

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

श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष
एवं एस जयरामन, लेखा सदस्य

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER &
SHRI S.JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.1867/Chny/2014		
निर्धारण वर्ष /Assessment year : 2010-11		
The Deputy Commissioner of Income Tax, Circle – IV, No.44, Williams Road, Cantonment, Trichy – 620 001	Vs.	Shri C. Kamaraj Prop. Rajashree Mines & Minerals and Rajashree Transports, Nataraja Medicals Upstairs, V. Kaikatti, Thellur Post, Ariyalur – 621 707. [PAN AJWPK 6009L]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
आयकर अपील सं./I.T.A.No.2989/Chny/2014		
निर्धारण वर्ष /Assessment year : 2010-11		
Shri C. Kamaraj Prop. Rajashree Mines & Minerals and Rajashree Transports, Nataraja Medicals Upstairs, V. Kaikatti, Thellur Post, Ariyalur – 621 707 [PAN AJWPK 6009L]	Vs.	The Deputy Commissioner of Income Tax, Circle – IV, No.44, Williams Road, Cantonment, Trichy – 620 001
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Department by	:	Mr. Pavitran Kumar,JCIT
Assessee by	:	Mr. A.S. Sriraman, Advocate

सुनवाई की तारीख/Date of Hearing : 18.09.2019

घोषणा की तारीख /Date of Pronouncement : 13.11.2019

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

The cross appeals filed by the Revenue as well as the assessee are directed against the order of the CIT(A), Tiruchirapalli in I.T.A. No.102/13-14/CIT(A)/TRY dated 28.03.2014 for the Assessment Year 2010-11.

2. Mr. Kamaraj, the assessee, is a Proprietor of M/s. Rajashree Mines & Minerals and Rajashree Transports. While making the assessment for the Assessment Year 2010-11, the Joint Commissioner of Income Tax, Range-IV, Tiruchirapalli made, *inter alia*, disallowance u/s.40A(3), addition towards short term capital gains, disallowance u/s.40(a)(ia), addition towards royalty received in advance, etc and completed the assessment. Aggrieved against that order, the assessee filed an appeal before the CIT(A). The Id.CIT(A) partly allowed the appeal. Aggrieved against his order, the Revenue as well as the assessee filed the above appeals.

3. The grounds of the appeal filed by the Revenue are extracted as under:

- “1. The order of the learned CIT(A), is against law, facts of the case and material evidences on records.
2. The Id. CIT(A) erred in allowing the appeal by giving relief in respect of the addition of ₹35,00,000/- as allowable expenditure which are related to business

without considering the remand report of the Assessing Officer.

3. The Id. CIT(A) erred in deleting the addition of ₹10,24,568/- towards short term capital gains without remanding the issue under Rule 46A as the related documents had not been produced at the time of assessment.

4. The Id. CIT(A) erred in deleting the addition of ₹1,82,68,745/- by merely accepting that as per the provisions of Sec.194(C) once the PAN data is taken from the transporters there is no requirement of deducting tax. PAN details are only produced before the CIT(A) and TDS was deducted till 30.09.2009 only. The CIT(A) ought to have called for the remand report for the fresh evidences filed before him.

5. The Id.CIT(A) erred in deleting the addition of ₹32,31,708/- as there was no contractual obligation entered with M/s. Kalaivani Borewells either orally or written on the basis of fresh evidences filed before him without calling for remand report under Rule 46A of the IT Act, 1961.

6. The Id. CIT(A) erred in deleting the addition of ₹13,23,303/- by misinterpreting the issue that it is only royalty advance and not unaccounted sales without cross-verifying or getting account copy from "Grasim Cements" which paid Royalty."

4. The learned Departmental Representative submitted that with regard to the addition of ₹15,00,000 & ₹20,00,000/- u/s.40(a)(ia), the Assessing Officer has made an addition of ₹35,00,000/- towards the payment made to various lorry operators since the assessee had not explained them with evidences. The CIT(A) has called for a remand report on the basis of the fresh evidences by way of proof in respect of payments made to various lorry operators. The DCIT, Circle-IV, Trichy submitted his remand report on 24.03.2014 stating that without any verifiable details furnished by the assessee such as there is no detail about the transporter name, just only a signature of a person made, in

some of the cases even the name of the person signed is not identifiable and whether it is the owner's signature or the driver's signature, and only one day this sum has been paid without any details of the trips made etc. In the absence of any verifiable expenses, the expense is not allowable u/s.37. It was further submissions of the Id. DR that the Id. CIT(A) has given relief on the basis of vouchers submitted by the assessee without considering the remand report submitted by the assessing officer. The Id. CIT(A) has allowed the appeal stating that the Assessing Officer did not doubt the genuineness of the expenses, which is contrary to facts as the expenses are entirely disallowed as there is no verifiable details which goes to prove that there is no evidence for making the payments. The Assessing Officer has clearly held in the assessment order and remand report that these payments are not verifiable.

With regard to the addition of ₹10,24,568/- towards short term capital gains, the Id. DR has submitted that the assessee has sold land shown as "mining land" with book value of ₹25,800/- to Grasim Cements which was brought to tax as short-term capital gains. The assessee has produced VAO's certificate mentioning survey nos. which are agricultural land but the VAO has not certified that agricultural operation had been done on the above land. The assessee has also

not produced copy of sale deed for cross verification. It was further submissions of the Id. DR that the CIT(A) has allowed this issue stating that the assessee has obtained copy of sale deed, chitta, adangal copy along with details of agriculture crops cultivated by the previous owner of the property to prove the contention of the appellant that it is agriculture land which was sold and it is not a capital asset for attracting capital gain. Further, the Id. DR has submitted that the CIT(A) has not remanded this issue under Rule 46A to Assessing Officer as these documents were not produced at the time of assessment and the details of it has not been dealt in the order vis-à-vis the contention of Assessing Officer. On this issue also, the Id. CIT(A) ought to have given an opportunity under Rule 46A while admitting a new evidence which were not produced at the time of assessment.

With regard to the disallowance u/s.40(a)(ia) of ₹1,82,68,745/-, the learned Departmental Representative submitted that the Assessing Officer has disallowed a sum of ₹1,82,68,745/- on the payments made to lorry on contract. The assessee has stated that TDS would not get attracted as the payment does not exceed ₹50,000/- in a year and the lorry owners owning one or two lorries only and most of them are not hired often by the assessee. However, the list produced by the

assessee was verified and payment details were taken from cashbooks and tabulated. The payments made were exceeding ₹20,000/- each and so section 194C is attracted. No TDS was made against these payments. Moreover, PAN details of these lorry owners were not filed by the assessee. So the addition was made u/s.40(a)(ia). It was further submissions of the Id. DR that the Id. CIT(A) in his order has stated that the Assessing Officer has ignored the assessee's production of PAN details, TDS deducted on the payments made to these parties were prior to 30th September, 2009, the Assessing Officer has not doubted the genuineness of the payment, etc. and allowed the assessee's appeal. It was further submissions of the Id. DR that no remand report on this aspect was called for by the Id. CIT(A) even though he states that the assessee furnished details of PAN of the parties at the time of assessment, overlooking the facts discussed in the assessment order and allowed the claim of the assessee.

With regard to the disallowance of payment made to Kalaivani Borewells u/s.40(a)(ia) of ₹32,31,708/-, the Id. DR has submitted that the Assessing Officer has disallowed ₹32.31 lakhs u/s.40(a)(ia) for non-deduction of tax towards the payment made to Kalaivani Borewells. The nature of job done is drilling of mines and labour payments have been made on daily basis on the spot to Kalaivani

Borewells and not to laborers directly. Hence, it can only be a contract and the Assessing Officer has disallowed ₹32.31 lakhs for non-deduction of TDS u/s.40(a)(ia). The Id. DR further submitted that the CIT(A) has placed reliance on the explanation that there is no contract and it is only purchase of materials and payment made to labours. The assessee produced a letter bearing letter pad of "Kalaivani Borewell", before the CIT(A) claiming that there was not oral or written contract, and their payments were made for supply of materials and the bank account of Kalaivani Borewells was also used to make the payment to labours of assessee. However, the Id. CIT(A) has not called for remand report under Rule 46A and no verification was done about genuineness of that letter.

With regard to the addition towards Royalty received in advance of ₹13,23,303/-, the Id. DR has submitted that during this year, it was found that the assessee has supplied lime stone to Chettinadu Cement apart from royalty and the total payment comes to ₹69.44 lakhs inclusive of royalty, whereas the assessee admitted only ₹56.21 lakhs including royalty. Hence, the difference of ₹13,23,303/- has been rightly added by the Assessing Officer as unaccounted sale of mine stones. However, the Id. CIT(A) has deleted the addition without cross-verifying or getting account copy from "Grasim Cements" which

paid the royalty and to whom the assessee was raising sale bills for lime stones.

5. Per contra, the learned AR relied on the order of the Id. CIT(A) on the issue of addition of Rs.35,00,000/- and hence the relevant portion of the order of the learned CIT(A) is extracted as under:

"4. The Assessing Officer noticed that the appellant had made payment to various lorries of ₹15,00,000 & ₹20,00,000 on 30.09.2009 & 03.11.2009. In the absence of any detailed list, the Assessing Officer treated the same as not allowable u/s.37 of the Act.

4.1 As the appellant submitted fresh evidence by way of proof in respect of payments made to various lorry operators during the course of hearing with the undersigned, a remand report was called for from the AO. The AO submitted in the remand report that in the absence of any verifiable evidence furnished during the course of assessment as well as remand proceedings, the claim of the appellant is not allowable u/s.37 of the Act.

4.2 The appellant has submitted vouchers for the payment of expenses incurred on account of freight, diesel, driver and cleaner batta along with vehicle numbers in consolidated vouchers maintained and obtained signatures of the vehicle owners to whom the payments have been made. Even though separate vouchers are not maintained for each expenditure such as freight, diesel and driver batta all the expenditure grouped together and maintained vouchers which have been produced before the Assessing Officer, who ignored the evidences produced and disallowed the entire expenditure u/s.37 of the I.T. Act. The expenditure incurred is related to the payments towards freight, diesel and driver batta paid in connection with the business of

the appellant whose genuinity has not been doubted by the Assessing Officer and hence the Assessing Officer is not justified in denying the claim of the appellant as all these payments made are related to the appellant's business expenses and therefore the same are allowed in favour of the appellant. This ground of appeal is allowed."

6. We have heard the rival submissions and gone through the above portions of the order of the learned CIT(A). We find that the learned CIT(A) duly considered the material and allowed the appeal. Therefore, we do not find any merit in the Revenue's grounds of appeal and hence the corresponding Revenue's grounds of appeal on this issue is dismissed.

7. On ground nos.3, 4 & 5 of the Revenue's appeal, the learned Authorized Representative supported the order of the learned CIT(A) on these issues.

8. We heard the rival submissions and gone through the relevant materials. Since the learned CIT(A) has not given due opportunity on these issues to the learned Assessing Officer and the Revenue has made out the case under Rule 46A, these issues are remitted back to the Assessing Officer for a fresh examination. The assessee shall place all materials in support of his contentions before the Assessing Officer and comply with the Assessing Officer's requirements in accordance

with law. The Assessing Officer is also free to conduct proper enquiry, however, he shall offer adequate opportunity to the assessee and then pass an order in accordance with law.

9. On ground no.6, the learned Authorized Representative supported the order of the learned CIT(A) which is extracted as under:

"11. The AO added a sum of ₹13,23,303 being the difference between the royalty received in advance and lime stone sales as unaccounted sales.

11.1 The AR of the appellant submitted that the royalty received in advance will be paid subsequently and cannot be treated as unaccounted sales. The Appellant paid royalty to the Government of India by way of cheque for obtaining rights. The royalty received in advance will be paid subsequently and the payments have been made by way of cheques to the Government Account which can be verifiable for its genuinity and hence the same cannot be treated as unaccounted sales. The Assessing Officer has misinterpreted the issue and the addition made is not justified and deserves to be deleted. The Appellant succeeds on this ground of appeal."

10. We heard the rival submissions. Since, the assessee has received the royalty in advance which would subsequently be paid to the Government and such payment can be verifiable for genuineness, we do not find any error in the order of the learned CIT(A) and hence the corresponding grounds of the Revenue is dismissed.

11. **I.T.A. No.2989/Chny/2014 of the Assessee** : Since the assessee has not filed any reason for filing the appeal after 82 days of delay, the assessee's appeal is dismissed.

12. In the result, the Revenue's appeal is partly allowed for statistical purposes and the assessee's appeal is dismissed.

Order pronounced in the court on 13th November, 2019, at Chennai.

Sd/-

(जॉर्ज माथन)
(**GEORGE MATHAN**)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(एस जयरामन)
(**S. JAYARAMAN**)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai

दिनांक/Dated: 13th November, 2019.

IA, Sr. PS

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