

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

श्री एन.आर.एस .गणेशन, न्यायिक सदस्य एवं
श्री एस जयरामन, लेखा सदस्य के समक्ष

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

**आयकर अपील सं./I.T.A. No. 2542/Chny/2017
& CO No: 5/Chny/2018**

निर्धारण वर्ष/Assessment Year : 2012-13

The Assistant Commissioner of Income
Tax,
Non- Corporate Circle -1(1),
Formerly known as Business Circle -1,
Chennai 600 034.

Smt. Abhaya Kashmira,
Vs. No. 6 & 7, RamgiriExtn.,
Taramani, Velachery Link Road,
Chennai – 600 042.

[PAN: AIXPK 0809J]

(अपीलार्थी/Appellant)

**(प्रत्यर्थी/Respondent/Cross
Objector)**

आयकर अपील सं./I.T.A. No. 225/Chny/2018

निर्धारण वर्ष/Assessment Year : 2012-13

Smt. Abhaya Kashmira,
No. 6 & 7, RamgiriExtn.,
Taramani, Velachery Link Road,
Chennai – 600 042.

Vs. The Assistant Commissioner of
Income Tax,
Non- Corporate Circle -1(1),
Formerly known as Business
Circle -1,
Chennai 600 034.

[PAN: AIXPK 0809J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Revenue by
Assessee by

: Shri. K. Mohamed Mustafa, JCIT
: Shri. J. Prabhakar, CA

सुनवाईकीतारीख/Date of Hearing

: 19.11.2018

घोषणाकीतारीख/Date of Pronouncement

: 27.11.2018

आदेश/ ORDER**PER S. JAYARAMAN, ACCOUNTANT MEMBER:**

The Revenue filed appeal against the order of Commissioner of Income Tax (Appeals)-2, Chennai in ITA No. 62/CIT(A)-12/15-16 dated 31.07.2017 for assessment year 2012-13, on which the assessee filed the CO. Later on, the assessee also filed an appeal in ITA No. 225/Chny/2018 against the same appeal order with a condonation petition. Since, all the appeals are inter linked, they are taken up together and decided as under.

2. Smt. Abhaya Kashmira, the assessee, is running a business of luxury serviced apartments in the name of "Velocity" at Plot No. 6,7,8 &9 Ramgiri Extension, Taramani Link Road at Velachery. The assessee admitted the rents received from six rooms situated in one floor as an income from house property and the rental receipts from the remaining rooms as an income from business receipts. While making the assessment, the Assessing Officer after examining all the aspects held that the assessee had no intention to invest her long term capital gains, which arose on 06.10.2006 in purchase or acquisition of residential house, even before investing the sale consideration in the capital gains

accounts scheme on 28.7.2007, the assessee had an intention to construct the serviced apartments and sought plan permission from CMDA as early as in April 2007 etc., and hence he withdrew the deduction claimed u/s. 54 for assessment year 2007-08 and thereafter taking all other factors into consideration, he assessed the income received from the apartments under the head "business", therefore, added back the deduction claimed u/s. 24A on one portion. Further, he found from the balance sheet that the assessee has shown the outstanding credit balance of Rs. 76,62,674/- to M/s. Doshi and Company – Builders. Since, the assessee has not furnished confirmation from the creditor, he added Rs. 76,62,674/-. The AO found that the assessee made investments in shares but did not compute disallowance u/s. 14A, though interest is debited to P&L account. After considering, the assessee's reply, invoking section 14A r.w.r. 8D(ii) & (iii), the AO disallowed Rs. 4,25,702/-. Aggrieved, the assessee filed an appeal before the CIT(A). With regard to the addition of Rs. 76,62,674/-, the Ld. CIT(A) called for a remand report from the AO based on which she deleted this addition. However, confirmed the other two issues.

3. Aggrieved against the deletion of Rs. 76,62,674/-, the Revenue filed an appeal in ITA No. 2542/Chny/2017, on which the assessee filed

a CO in CO No. 5/Chny/2018. However, later on, the assessee filed an appeal against the order of the CIT(A) in ITA No. 225/Chny/2018 against the other two issues with a condonation petition for the delay in filing the appeal for 89 days.

4. The assessee filed CO with the following grounds of appeal:

"2. The Assessing Officer is not justified in raising objection to deletion of Rs.76.62 lakhs in their appeal filed after confirming the factual details in his remand report and having accepted the same to be in order.

3. The Assessing Officer has no credence to question the wisdom of the CIT (A) to allow the appeal on the issue of outstanding liability shown at Rs.76.62 lakhs and the alleged unexplained sum of Rs.73.3 lakhs when his remand report clearly spells out the breakup of the amounts as well as the source therefore and duly confirmed by the creditor which was examined by the Assessing Officer to conclude the facts and veracity thereof and thereafter furnish the clear remand report on this issue."

5. On the Revenue's appeal, the Ld. DR submitted that the Ld. CIT(A) failed to appreciate that in the remand report, the AO had held that the confirmation of the outstanding liability is proved to the extent of 3.36 lakhs only as against the total addition of Rs. 76.62 lakhs. Thus, the Ld. CIT(A) erred in deleting the balance of Rs. 73.3 lakhs of outstanding liability without further evidence and held that the same was genuine. The Ld. DR invited our attention to the paper book, wherein a copy of letter issued by Doshi & Company dated 31.03.2012

is kept in Page No. 9 and submitted that the balance receivable as on 31.03.2012 is shown at Rs. 3,26,364/- only. Thus, in the remand report, the AO indicated that the claim of the assessee is supported to this extent only. However, the Ld. CIT(A) mistook it as if the entire sum i.e., 76,62,674/- was in order and deleted the balance sum without due examination.

6. Per contra, the Ld. AR invited our attention to the same material and submitted that the estimated cost of Velocity project was Rs. 345,62,674/- and the final cost of velocity project was Rs. 312,26,364/- towards which Rs. 309,00,000/- was paid from 20.01.2018 to 21.03.2012 and the balance receivable as on 31.03.2012 was Rs.3,26,364/-, which was considered by the Assessing Officer and duly admitted in the remand report. Therefore, the Ld. CIT(A) has correctly deleted the addition.

7. We have considered the rival submissions. The relevant portion of the remand report is extracted as under:

"Issue :1

In the original Assessment order outstanding credit balance of Rs 76,62,674 to M/s Doshi& Co was treated as non existing liability as the Assessee could not produce confirmation letter from M/s Doshi& co.

Assessee has submitted letter from M/s Doshi & Co as additional evidence and the same has been admitted under rule 46A by the Hon'ble Appellate Commissioner.

Perusal of the newly furnished evidence reveals that the total outstanding liability towards M/s Doshi & Co was Rs 3,26,364 only not Rs 76,62,674 as claimed by the Assessee during the Assessment stage. The creditor party too has confirmed the same through his letter dated 31/03/2012. The outstanding liability of Rs 76,62,674 break up as supported by the new evidence works out to

<i>Amount paid by Assessee's father:</i>	<i>40,00,000</i>
<i>Difference in Estimate and final value of project :</i>	<i>33,36,310</i>
<i>Liability towards M/s Doshi & Co:</i>	<i>3,26,364</i>
<i>Total:</i>	<i>76,62,674</i>

Thus the claim of the Assessee as supported by the newly admitted evidence is found to be in order."

8. From the above, it is clear that the Ld. CIT(A) has not furnished a copy of remand report to the assessee. Further, there is an apparent confusion on the genuineness of total outstanding liability as on 31.03.2012 of Rs. 76,62,674/-. The Revenue states that the AO has accepted the liability to the extent of Rs. 3,26,364/- as is confirmed in the letter claimed to have been issued by M/s. Doshi & Company and for the balance sum of Rs. 73,36,310/- comprising the amount paid by assessee's father at Rs. 40,00,000/- and the difference in estimate and final value of the project of Rs. 33,36,310/-, totalling at Rs. 73,36,310/- the genuineness has not been examined by the AO. From the material before us, it is not clear as to on what basis the total outstanding of Rs.

76,62,674/- was arrived at and on what basis the estimated cost, the final cost of velocity project etc shown in the letter issued by M/s. Doshi & Company was arrived , how it was reflected in the audited accounts of the assessee as on 31.3.2012 etc., how and what basis it was reconciled, verified etc is not clear.

9. In the facts and circumstances, we deem it fit to remit this issue back to the AO for fresh examination. The assessee shall lay relevant materials in support of its contention before the AO and comply with the requirements of the AO in accordance with law. The AO is free to conduct appropriate enquiry as deemed fit, but he shall furnish adequate opportunity to the assessee on the material etc to be used against it and decide the matter in accordance with law. The Revenue's appeal is treated as allowed for statistical purposes and the CO is treated as dismissed.

10. Now let us take the appeal in ITA No. 225/Chny/2017. The assessee pleaded condonation of delay in filing the appeal for 89 days stating that the order consequent to the appellate order was passed dated 05.09.2017 raising a demand of Rs. 38,200/-, the assessee felt that the tax payment was meagre and hence no further appeal be

preferred. When the department filed further appeal against the order of the CIT(A) in ITA NO. 2542/Chny/2017 and its copy was served on her on 05.01.2018, she took up the matter with her tax consultant, who advised her to file appeal on these issues. On receipt of expert opinion, realising her legal rights as well as to escape the consequential penalty etc., she filed this appeal. Since, the delay in filing the appeal is not wanton and in the interests of justice etc, it is submitted that the delay may be condoned.

11. We heard the rival contentions and in the interests of justice, we condone the delay.

12. The Ld. AR submitted that the Ld. CIT(A) erred in concluding the income from house property as income from business based upon the assessee's settling the addition made u/s. 54 in the assessment for assessment year 2007-08 under Direct Taxes Dispute Resolution Scheme, 2016. The CIT(A) has not justified in treating the receipts from one floor of the impugned property as business income when no service tax was levied or collected as opposed to service apartment business done qua other floors. The Ld. CIT(A) is not justified in condoning the assessment made under the head "house property" by

resorting to subterfuge of section 292B which does not condone the legal effect of treating the income from house property sans service tax levy.

13. With regard to the disallowance sustained u/s. 14A, the AR submitted that the investments in shares of M/s. Shasun Pharmaceuticals Pvt. Ltd. is a strategic investment made long before. Since the year 2008, the total investment in group companies are shown at Rs. 39,30,000/-. While, the balance 20,000 receipts investments in shares of unlisted companies. No fresh investments during the relevant previous year either out of own funds or borrowed capital. The initial investments in shares were made out of internal accrual and not out of borrowed funds and no expenditure was incurred in connection with earning the dividend income. The financial charges debited in the books of accounts pertains to term loan and overdraft facility for meeting the working capital requirement etc and hence, the Ld. CIT(A) erred in sustaining the disallowance made u/s. 14A r.w.r. 8D.

14. Per contra, the Ld. DR submitted that the assessee with her father had submitted a plan to CMDA for construction of services apartments in April 2007 itself much before the deposits made in capital

gains accounts scheme which indicated the intention to construct the serviced apartments and not a residential house. She purchased FSI at a cost of Rs. 34.63 lakhs and quoted extensively from the order of the Ld. CIT(A) including the fact that the assessee settled the addition made u/s. 54 in the assessment for assessment year 2007-08 under Direct Taxes Dispute Resolution Scheme, 2016 which also clearly establishes the fact that the investment in the impugned property is of commercial nature etc and supported the orders of lower authorities.

15. We heard the rival submissions and gone through the relevant materials. We find that the AO has not examined as to whether there is commonality or difference in the nature of the rooms, services, periodicity of rent , the charges , if any, charged for other facilities etc from the tenants from the portions from which income is admitted under the head "house property" vis-a-vis the persons in services apartments from which income is admitted under the head "business" etc from the contemporaneous material. In the facts and circumstances, we deem it fit to remit this issue back to the AO for proper appreciation of facts and decide the issue in accordance with law.

16. With regard to the disallowance u/s. 14A r.w.r. 8D, since, the impugned investments were claimed to have been made long before from internal accrual and the assessee claimed to have not incurred any expenditure out of borrowings etc, we deem it fit to remit this issue back to the AO for due examination on the facts and decide the issue in accordance with law. In the result, the assessee's appeal is treated as allowed for statistical purposes.

17. In the result, the Revenue's appeal in ITA No. 2542/Chny/2017 and the assessee's appeal in ITA No. 225/Chny/2018 are treated as allowed for statistical purposes and the assessee's CO in CO No. 05/Chny/2018 is dismissed.

Order pronounced on Tuesday, the 27th day of November, 2018 at Chennai.

Sd/-

(एन.आर.एस .गणेशन)

(N.R.S. GANESAN)

न्यायिकसदस्य/Judicial Member

Sd/-

(एस जयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 27th November, 2018

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त) अपील(/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF