

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

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
श्री इंटूरी रामा राव, लेखा सदस्य एवं

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.3278 & 3279/Chny/2019
निर्धारण वर्ष /Assessment Year: 2012-13 & 2013-14

Mr. Parasmal Sharma Santosh,
C/o M/s. Pass Associates,
Unit No.208, 2nd Floor, Beta Wing,
Raheja Towers, No.113-134,
Anna Salai,
Chennai – 600 002.
[PAN: APIPS 0964A]

Deputy Commissioner of
Income Tax,
Vs. Central Circle – 2(3),
Chennai – 600 034

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Mr. D. Anand, Advocate
: Mr. Abani Kanta Nayak, CIT

सुनवाई की तारीख/Date of Hearing

: 29.01.2020

घोषणा की तारीख /Date of Pronouncement

: 29.01.2020

आदेश / ORDER

PER GEORGE MATHAN, JUDICIAL MEMBER:

These are appeals filed by the Assessee against the order of the learned Commissioner of Income Tax (Appeals)-19, Chennai in ITA No.111 & 112/15-16 dated 20.09.2019 for the Assessment Years 2012-13 & 2013-14.

2. Mr. D. Anand, Advocate represented on behalf of the Assessee and Mr. Abani Kanta Nayak, CIT represented on behalf of the Revenue.

3. It was submitted by the learned Authorized Representative that the assessee is a Director in M/s. Styleone Retail Concepts Private Limited and M/s. Lokaa Developer Private Limited and also the proprietor of M/s. Shoppers, a retail showroom. It was a submission that the assessee was substantially in the business of dealing in school uniforms and clothes. It was a submission that there was a search on the premises of one Shri V. Selvakumar on 13.07.2016. In the course of search, certain promissory notes issued by the assessee were found. On being questioned of the nature of the transaction, the assessee had submitted that the promissory notes for an amount of Rs.1.00 crore had not been accounted for by the assessee in his books. It was a further clarified that the said promissory notes were in respect of the advances received from Shri N. Elamaran for the supply of uniform and other due materials for M/s. Shree Balaji Medical College and Hospital, Chennai. As the amounts were received in two different assessment years, the Assessing Officer had assessed Rs.50.00 lakhs each for each of the assessment years 2012-13 and 2013-14. It was a submission that the said Shri. Elamaran had admitted an amount of Rs.1.00 crore as an advance given to the assessee and had offered the said amount of Rs.50.00 lakhs each for the assessment years 2012-13 and

2013-14 as his undisclosed income and the same had also been brought to tax. It was a submission by the learned Authorized Representative that this was also recognized by the Assessing Officer in para 7.2 of the assessment order. It was a submission that the said amount was an advance from Shri N. Elamaran for supply of goods and the assessee had also subsequently entered the amount in his books when he was ready to supply the goods and the sales have also been recorded in his books for the assessment years 2014-15 and 2015-16. The learned Authorized Representative placed before us a copy of the ledger extracts and the confirmation letter from M/s. Sree Balaji Medical College and Hospital, Chennai to the effect that the sales have been made and the materials supplied. It was further a submission that even before the learned Commissioner of Income Tax (Appeals), it was categorically confirmed that the amount of Rs.50.00 lakhs each for each of the assessment years 2012-13 and 2013-14 were only advances and that Shri N. Elamaran had disclosed the said amount of advances given as his undisclosed income for the assessment years 2012-13 and 2013-14.

The learned Authorized Representative drew out attention to para-4.7(iv) of the order of learned Commissioner of Income Tax (Appeals). It was a submission that the learned CIT(A) has stated that the assessee has not produced any primary material evidences in support of any supply of uniform dress materials or other services carried out in connection with the advance of Rs.1.00 crore received in para 4.7(i)(iv). It was a submission

that the confirmation of the accounts were very much available. It was a submission that as it has been recognized by both the authorities below that the amount of Rs.50.00 lakhs each, totaling to an amount of Rs.1.00 crore which has been assessed for the assessment year 2012-13 and 2013-14 in the hands of the assessee were in fact advances received from Shri N. Elamaran, the same could not be treated as undisclosed income of the assessee. Also in view of the fact that Shri N. Elamaran has himself accepted the fact that the said amount of Rs.1.00 crore was the undisclosed income of Shri N. Elamaran for the assessment years 2012-13 and 2013-14 and he had offered the same as his undisclosed income for the relevant years it could not be treated as the income of the assessee. It was a submission that the additions as made in the hands of the assessee and as confirmed by the learned Commissioner of Income Tax (Appeals) was liable to be deleted.

4. In reply, the learned Departmental Representative submitted that three promissory notes were found, one for Rs.50.00 lakhs dated 22.02.2012 and another for Rs.50.00 lakhs dated 'Nil' and one Rs.1.00 crore promissory note dated 31.05.2012. It was a submission that after considering the explanation of the assessee, the Assessing Officer had accepted the claim that the promissory note of Rs.1.00 crore was the only promissory note that required to be considered as the income of the assessee. It was a submission that it was for the assessee to prove that

the amount of Rs.1.00 crore had been disclosed by the assessee. It was a submission that the assessee having not shown nor produced any evidences to show that the amount of Rs.1.00 crore received by him was not his income, the same is liable to be assessed as undisclosed income of the assessee as has been done by the Assessing officer and as confirmed by the learned Commissioner of Income Tax (Appeals).

5. The learned Departmental Representative vehemently supported the order of the learned Assessing Officer and the learned CIT(A).

6. We have considered the rival submissions and perused the materials available on record.

7. At the outset, a perusal of the assessment order in para-7.2 clearly shows that the said Shri N. Elamaran on account of the above transaction has disclosed Rs.1.00 crore as his undisclosed income for the assessment years 2012-13 and 2013-14. A perusal of the para-7.1 shows that the amount of Rs.1.00 crore has been categorically admitted to be the advance received from Shri N. Elamaran for supply of uniform and other due materials for M/s. Sree Balaji Medical College and Hospital, Chennai. It is also very clear vide Question No.9 that the amount of Rs.1.00 crore received was the advance and admittedly was not accounted for in the books of accounts of the assessee. It is also noted that the assessee himself offered Rs.1.00 crore, as the same was not accounted in his books.

It is also noticed that the Assessing Officer has recorded that the assessee has not produced any primary material evidences in support of the uniform dress material of other services carried out in connection with the advance of Rs.1.00 crore received.

8. Thus, the facts clearly shows that the amount of Rs.1.00 crore being Rs.50.00 lakhs each for the assessment years 2012-13 and 2013-14 is clearly an advance. The advance does not become the income of the assessee. The advance in fact is a credit appearing in the name of the assessee, whether accounted or unaccounted. It is for the assessee to prove the source of the credit. If the assessee is unable to prove the source of the credit, then it is deemed to be the income of the assessee.

9. In the present case, the source of the credit is Shri N. Elamaran and Shri Elamaran has also confirmed the advance. Therefore, the question of the said advance or the credit being treated as a deemed income of the assessee no more survives. It is also an admitted fact that Shri N. Elamaran has himself offered the amount of Rs.1.00 crore as his undisclosed income relating to the assessment years 2012-13 and 2013-14. The fact that Shri Elamaran has offered the amount has never been intimated to the assessee and consequently the assessee would under normal circumstances accept the said amount to be his income. That does not make it the income of the assessee. The assessee is very well entitled to prove that it is not his income. In the present case, much more than the

assessee proving that it is not his income, it is the Revenue which has produced evidences to show that it is not the income of the assessee. In so far as, it is the Assessing Officer who has accepted the claim that the amount of Rs.1.00 crore in respect of which the promissory notes have been issued and found in the course of search is in fact the advance given to the assessee by Shri N. Elamaran. The purpose for which Shri N. Elamaran has given the advance, is also brought out by the Assessing Officer, being for the supply of uniform and materials for M/s. Sree Balaji Medical College and Hospital, Chennai. It is the Assessing Officer who has brought out the fact that Shri N. Elamaran has also offered the said amount of Rs.1.00 crore as his undisclosed income for the assessment years 2012-13 and 2013-14. When so much of evidences has been produced by the Revenue which is in favour of the assessee, the same cannot be wished away by saying that the amount of Rs.1.00 crore has been offered by the assessee in his statement and that the said amount should be assessed as the undisclosed income of the assessee also. Further, even the claim of Shri Elamaran that the advances was for the supply of materials for M/s. Sree Balaji Medical College and Hospital, Chennai has not been considered by the Assessing Officer or the learned CIT(A).

This being so, we are of the view that the addition of Rs.50.00 lakhs for each of the assessment years 2012-13 and 2013-14 as unaccounted

income of the assessee is unsustainable on the facts of the case and consequently the same stands deleted.

10. In the result, the appeals of the assessee in ITA Nos.3278 & 3279/Chny/2019 are allowed.

Order pronounced in the open Court on 29th January, 2020 in Chennai.

Sd/-
(इंटूरी रामा राव)
(INTURI RAMA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(जॉर्ज माथन)
(GEORGE MATHAN)
न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 29th January, 2020

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