received through five Sub agents who got the same from 86 job aspirants which were to be placed in Singapore. Shri. D. Naresh Kumar had claimed in an affidavit dated 7-8-2002 filed before the 14th Metropolitan

Magistrate that the money deposited by the Police in the Court belonged to his brother Sri Ethiraj, who being engaged in business of civil construction had given him this money to buy a plot of land in Chennai. This stand was changed by the assessee subsequently. These facts were not taken due cognizance by the CIT(A). Further, during the course of assessment proceedings, the AO conducted enquiries with the 5 alleged sub-agents viz. Shri. K. Mani, Shri. P. Sampath, Shri. K. Mohana Reddy, Shri. A. Janarthana Rao and Shri. T. Sreenivasan . In the process, the AO concluded that only the identity of alleged creditors was proved. The capacity of the creditor to advance money and the genuineness of the transactions were not proved. These things must be proved "prime facie" by the assessee. It is held in various decisions that merely establishing the identity is not enough. Further, the DR submitted that the assessee has been shifting the stand regarding the source of funds to avoid the penal proceedings of FEMA and the consequent total confiscation of the entire money. However this aspect was not appreciated by the Commissioner of Income Tax (Appeals). Thus, on the above facts and on the grounds of appeals, the DR pleaded that the orders passed by CIT(A) in all these cases are against the facts and circumstances of the cases and law and hence the orders passed by the AO may be restored. Per Contra, the AR relied on the orders of the CIT(A).

5. We heard the rival submissions and gone through the relevant orders. It is clear from the above, that Sri. S. Sreenivasan admitted in various statements recorded during the course of investigations by the Enforcement Directorate and Police that he was engaged in the business of hawala with one Krishnan of Singapore and money was received from the three persons of Chennai in the course of hawala business. These three persons also admitted to have given the amount as part of hawala transaction. This amount was taken over by the Directorate through 14th Metropolitan Magistrate, Chennai. The Deputy Director of Enforcement Directorate has imposed a penalty of Rs.10 lakhs vide his adjudication order dated 30-7-2004 for violation of FEMA on the Sreenivasan, which has been adjusted from the amount seized. Penalty was also imposed on these accomplices by the Enforcement Directorate. Shri. D. Naresh Kumar had claimed in an affidavit dated 7-8-2002 filed before the 14th Metropolitan Magistrate that the money deposited by the Police in the Court belonged to his brother Sri Ethiraj, who being engaged in business of civil construction had given him this money to buy a plot of land in Chennai. This stand was subsequently changed for claiming balance amount from the Metropolitan Magistrate, by the assessee, as Shri Naresh Kumar has put forward a claim that Sri. S. Sreenivasan, was his Manager and the source for the seized amount was out of the money of Rs.50,91,000/- received through five Sub agents who got the same from 86 job aspirants which were to be placed in Singapore. In such facts and circumstances, the Onus is much more

on the assessee to place all original and secondary contemporaneous evidences in support of his case. From the assessment order, it is clear that no such evidence has been placed. In the facts and circumstances and in the interest of justice, we deem it fit to remit these cases back to the AO for a fresh examination. The respective assessee's shall place all the materials in their support before the AO and they shall comply to the AO's requirements as per law. The A O is free to conduct appropriate enquiry as deemed fit, but he shall furnish adequate opportunity to each of the assessee on the material etc to be used against each of them and decide the matter in accordance with law .

6. In the result, the Revenue's appeals in ITA Nos. 1692/Chny/2009, 111 & 112/Chny/2013 are treated as allowed for statistical purposes.

Orders pronounced on Friday, the 16<sup>th</sup> day of February, 2018 at Chennai.

**Sd/-**

(एन.आर.एस .गणेशन)

**(N.R.S. GANESAN)**

**न्यायिकसदस्य/Judicial Member**

**Sd/-**

(एसजयरामन)

**(S. JAYARAMAN)**

**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 16<sup>th</sup> February, 2018

**JPV**

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent

4. आयकरआयुक्त/CIT 5. विभागीयप्रतिनिधि/DR

3. आयकरआयुक्त) अपील(/CIT(A)

6. गार्डफाईल/GF