

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखासदस्य एवं श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष
BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER AND
SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.1426/CHNY/2017
निर्धारण वर्ष /Assessment year : 2012-2013.

Income Tax Officer,
Non Corporate Ward 15(1)
Chennai 600 034

Vs. Shri. T. Chinnadurai,
A7, VI Cross Street,
Indira Nagar,
Adayar,
Chennai 600 020.

(अपीलार्थी/Appellant)

[PAN AEEPC 9133N]
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. Shaji P. Jacob, Addl. CIT
प्रत्यर्थी की ओर से /Respondent by : Shri. M. Gopinath, Advocate

सुनवाई की तारीख/Date of Hearing : 10-07-2018
घोषणा की तारीख /Date of Pronouncement : 10-07-2018

आदेश / O R D E R

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER:

In this appeal filed by the Revenue, which is directed against an order dated 15.02.2017 of Commissioner of Income-tax (Appeals)-15, Chennai, it has taken altogether three grounds of which grounds 1 & 3 are general, needing no specific adjudication.

2. Ground No.2 is reproduced hereunder:-

1.The order of the Ld CIT(A) is contrary to law and facts of the case.

2.The Ld CIT(A) erred in directing the AO to delete the addition of Rs.1,02,06,929/- u/s 68 of the IT Act.

2.1 The Ld CIT(A) erred in directing the AO to delete the addition of ₹11,88,000/-- on account of low personal drawings.

2.2) The Ld CIT(A) erred in directing the AO to delete the addition for taxes paid for Rs.13, 17,620/-.

2.3) The Ld CIT(A) erred in directing the AO to delete the addition of Rs.1,27,12,549/- made u/s 68 of the IT Act.

2.4) The Ld CIT(A) erred in deleting the excess claim of opening capital even though assessee failed to substantiate the same and existence of such opening capital.

2.5)The Ld CIT(A) grossly erred in not following the binding decision of the Jurisdictional High Court in C.Pakirasamy VS.ACIT (315 ITR 293) on identical circumstances.

2.6) The Ld CIT(A) erred in holding that balance sheet of the assessee cannot be relied upon when assessee furnished such signed balance sheet before bank authorities as well as enclosed with the income tax return filed under verification.

2.7) The Ld CIT(A) erred in holding that the opening capital is only a notional entry and it is not reflected as assets in balance sheet when the balance sheet shows corresponding assets such as "investments" and "Loan and advances" and whether such findings of CIT(A) is perverse being contrary to facts on record.

3. For these and other grounds that may be adduced at the time of hearing. It is prayed that the order of the Learned CIT(A) may be set aside and that of the Assessing Officer restored".

3. Facts apropos are that assessee an individual having income from real estate, income from other sources and agricultural income,

had filed his return for the impugned assessment year disclosing income of ₹2,51,033/-. From the Balance Sheet as on 31.03.2012 filed by the assessee, it was noted by the Id. Assessing Officer that assessee had shown a capital of ₹7,49,13,460/-. The said amount ₹7,49,13,460/- was reflected in this Balance sheet as under:-

<i>Opening capital as on 01.04.2011</i>	<i>₹7,46,48,917</i>
<i>Add: Net profit for the year</i>	<i>₹5,20,950</i>
<i>Less: Drawings</i>	<i>₹2,56,407</i>
	<i>₹7,49,13,460</i>

Assessee was required to explain the source for the capital of ₹7,46,48,917/- as on 01.04.2011. Reply of the assessee read as under:-

"The assessee has been maintaining single entry system of book keeping for more than a decade and his income tax returns were filed after preparation of Income and expenditure account till financial year 2010-11. With the intention of availing bank loan the assessee requested the Authorised Representative to prepare and submit to the bank a Balance Sheet for the year ending 31103/2012. Thus a Balance sheet was for the first time drawn listing out all the movable and immovable properties of the assessee on the assets side and known liability due to Mr Sivakumar was deducted to arrive at the capital balance as on 3110312012.

From such arrived amount due adjustments were made for Net Profits and Drawings for the year to arrive at the opening capital as on 01.04.2011 amounting to Rs 7,46,48,917/-

This opening capital is a cumulative sum accumulated over a period of time and it has been demonstrated by way of a detailed working enclosed"

Apart from the above reply, assessee also gave a table (hereafter referred as "the table") for justifying the opening capital of ₹7,46,48,917/-. The said table read as under:-

<i>FY</i>	<i>Income declared</i>	<i>Agricultural income</i>	<i>Capital gains</i>	<i>Dividend</i>	<i>Total</i>
<i>Opening Balance</i>					<i>1,18,42,598</i>
<i>2003-04</i>	<i>2,06,270</i>	<i>98,600</i>	<i>14,66,274</i>	<i>.....</i>	<i>17,71,144</i>
<i>2004-05</i>	<i>2,75,876</i>	<i>.....</i>	<i>38,96,405</i>	<i>.....</i>	<i>41,72,281</i>
<i>2005-06</i>	<i>3,31,853</i>	<i>.....</i>	<i>49,32,670</i>	<i>.....</i>	<i>52,64,523</i>
<i>2006-07</i>	<i>1,69,954</i>	<i>.....</i>	<i>.....</i>	<i>14,988</i>	<i>1,84,942</i>
<i>2007-08</i>	<i>27,62,260</i>	<i>1,00,000</i>	<i>.....</i>	<i>5,396</i>	<i>28,67,656</i>
<i>2008-09</i>	<i>5,49,667</i>	<i>1,25,000</i>	<i>.....</i>	<i>5,995</i>	<i>6,80,662</i>
<i>2009-10</i>	<i>9,85,550</i>	<i>1,25,000</i>	<i>4,60,00,000</i>	<i>.....</i>	<i>4,71,10,550</i>
<i>2010-11</i>	<i>6,29,562</i>	<i>1,25,000</i>	<i>.....</i>	<i>.....</i>	<i>7,54,562</i>
				<i>Total</i>	<i>7,46,48,918</i>

4. Ld. Assessing Officer did not doubt the claim of agricultural income, nor the claim of capital gains, nor the claim of dividend as appearing in the table furnished by the assessee. However, he required the assessee to substantiate the opening balance of

₹1,18,42,598/- as on 01.04.2003, shown in such table. Assessee explained the said amount of ₹1,18,42,598/- as follows:--

Sl.No	Particulars	Amount (₹)
1	Land at Pallikaranai	4,89,562
2	Land at Karapakkam	4,51,527
3	Land at Sholinganallur	6,84,080
4	Cash at Bank	10,500
5	Value of agricultural produce, food grain stock and cash in hand.	1,02,06,929
	Total	1,18,42,598

Ld. Assessing Officer believed the claim of the assessee with regard to value of the land at Pallikaranai, Karapakkam and Sholinganallur but refused to accept the claim of the assessee that ₹1,02,06,929/- was cash and value of agricultural produce and food grain stock as on 01.04.2003. He held that a sum of ₹1,02,06,929/- out of the opening capital of ₹7,49,48,917/- as on 01.04.2011 shown by the assessee stood unexplained. An addition of ₹1,02,06,929/- was made u/s.68 of the Income Tax Act, 1961 (in short "the Act").

5. Ld. Assessing Officer also found from the table reproduced at para 3 above that assessee had not shown any drawings for meeting his personal expenses during the financial years 2003-04 to 2011-12.

Ld. Assessing Officer further noted assessee had also not shown any source for the taxes paid during these years except for tax of ₹2,56,407/- paid for the impugned assessment year. The shortfall in drawings and taxes paid were worked out by the Id. Assessing Officer as under:-

<i>For the FY</i>	<i>Addition for Drawings</i>	<i>Addition for taxes paid</i>
<i>2003-04</i>	<i>84,000</i>	<i>.....</i>
<i>2004-05</i>	<i>96,000</i>	<i>80,000</i>
<i>2005-06</i>	<i>1,08,000</i>	<i>6,347</i>
<i>2006-07</i>	<i>1,20,000</i>	<i>1,193</i>
<i>2007-08</i>	<i>1,32,000</i>	<i>2,00,000</i>
<i>2008-09</i>	<i>1,44,000</i>	<i>78,993</i>
<i>2009-10</i>	<i>1,56,000</i>	<i>8,06,262</i>
<i>2010-11</i>	<i>1,68,000</i>	<i>1,44,825</i>
<i>2011-12</i>	<i>1,80,000</i>	<i>.....</i>
<i>Total</i>	<i>11,88,000</i>	<i>13,17,620</i>

Ld. Assessing Officer took a view that, if these amounts were also considered as outflows for the respective years, funds available for explaining the capital of ₹7,46,48,917/- as on 01.04.2011 shown by the assessee, would go down by like amount. Additions of ₹11,88,000/- and ₹13,17,620/- were also made. Aggregate additions came to ₹1,27,12,549/-.

6. Aggrieved, assessee moved in appeal before Id. Commissioner of Income Tax (Appeals). Argument of the assessee

was that the amount of ₹1,18,42,598/-, was opening capital as on 01.04.2003, and could not be considered for taxation for the impugned assessment year. Similarly, as per the assessee notional drawings for earlier years and taxes paid for earlier years could not have been considered for addition for the impugned assessment year since these did not relate to the relevant previous year. Contention of the assessee was that Balance sheet as on 31.03.2012 relied on by the Id. Assessing Officer for making the addition was prepared for availing a bank loan, listing therein all the movable and immovable properties held by it. As per the assessee, opening capital was nothing but the cumulative sum of the aggregate value of investments.

7. Ld. Commissioner of Income Tax (Appeals) after considering the above submissions held that the sum of ₹1,02,06,929/- was not introduced by the assessee either in the form of cash or in his bank account during the relevant previous year. As per the Id. Commissioner of Income Tax (Appeals) opening balance represented the aggregate value of the assets and the Balance sheet which was prepared for the purpose of bank loan might not present exact facts and figures. Further, as per the Id. Commissioner of Income Tax (Appeals), inadequate drawings of ₹11,88,000/- for earlier years worked out by the Id. Assessing Officer was purely based on

assumptions and had no justification. Ld. Commissioner of Income Tax (Appeals) also reached a finding that the addition of ₹13,17,620/- made for deficit due to taxes paid during the earlier years, was also not justified. Thus, he deleted the additions made by the Id. Assessing Officer. Finding of the Id. Commissioner of Income Tax (Appeals) as it appears at paras 16 to 18 of his order is reproduced hereunder:-

16. I have considered the above submissions of the appellant and the same are found acceptable. First of all, the foremost thing to be noted is that whether this amount of Rs.1,02,06,929/- was ever introduced in the form of cash in the books of accounts of the appellant during the relevant year 'under consideration or whether it was deposited in the bank account of the appellant in that relevant year. If the same is not there, then the taxability of something which is not existing does not arise. As the balance sheet was drawn for the purposes of bank loan, the capital formulation in the impugned balance sheet was based on the assets and the liabilities held by the appellant prior to the relevant assessment year under consideration. Under these circumstances, the balance sheet may not present exact and correct facts and figures would result in incorrect assessment of taxable income. Hence I am of the considered opinion that there was no unexplained cash credit available with the appellant during the year under consideration which the Assessing Officer could have taxed u/s.68 of the Act. Accordingly, the addition of ₹1,02,06,929/- is deleted.

17. The other addition is on account of unexplained drawings of Rs.11,88,000/-. The AO has once again relied on the impugned balance sheet of the appellant for the relevant year under consideration and observed that the appellant had not reduced the amount of personal drawings and taxes paid during the corresponding period from the said accumulated capital. The AO also noticed that the drawings of Rs.2,56,407/-

admitted by the appellant for the relevant year under consideration consisted of taxes paid only. In view of this, the AO held that the personal drawings and taxes paid which were not considered by the appellant, represented money already spent and not available as capital -as on 31/03/2012. Hence, according to the AO, to the extent of drawings and taxes paid in the previous assessment years, the appellant did not explain the source of capital. Based on this assumption, the AO calculated the personal drawings at RS.11,88,000/-for the previous years starting from the F.Y 2003-04 till the F.Y. under consideration. Accordingly, to this extent of Rs.11,88,000/-, it was treated as unexplained cash credit *uls* 68 of the Act which was added back to the income of the assessee

18. I have considered the above findings of the AO and the same are not acceptable. The above assumptions and the corresponding calculations carried out by the AO do not substantiate his findings. As already discussed in detail at para 16 above, the impugned balance sheet does not reflect correct and objective facts and figures which could be relied on for effecting such additions. Therefore, it will be wrong on the part of the AO to hold that this amount of Rs.11,88,000/-did not suffice the opening capital of the appellant. Hence, the same cannot be treated as unexplained cash credit for the year under consideration. Accordingly, the AD is directed to delete the addition of ₹11,88,000/-

8. Now before us, the Id. Departmental Representative strongly assailing the order of the Id. Commissioner of Income Tax (Appeals) submitted the Balance sheet filed by the assessee as a part of its return for assessment year 2011-12, reflected proprietors' capital as "Nil". As per the Id. Departmental Representative, such Balance Sheet was an integral part of the return for the immediately preceding assessment year 2011-2012, filed by the assessee. Contention of the

Id. Departmental Representative was that the capital had increased to ₹7,46,48,918/-, in one day. Viz capital of zero as on 31.03.2011 had increased to ₹7,46,48,917/- as on 01.04.2011. Despite this, as per the Id. Departmental Representative, the Id. Assessing Officer had accepted the explanation for the source given by the assessee except for the sum of ₹1,27,12,549/-. According to him, Id. Assessing Officer was fair enough to accept the claim of agricultural income and capital gains for earlier years. However, assessee as per the Id. Departmental Representative, could never given any reasonable explanation for the sum of ₹1,02,06,929/- out of the opening balance claimed on 01.04.2003. Assessee having filed its Balance sheet alongwith its return for the impugned assessment year, as per the Id. Departmental Representative, Id. Commissioner of Income Tax (Appeals) fell in gross error in holding that such Balance sheet did not present the correct figures. Contention of the Id. Departmental Representative was that the opening balance claimed by the assessee on 01.04.2003 was a fictitious one. Once this was ignored, as per the Id. Departmental Representative, there was a deficit of ₹1,02,06,929/- in the opening balance of ₹7,46,48,917/- as on 01.04.2011 claimed by the assessee. As per the Id. Departmental Representative, difference in opening balance, to the extent not explained by the assessee, could be added

u/s.68 of the Act, by virtue of the judgment of Hon'ble Jurisdictional High Court in the case of *C. Packirisamy vs. ACIT, 315 ITR 293*.

9. Viz-a-viz, addition made for deficit arising due to expenditure incurred for personal needs and payment of taxes for earlier years, contention of the Id. Departmental Representative was that assessee himself had not shown any source for such amounts. If these amounts were considered as paid out of the income declared by the assessee for earlier years, as per the Id. Departmental Representative, there would be a further deficit of ₹25,05,620/- in the opening capital as on 01.04.2011. As per the Id. Departmental Representative, Id. Commissioner of Income Tax (Appeals) had without any rhyme and reason, deleted the additions made by the Id. Assessing Officer.

10. Per contra, Id. Authorised Representative strongly supporting the order of the Id. Commissioner of Income Tax (Appeals) submitted that opening capital as on 01.04.2003 could not be a subject matter of addition for impugned assessment year. As per the Id. Authorised Representative, value of the assets held by the assessee as on 31.03.2012 after deducting the outside liabilities was shown by it as its capital. Contention of the Id. Authorised Representative was that assets in the Balance sheet were all acquired in earlier years and hence the opening balance did not represent any income of the

impugned assessment year. As per the Id. Authorised Representative, assessee owned 20 to 25 acres of agricultural land with sugarcane and paddy cultivation. Further, as per the Id. Authorised Representative, assessee was in Gulf working as fitter and labour contractor during the period 1990 to 2000 and had the wherewithal to acquire assets shown in the Balance sheet in the earlier years. Long and short of the contentions of the Id. Authorised Representative was that opening capital represented assets acquired during earlier years and could not be a subject matter of addition for the impugned assessment year. Viz-a-viz the addition made for deficit in opening capital due to inadequacy of source for personal expenses and payment of taxes, submission of the Id. Authorised Representative such expenses/payments also pertained to earlier years. Thus, as per the Id. Authorised Representative, Id. Commissioner of Income Tax (Appeals) was justified in deleting the additions made by the Id. Assessing Officer. As for the judgment of Hon'ble Jurisdictional High Court in the case of *C. Packirisamy (supra)*, contention of the Id. Authorised Representative was that in the said case concerned assessee had filed returns for a number of earlier assessment years on the very same day, as it filed its return for the assessment year in question. As against this, here the assessee had filed returns for the

earlier years in time. Thus, according to him, the case of *C. Packirisamy (supra)* had not application.

11. We have considered the rival contentions and perused the orders of the authorities below. It is an admitted position that assessee had shown opening capital of ₹7,46,48,917/- as on 01.04.2011 in its Balance sheet filed with its return for the impugned assessment year. It is also an admitted position that in the Balance sheet forming part of the return filed for the immediate preceding assessment year 2011-12, it had shown proprietors' capital as Nil. Thus, capital of the assessee increased from Zero as on 31.03.2011 to ₹7,46,48,917/- on 01.04.2011. What we find is that Id. Assessing Officer had accepted the explanation of the assessee for the above sum except for ₹1,27,12,549/-. The table reproduced by us at para 3 above was furnished by the assessee to justify the opening capital of ₹7,46,48,917/-. This table, in our opinion could be considered only as a self serving document. Even if assessee had no agricultural income, no capital gains and no dividend, and no investments in land it could still have claimed that the opening balance in the capital account came from balances held by it as on 01.04.2003, or earlier by simply reframing this table. In other words assessee could change any figures given in table given above, to satisfy the requirement of capital as on 01.04.2011, and argue that opening balance as on 01.04.2011

were from balances available with it on 01.04.2003, and hence could not be considered for addition in the impugned assessment year. If such claim is allowed, any amount shown by the assessee as opening balance can be claimed as coming out from balances of the earlier years. Despite this lacuna in the claim of the assessee, Id. Assessing Officer accepted what all the assessee could even remotely substantiate in such opening balance. Id. Assessing Officer, in our opinion was more than fair in accepting every explanation given by the assessee except for its claim of opening capital of ₹1,02,06,929/- as on 01.04.2003 and deficit due to non reflection of drawings and sources for tax payments in the earlier years. Assessee was duty bound to explain every rupee out of the opening capital balance of ₹7,46,48,917/- shown by it as on 01.04.2011. Especially so since it had shown "Nil" amount as its capital in the Balance sheet as on 31.03.2011 forming part of its return for assessment year 2011-12. Explanation of the assessee that the sum of ₹1,02,06,929/- represented cash in hand, value of food grain stock and value of agricultural produce was not substantiated before the Id. Assessing Officer, through any evidence. That apart, agricultural income shown by the assessee himself was in the vicinity of ₹1,00,000/- to ₹1,25,000/- per year, and the probability of accumulating a huge amount from such agricultural income was negligible.

12. Coming to the question of drawings and taxes in the earlier years, it is an admitted position that such drawings and taxes do not appear in the table furnished by the assessee reproduced by us at para 3 above. Or in other words, assessee had no source for his personal expenses and taxes paid. Hence, we have to consider that such amounts had gone out of the income of the respective years. Then without doubt, opening capital as on 01.04.2011, would remain unexplained to the extent of such aggregate drawings and taxes.

13. Ld. Commissioner of Income Tax (Appeals) in our opinion fell in error in considering the Balance sheet filed by the assessee alongwith its own return as not factual and incorrect one. An assessee cannot be allowed to approbate and reprobate. It cannot say that its own Balance sheet did not reflect correct state of affairs. Just by claiming that the capital was represented by assets, which were acquired during earlier years, in our opinion an assessee cannot escape from its onus of explaining the source of such capital. In the facts and circumstances, we are of the opinion that Id. Assessing Officer was justified in making the addition for unexplained capital, drawings and taxes paid. Judgment of Hon'ble Jurisdictional High Court in the case of *C. Packirisamy (supra)* does enable an Assessing Officer to make an addition for deficit in opening capital. The additions

made by the Id. Assessing Officer, are all reinstated. Order of the Id. Commissioner of Income Tax (Appeals) is set aside.

14. In the result, the appeal of the Revenue is allowed.

Order pronounced in the open court at the time of hearing on Tuesday, the 10th July, 2018, at Chennai.

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai

दिनांक/Dated:10th July, 2018.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

4. आयकर आयुक्त/CIT

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/**ACCOUNTANT MEMBER**

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF