

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.2731/Chny/2016

निर्धारण वर्ष /Assessment Year : 2008-09

M/s L.M.S. Thamby & Co.,
No.5/3, Nacfer Lane, 1st floor,
Periamet, Chennai - 600 003.

v. The Income Tax Officer,
Ward – XI (2),
Chennai.

PAN : AAAFL 1896 M

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : None

प्रत्यर्थी की ओर से / Respondent by : Shri V. Nandakumar, JCIT

सुनवाई की तारीख/Date of Hearing : 27.11.2018

घोषणा की तारीख/Date of Pronouncement : 03.12.2018

आदेश /ORDER

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

This appeal of the assessee was disposed of earlier by an order dated 27.12.2016. However, on the application filed by the Revenue in M.P. No. 176/Chny/2017, the order dated 27.12.2016 was recalled and the appeal was restored on file. Accordingly, the appeal is posted for hearing for final disposal.

2. The notice of hearing was served on the assessee by RPAD and the Registry has placed the postal acknowledgement as proof for the service of notice on the assessee. Even after the receipt of notice, the assessee did not appear before this Tribunal when the appeal was taken up for hearing. There may be various reasons for the assessee for not appearing before this Tribunal when the appeal was taken up for hearing. One of the reasons may presumably be that the assessee may not be interested in prosecution. Whatever may be the reason for non-appearance of the assessee, this Tribunal is expected to dispose the appeal on merit on the basis of material available on record. Accordingly, we heard Shri V. Nandakumar, the Ld. Departmental Representative and proceeded to dispose the appeal on merit.

3. Shri V. Nandakumar, the Ld. D.R. submitted that the Assessing Officer made addition of ₹7,80,000/-. According to the Ld. D.R., a sum of ₹5,00,000/- was added from and out of capital introduced by Smt. L. Katheeja. A sum of ₹2,80,000/- was added in the hands of Shri L.T. Ilyas. Since the assessee-firm could not explain the source for capital introduced by Smt. L. Katheeja and Shri L.T. Ilyas, an addition of ₹7,80,000/- was made. Therefore,

according to the Ld. D.R., the CIT(Appeals) has confirmed the addition.

4. Having heard the Ld. D.R., we perused the material available on record. We have carefully gone through the orders of both the authorities below. A sum of ₹7,80,000/- was introduced as capital in the firm's account. The Assessing Officer found that a sum of ₹14,50,000/- was introduced as capital in the name of Smt. L. Katheeja and another sum of ₹7,80,000/- in the name of Shri L.T. Ilyas. Smt. Katheeja appears to have received a gift of ₹5,00,000/- from Shri L.T. Bazul Ashab, who is none other than her brother and the same was given in the form of cheque. Another sum of ₹4,50,000/- was received as gift from Shri A.R. Sadiq, who is none other than the son of Smt. Katheeja. The Assessing Officer found that out of ₹14,50,000/-, the assessee has explained the source for ₹9,50,000/-. Therefore, he made addition of ₹5,00,000/- in the hands of the firm.

5. In respect of Shri L.T. Ilyas, the Assessing Officer found that a sum of ₹7,80,000/- was introduced as additional capital. Even though there was claim of gift to the extent of ₹5,00,000/- from Shri L.T. Bazul Ashab, the Assessing Officer found that the cheque was

not deposited in the bank. The assessee claimed before the Assessing Officer that the amount was withdrawn by cash and it was introduced in the firm's account on 10.01.2008. In respect of ₹2,80,000/-, there was no explanation. Therefore, the Assessing Officer found that the entire explanation of the assessee for source of ₹7,80,000/- is not satisfactory. Accordingly, the same was added to the total income of the assessee. Out of ₹14,50,000/-, the assessee explained only ₹9,50,000/-. In respect of Smt. Katheeja, there was no explanation for ₹5,00,000/-. Therefore, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly confirmed the addition of ₹5,00,000/- which was said to be introduced by Smt. Katheeja to the capital account of the firm.

6. In respect of Shri L.T. Ilyas, the claim of the assessee was that a gift was received from Shri L.T. Bazul Ashab. But, Shri L.T. Ilyas did not use the cheque for drawal of cash and but cash was deposited in the capital account of the firm. This factual claim of the assessee was not controverted by the Revenue. Therefore, this Tribunal is of the considered opinion that out of ₹7,80,000/-, the assessee has explained the source for ₹5,00,000/-. So, what remains to be explained is ₹2,80,000/-. In respect of ₹2,80,000/-,

no explanation is forthcoming. Therefore, this Tribunal is of the considered opinion that the sum of ₹2,80,000/- was said to be introduced by Shri L.T. Ilyas is confirmed. As a result, the addition of ₹7,80,000/- is confirmed as follows:-

In the hands of Smt. L. Katheeja	:	₹5,00,000/-
In the hands of Shri L.T. Ilyas	:	₹2,80,000/-.

7. The CIT(Appeals), in fact, upheld the order of the Assessing Officer only to the extent of ₹7,80,000/-. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

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

Order pronounced in the court on 3rd December, 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 3rd December, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-5, Chennai
4. Principal CIT-9, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.