

आयकर अपीलीय अधिकरण, "बी" न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
Before Shri Abraham P. George, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I.T.A.No.1682/Chny/2017
निर्धारण वर्ष/Assessment Year:2009-10

Shri Sunil Balasubramaniam Shankar,
No. 6/45, 4th Street, Avvai Thiru Nagar,
Koyambedu, Chennai 600 107.

The Income Tax Officer,
Vs. Non Corporate Ward 18(3),
Chennai 600 034.

[PAN:BBFPS4197B]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri Sunil Balasubramaniam
Shankar, C.A.
प्रत्यर्थी की ओर से/Respondent by : Shri B. Sagadevan, JCIT
सुनवाई की तारीख/ Date of hearing : 07.08.2018
घोषणा की तारीख /Date of Pronouncement : 16.08.2018

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 15, Chennai dated 10.02.2017 relevant to the assessment year 2009-10. The only effective ground raised in the appeal of the assessee is that the Id. CIT(A) has erred in confirming the addition of ₹.34,86,141/- towards unexplained expenditure under section 69 of the Income Tax Act, 1961 ["Act" in short] by treating them as income from other sources.

2. The assessee filed his return of income for the assessment year 2009-10 on 15.07.2009 admitting a total income of ₹.4,98,980/-. This case was selected for scrutiny for Cash deposits of ₹.1,04,500/- and Credit Card payments of ₹.37,77,552/-. The assessment order was passed under section 143(3) of the Act on 28.12.2011 disallowing the credit card payment for ₹.34,86,141/- as unexplained expenditure under section 69 of the Act. The assessee went on appeal before the Id. CIT(A) and the Id. CIT(A) deleted the addition. Further, against the appeal by the Department, vide its order dated 27.11.2013, the Tribunal had appropriated the matter to the Assessing Officer for re- examination. Accordingly, notice under section 143(2) of the Act dated 20.03.2014 was issued to assessee and served and the assessee filed the details. After considering the submissions of the assessee as well as the submissions of Shri Neelamegan, the Assessing Officer treated the unexplained expenditure of the assessee as income from other sources and brought to tax.

3. The assessee carried the matter in appeal before the Id. CIT(A). The Id. CIT(A) considered the written submissions of the Id. Counsel for the assessee, who has expressed his inability to file the relevant details as called for. Since the assessee did not prove the onus cast upon him that the credit cards were used by him for lending loans to Shri Neelamegan and moreover the assessee has not disclosed the interest income earned from

lending transaction, the Id. CIT(A) held that the Assessing Officer was justified in treating the amount of ₹.34,86,141/- as unexplained expenditure as the sources of which were also not at all explained at any stage.

4. On being aggrieved, the assessee is in appeal before the Tribunal. By reiterating the submissions as made before the authorities below, the Id. Counsel for the assessee prayed for deleting the addition made under section 69 of the Act.

5. On the other hand, the Id. DR strongly supported the orders of authorities below.

6. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. It is a second round of litigation. Vide order dated 27.11.2013 in I.T.A. No. 1327/Mds/2013 & C.O. No. 138/Mds/2013, the Tribunal directed the Assessing Officer to re-examine the explanation submitted before the Id. CIT(A) that assessee's friend Shri Neelamegan has used the credit cards and made payments and any other details as may be furnished. Accordingly, the Assessing Officer served notice on the assessee and called for details. The Assessing Officer also summoned Shri Neelamegan under section 131 of the Act. In his sworn statement, Shri Neelamegan insisted that no credit cards can be used by a third party as signature of the card holder is mandatory while using credit

card, and objected having used the credit card of the assessee and also emphasized that it is not all possible to use the credit card by a third party, Mr. Neelamegan also stated that he has no idea of four stores- namely: M/s. Aakash Decors, M/s. C.R. Agencies, M/s. Jaya Medicals and M/s. Aruna Pharmacy, where the credit cards were used. Further, before the Assessing Officer, the assessee vide his letter dated 19.02.2015 stated that the credit card transactions are not real transactions of expenses and it is loan transactions. However, Mr. Neelamegan who is mentioned as agent in swiping credit card in various stores has refused having used assessee's credit card as well as having taken huge loan from the assessee and thus, the assessee's statement was not proved. Since the basic issue of the usage of credit cards by Shri Neelamegan was not proved, the usage of credit card by the assessee for ₹.34,86,141/- was taken as unexplained expenditure and the Assessing Officer treated the same as deemed income as per section 69 of the Act and hence, assessed as income from other sources.

6.1 During the course of appellate proceedings, the Id. CIT(A) called for the following details of M/s. Aakash Decors, M/s. C.R. Agencies, M/s. Jaya Medicals and M/s. Aruna Pharmacy, where the credit cards were stated to have used:

- i. PAN of these four concerns.

- ii. The copy of their ITR for the relevant period under consideration.
- iii. The addresses of income tax office where they were filing their return of income.
- iv. The copy of the ledger account of the appellant reflecting in their books of accounts for the relevant period under consideration.
- v. The bank account statements of these four entities from which the funds were transferred to the account of the assessee. The address of the bank branches was also called for.

Before the Id. CIT(A), on 01.02.2017, the Id. AR furnished the addresses of these four parties. However, he failed to furnish the confirmation from these parties. Since the assessee could not furnish any other details before the Id. CIT(A), the Id. CIT(A) confirmed the addition.

6.2 It is the contention of the assessee that Shri Neelamegan has used his credit card, but during the de novo assessment proceedings, the Assessing Officer examined Shri Neelamegan under section 131 of the Act, who has categorically denied that he has used the credit card of the assessee and moreover, he has stated that he has no idea of four stores- namely: M/s. Aakash Decors, M/s. C.R. Agencies, M/s. Jaya Medicals and M/s. Aruna Pharmacy, where the credit cards were used. So far as credit card transactions, Shri Neelamegan has denied the entire transaction. Since the assessee failed to establish that Shri Neelamegan used assessee's credit card and repaid the amount, we find that the addition made by the Assessing Officer was rightly confirmed by the Id. CIT(A). We do not find any

infirmary in the order passed by the Id. CIT(A). Accordingly, the ground raised by the assessee stands dismissed.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on the 16th August, 2018 at Chennai.

Sd/-
(ABRAHAM P. GEORGE)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 16.08.2018

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.