

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

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष  
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.423/CHNY/2018  
निर्धारण वर्ष /Assessment year : 20104-2015.

Shri. Mohamed Iyub,  
Prop. Capital Investment &  
Holding Co.,  
No.298, Yussof- Raja Tower,  
Peters Road, Chennai 600 086.

**Vs.** The Income Tax Officer,  
Non Corporate Ward 3(3)  
Chennai

[PAN AAFPI 0112G]

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri. K.G. Raghunath, Adv.  
प्रत्यर्थी की ओर से /Respondent by : Ms. R. Anitha, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 18-12-2019  
घोषणा की तारीख /Date of Pronouncement : 09-01-2020

**आदेश / ORDER**

**PER INTURI RAMA RAO, ACCOUNTANT MEMBER**

This is an appeal filed by the Assessee directed against the order of the Id. Commissioner of Income Tax (Appeals)-4, Chennai ('CIT(A)' for short) dated 27.10.2017 for the Assessment Year (AY) 2014-2015.

2. The Assessee raised the following grounds of appeal.

“1. The order passed by the Learned Assessing Officer, for the Assessment Year 2014-15 , is contrary to law, evidence and facts and is arbitrary.

2. The Learned Assessing Officer, had erred in not comprehending the nature of the business of the appellant and the nature of the transactions, and that the inability of the appellant to produce the Sundry Creditors for Cross examination was solely on account of the pending litigations, and the Learned Assessing Officer, had thus erroneously concluded that the repayable Security deposits outstanding in the books of the appellant, are unproved in respect of genuineness and creditworthiness, and had made the additions U/s 68 of the Income Tax Act, 1961 amounting to Rs.1,56,20,000/-,

3. The Learned Assessing Officer, had erroneously invoked the provisions of Section 68, on the security deposit of Rs. 1,56,20,000/- , accepted by the appellant during the course of business transactions, and without considering all the relevant documentary evidences and all the explanations provided, during the course of the assessment.

4. The Learned Commissioner of Income Tax-Appeals , failed to comprehend and appreciate the binding nature of the decisions of the various Hon’ble High Courts and Hon’ble Tribunal on the same issue on hand and various associated aspects thereof.

5. In view of the above and in view of the further grounds that may be advanced, as the circumstances may warrant , in the interest of deliverance of justice, during the course of hearings , it is prayed that the Honourable Tribunal may be pleased to grant suitable relief after considering all the evidences and explanations that the Appellant could produce before the Honourable Tribunal during the course of hearing on the appeals, on the issues raised in the Assessment Order & the Appellate order concerned”.

3. The brief facts of the case are as under:

The appellant is an individual deriving income under the head “business”. The return of income for the AY 2014-15 was filed on 30.07.2014 disclosing total income of Rs.89,74,130/- and the same

was revised on 31.07.2014 at total income of Rs.88,59,130/-. The case was selected under limited scrutiny category in order to verify large increase in sundry creditors and the assessment was completed by the Income Tax Officer, Non Corporate Ward 3(3), Chennai (hereinafter referred as Assessing Officer) vide order dated 30.12.2016 passed u/s.143(3) of the Act at total income of Rs.2,44,79,130/-. While doing so, the Assessing Officer made addition of Rs.1,56,20,000/- treating the following credits standing in the names of the following persons as unexplained credit u/s.68 of the Act.

(i)	<i>Hanuman Prasad (PAN ABCPH 1055K)</i>	<i>Rs.1,00,00,000/-</i>
(ii)	<i>J. Elango (Prop. Conceptts) (PAN AAHPE 8131H)</i>	<i>Rs.50,00,000/-</i>
(iii)	<i>Jude Thomas (Faith Foundation)</i>	<i>Rs.6,20,000/-</i>
		<u><i>Rs.1,56,20,000/-</i></u>

4. The factual background of the issue is as under:-

During the course of assessment proceedings, the Assessing Officer had called upon the assessee to produce details of sundry creditors standing in the books of the assessee. Assessee had filed party wise details of sundry creditors. Based on this information filed by the assessee, the Assessing Officer had issued summons to three individuals namely Shri. Hanuman Prasad, Shri. J. Elango and Shri. Jude Thomas, which were returned unserved by the postal authorities. Thereupon, Assessing Officer had called upon the assessee to

produce those parties for examination before him. However, assessee could not produce the sundry creditors for verification but filed details as to how these debts/credits had arisen. Assessee further submitted copies of legal notice issued to one of the parties namely Shri. Hanuman Prasad and Criminal Complaint filed against another party Shri. J.Elango. Based on these information's, the Assessing Officer was of the opinion that credits were not genuine and accordingly made an addition of Rs.1,56,20,000/- as unexplained cash credits.

5. Being aggrieved, an appeal was preferred before the Id.CIT(A), who vide impugned order confirmed the addition by holding that assessee had failed to substantiate the genuineness, creditworthiness and identity of the sundry creditors.

6. Being aggrieved, the appellant is in appeal before us in the present appeal. It is submitted that assessee had received security deposits from three parties. Names, address, phone numbers, copies of ledger accounts and confirmation letters from the said parties were filed before assessment proceedings and assessee could not produce those creditors before the Assessing Officer for cross examination as assessee was not aware of the whereabouts of those parties. Subsequently, assessee had filed copies of first information report

filed against Shri. Hanuman Prasad and Shri. J.Elango placed at pages 17 to 20 of the paper book. As regards to Shri. Jude Thomas, it is submitted that the credit represents opening balance and hence no addition can be made in the current assessment year.

7. On the other hand, the Id. Sr. Departmental Representative placed reliance on the orders of lower authorities.

8. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to an addition made u/s.68 of the Act. Admittedly, out of three credits, one creditor namely Shri. Jude Thomas, represents opening balance and it is settled proposition of law that addition should be made u/s.68 of the Act in the year in which the credit is first introduced in the books as held by Hon'ble Delhi High Court in the case of *CIT vs. Usha Stud Agricultural Farm Ltd, 301 ITR 384*. As regards to the balance two credits made by the Assessing Officer on the ground that parties were not produced before him for cross examination. Assessee had made all possible efforts to produce the creditors before the Assessing Officer and also filed copies of FIR filed against them. These facts were brought to the notice of the Assessing Officer by the assessee. Admittedly, these credits were received through banking channel. Names, address, phone numbers, details of payment received were furnished by the

assessee to the Assessing Officer. In the circumstances, the Assessing Officer should have invoked statutory powers vested with him to trace the whereabouts of the sundry creditors. The assessee had discharged the onus to the extent possible and hence addition cannot be made merely because sundry creditors were not produced by the assessee before the Assessing Officer. In the circumstances, we are of the opinion that the Assessing Officer should not have made addition keeping in view that assessee had discharged the onus to the extent possible. Therefore, we direct the Assessing Officer to delete the addition of Rs.1,56,20,000/-.

9. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on 9th day of January, 2020 at Chennai.

**Sd/-**

(एन.आर.एस. गणेशन)

**(N.R.S. GANESAN)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**

(इंटूरी रामा राव)

**(INTURI RAMA RAO)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated:9<sup>th</sup> January, 2020

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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