

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' 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.822/Chny/2014

निर्धारण वर्ष / Assessment Year : 2007-08

The Deputy Commissioner of
Income Tax,
Company Circle – II(4)
Chennai - 600 034.

(अपीलार्थी/Appellant)

M/s King Makers Enterprise
Pvt. Ltd.,
v. No.61, Sairam Apartments,
Logaiah Colony, Saligramam,
Chennai - 600 092.

PAN : AACCK 9936 C

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.2994/Chny/2017

निर्धारण वर्ष / Assessment Year : 2007-08

The Deputy Commissioner of
Income Tax,
Corporate Circle – 4(2),
Chennai - 600 034.

(अपीलार्थी/Appellant)

M/s King Makers Enterprise
Pvt. Ltd.,
v. No.22 B & C, Balvadi Street,
Nerkundram,
Chennai - 600 107.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellants by : Shri Asish Tripathy, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri R. Viswanathan, CA

सुनवाई की तारीख/Date of Hearing : 23.05.2018

घोषणा की तारीख/Date of Pronouncement : 14.06.2018

आदेश / O R D E R

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

Both the appeals of the Revenue are directed against the common order of the Commissioner of Income Tax (Appeals) –II, Chennai, dated 18.11.2013. When one appeals is against the order passed by the Assessing Officer under Section 143(3) of the Income-tax Act, 1961 (in short 'the Act'), the other appeal is against the order passed by the Assessing Officer consequent to the revisional order passed by the Commissioner under Section 263 of the Act.

2. There was a delay of 1402 days in filing the appeal in I.T.A. No.2994/Chny/2017 by the Revenue. The Revenue has filed a petition for condonation of delay. We have heard the Ld. D.R. and the Ld. representative for the assessee. We find that there was sufficient cause for not filing the appeal before the stipulated time. Therefore, we condone the delay and admit the appeal.

3. The first issue arises for consideration in both the appeals is with regard to disallowance of 50% of the purchases made by the assessee.

4. Shri Asish Tripathy, the Ld. Departmental Representative, submitted that the assessee has shown purchases to the extent of ₹1,75,00.450/- in the Profit & Loss account. When the Assessing Officer asked for details, according to the Ld. D.R., the assessee could not furnish any supporting material. Therefore, the Assessing Officer disallowed 50% of the purchases which comes to nearly ₹87,50,200/-. According to the Ld. D.R., the CIT(Appeals) deleted the disallowance on the ground that the assessee is only an agent for selling the plots. Therefore, he deleted the disallowance of even 50% made by the Assessing Officer. According to the Ld. D.R., in the absence of any details, the CIT(Appeals) is not justified in deleting the addition.

5. The next ground of appeal is with regard to advance said to be received by the assessee to the extent of ₹48,61,000/-. Here also, according to the Ld. D.R., the assessee could not file any details before the Assessing Officer. Therefore, the Assessing Officer made disallowance under Section 68 of the Act. According to the Ld. D.R., the CIT(Appeals) found that the sales advance are considered as sales in the next financial year on completion of

registration of plots. These details were not available before the Assessing Officer. Therefore, according to the Ld. D.R., the CIT(Appeals) is not justified in deleting the addition made by the Assessing Officer.

6. On the contrary, Shri R. Viswanathan, the Ld. representative for the assessee, submitted that the assessee is only an agent. The assessee-company was entrusted the responsibility of selling of plots for a commission of ₹7000/- per plot. According to the Ld. representative, the assessee has to canvass and market the sale of plots. Other than that, the assessee has no role to play. According to the Ld. representative, the amounts deposited by the purchasers were initially deposited in the assessee's bank account. According to the Ld. representative, the assessee-company is not holding any general power of attorney. The registration of documents was made by the landlords in favour of purchasers. Even the approval for layout was obtained by the land owners only. Therefore, according to the Ld. representative, the amount collected by the assessee, belongs to it, hence the CIT(Appeals) has rightly deleted the addition made by the Assessing Officer.

7. Coming to the sales advance, the Ld. representative for the assessee submitted that these amounts were in connection with the plots booked during the financial year 2006-07. According to the Ld. representative, what was received is only an advance and registration was not completed. Hence, according to the Ld. representative, the advance received as on 31.03.2007 cannot be construed as income. In the next financial year, since the registration formalities were completed, according to the Ld. representative, the same was shown in the Profit & Loss account.

8. We have considered the rival submissions on either side and perused the relevant material available on record. The Assessing Officer disallowed 50% of purchases which comes to ₹87,50,200/- on the ground that no details were available. However, the CIT(Appeals) deleted the same on the ground the assessee is only an agent for marketing the layout / plots. Since the assessee could not produce any details either for acting as agent or otherwise, this Tribunal is of the considered opinion that the matter needs to be reconsidered by the Assessing Officer. The Assessing Officer shall re-examine the matter whether the assessee acted only as agent or otherwise and thereafter decide the case in accordance with law.

Accordingly, the orders of both the authorities below are set aside and the disallowance of purchases is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter on the basis of the material that may be filed by the assessee and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

9. Now coming to unexplained credit of ₹48,61,000/-, the assessee claims that it is only an advance received and the same was offered for the next financial year since the registration formalities were completed. However, no details of advances were furnished by the assessee. In those circumstances, this Tribunal is of the considered opinion that this matter needs to be reconsidered by the Assessing Officer. Accordingly, the orders of both the authorities below are set aside and the issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter on the basis of the material that may be filed by the assessee and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

10. In the result, both the appeals of the Revenue are allowed for statistical purposes.

Order pronounced on 14th June, 2018 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 14th June, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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