

आयकर अपीलीय अधिकरण, 'ए' न्याय पीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.2229/Chny/2019

(निर्धारणवर्ष / Assessment Year: 2015-16)

Income Tax Officer , Corporate Ward-5(4), Chennai.	Vs	M/s. Rajkishore Developers Pvt.Ltd., 7/486, 17 th Street, 4 th Sector, K.K.Nagar, Chennai-600 078.
		PAN : AADCR 6450R
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Mr. Suresh Periasamy,JCIT
प्रत्यर्थी की ओरसे/Respondent by	:	Mr.G.Baskar, Advocate

सुनवाई की तारीख/Date of hearing	:	02.11.2020
घोषणा की तारीख /Date of Pronouncement	:	04.12.2020

आदेश / ORDER

PER G.MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is directed against the order of the learned Commissioner of Income Tax (Appeals)-3, Chennai dated 31.05.2019 and pertains to the assessment year 2015-16.

2. The Revenue has raised the following grounds of appeal:-

"1. The order of the Commissioner of Income Tax (Appeals) is contrary to the law and facts of the case.

2. The CIT (Appeals) has erred in law and on facts in holding that the amount credited to the bank account of M/s. Rajkishore Engineering and Constructions Pvt.Ltd. was adjusted against the dues from assessee company M/s. Rajkishore Developers Pvt.Ltd. without verifying the actual transaction between the two companies.

2.1. The CIT (Appeals) failed to consider the details of the construction done by M/s. Rajkishore Engineering and Constructions Pvt.Ltd. for the assessee company as also the fact that whether M/s. Rajkishore Engineering and Constructions Pvt.Ltd. had admitted this amount as its income remains unexplained.

2.2. The CIT (Appeals) failed to give an opportunity to the Assessing Officer as envisaged in rule 46A of I.T.Rules, 1962 for examination of evidence furnished by the assessee company during the appellate proceedings.”

3. Brief facts of the case are that the assessee company is in the business of construction and flat promotion filed its return of income for the assessment year 2015-16 on 02.11.2015 admitting total income of ₹ 1,32,530/-. The case has been selected for scrutiny and assessment has been completed u/s.143(3) of the Act on 19.12.2017 and determined total income at ₹ 5,77,38,600/- by making the following additions:-

1. Disallowance of expenses :	92,75,428
2. Disallowance of interest :	51,90,715
3. Disallowance u/s.68 :	3,98,00,000
4. Difference in sale consideration:	5,45,934
5. Disallowance of service tax claimed:	16,44,373
6. Disallowance of service tax u/s.43B	8,82,282
7. Disallowance of ROC fees	2,67,333

Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee has filed additional evidences to justify its case on the various issues including the addition made by the Assessing Officer towards unsecured loans u/s.68 of the Act, ad-hoc disallowance of expenses, disallowance of interest for non-deduction of TDS, difference in gross receipts as per books of accounts and as per statement of receipts filed during the course of assessment proceedings, disallowance of sales tax and disallowance of ROC fees. The learned CIT(A), after considering the submissions of the assessee has partly allowed the appeal, where he has allowed relief in respect of additions made by the Assessing Officer towards unsecured loans u/s.68 of the Act, however, allowed partly relief in respect of additions made by the Assessing Officer towards disallowance of interest u/s.40(a)(ia) of the Act for non-deduction of TDS @ 30% by taking note of amendment made to section 40(a)(ia) by the Finance Act, 2014 effective from assessment year 2015-16. As regards disallowance of expenditure, after considering the relevant submissions of the assessee including copy of work order restricted the ad-hoc disallowance made by the Assessing Officer to 7.5% of total

expenditure. The relevant findings of the order of learned CIT(A) are as under:-

“6. Before me, the authorized representative Shri B.Baladasan, Chartered Accountant has submitted that the promoter group has obtained a loan from Future Capital amounting to Rs.5,00,00,000/- vide application No.HE-1016782 out of which an amount of Rs.3,57,89,000/- was disbursed by crediting directly to the bank account NO.00000030328771730 standing in the name of M/s.Rajkishore Engineering and Constructions Pvt Ltd.(RKECPL for short), which is an associate company, maintained with State Bank of India, in support of which the copy of loan sanction letter and bank account extract are furnished before me. He further submitted that this loan was obtained by promoter group to settle the amount receivable by RKECPL from the appellant (RKD). As a result, a corresponding liability was credited in the books of RKD and subsequently was capitalized. The amount capitalized included this liability and other amounts due to the promoter group totaling to Rs.3,98,00,000/-. In support of which, the relevant documents filed with Ministry of Corporate Affairs such as Form SH7 and PAS-3 are furnished for my perusal. The authorized representative has clarified that there are two different loans, the first loan was taken by RKD directly from Capital First during February 2013 amounting to Rs 3,92,00,000/- vide LAN-1199126 and second loan was taken by promoter group, also from Future Capital for an amount of RS.3,57,89,0001- vide LAN-1016782. It is further explained that the loan taken by RKD (appellant) was recorded as secured loan in RKD books and the loan taken by promoter group along with other amounts due to them was capitalized. According to authorized representative, the assessing officer had mis-construed that there was only one loan and treated the amount of liability taken over by RKD from RKECPL, which was converted as capital to be unexplained credit u/s.68. Thus, the authorized representative vehemently argued that the inference drawn by the assessing officer is wrong as the source for introduction of capital to the tune of RS.3,98,00,000/- stands explained.

7. I have considered carefully the discussion made by the assessing officer in the assessment order passed and the submissions made by the authorized representative from time to time. Relevant documents furnished by the authorized representative have been perused. I agree with the contention of the authorized representative that the loan taken by the promoter group led by Mr.Rajasekar from Capital First vide sanction letter dated 27.09.2012at ₹.3,57,89,000/- was initially credited directly into the bank account NO.00000030328771730 standing in the name of M/s.Rajkishore

Engineering and Constructions Pvt Ltd. maintained with State Bank of India, Vadapalani Branch on 05.11.2012 for the purpose of business. Subsequently in FY 2014-15, this loan amount which was credited in the bank account of RKECPL was adjusted against dues from RKD towards payment of construction cost. This liability along with existing liabilities to the tune of Rs.3,98,00,000/- in the books of RKD which is payable to the promoter Mr.Rajasekar was converted into equity by issuing shares to the tune of 39,80,000 with a face value of RS.10/- each aggregating to Rs.3,98,00,000/- as is evident in Form No.PAS- 3 (return of allotment) filed before me. As a result of which, the share capital has been increased from Rs.2,00,000/- to ₹ 4,00,00,000/-. Therefore, the sources for increase in share capital to the tune of Rs.3,98,00,000/- stands explained. I direct the assessing officer to delete the addition made at Rs.3,98,00,000/- on account of unexplained credit u/s.68 The ground taken is allowed.

*8. The ground No.2 is directed against the addition made at ₹.51,90,715/- on account of disallowance of interest u/s,.40(a)(ia) for non-deduction of TDS on the interest paid to M/s.Capital First Limited. Before me, the authorized representative has only argued that section 40(a)(ia) of the Income Tax Act, 1961 has been amended vide Finance Act, 2014, effective from AY 2015-16, to restrict the amount of disallowance for non-deduction of tax to 30 percent of the expenditure claimed. On perusal of the section 40(a)(ia), the argument of the authorized representative is found, to be correct. From AY 2015-16 onwards, the disallowance u/s40(a)(ia) shall be only 30% of the expenditure claimed. Therefore, I direct the assessing officer to restrict the disallowance made u/sAO(a)(ia) to 30% of the expenditure claimed at Rs.51,90,715/-, which comes to RS.15,57,215/-. The appellant gets relief of RS.36,33,500/- on this count. The ground taken is **partly allowed**.*

9. The third ground is directed against addition made at Rs.92,75,428/- on account of disallowance of operating expenditure. The assessing officer has stated that the appellant has produced a single bill copy in support of the expenditure claimed towards payment of construction cost to its associate concern RKECPL at Rs.4,63,77,138/- and as details such as nature of work done, date and mode of payment, etc are not furnished and therefore, the assessing officer has disallowed 20% of the said expenditure, which comes to Rs.92,75,428/- has been disallowed. On the contrary, the authorized representative Shri. B. Baladasan, Chartered Accountant has submitted that the

RKD has issued contract in the form of work order to RKECPL to construct the building for a project that is currently undertaken. The progress of work carried out by RKECPL and the related value of work completed by RKECPL for assessment year under consideration has been conveyed to RKD through the invoice issued by RKECPL on 30th March 2015, in support of which the invoice issued has been furnished. According to him, the said invoice contained detailed break up of description of work, measurement of units, rate per unit, the quantum of work done and the corresponding monetary value of the work completed. Therefore, the authorized representative has argued that the claim for expenses are fully supported by the documents and hence, the disallowance made by the assessing officer is arbitrary and without any valid reason.

*10. I have gone through the discussion made by the assessing officer and relevant documents furnished by the authorized representative before me. The copy of work order for construction of basement plus stilt plus four floors residential apartment in the name of RKC Suprabath at Vadapalani, Chennai-26 issued to RKECPL by RKD, the appellant on 18.02.2014 is furnished before me. As rightly pointed out by the authorized representative, the work order issued is a detailed one containing description of work, measurement of units, rate per unit, the quantum of work done and the corresponding monetary value of the work completed. Therefore, in so far as construction work undertaken by RKECPL is concerned, the assessing officer has not doubted the same. It is only for want of complete details, the impugned disallowance of Rs.92,75,428/- is made. However, on due consideration of the information furnished before me, I found that the disallowance made is excessive as the assessing officer did not brought out any material evidence for supporting the disallowances made at 20% of expenditure claimed. The same appears to be an adhoc disallowance. But the facts remains that the RKECPL is an associate concern of the appellant, M/s. RKD. The prices decided by the RKD for various types of work may be excessive because the work order is given by way of nomination and not through tender process. The impugned transaction is a related party transaction and the same is a controlled transaction. Also, the appellant has not furnished any comparable data in support of the rates given to its associate concern for the work done in respect of the residential project undertaken by the appellant. Taking these facts into consideration, I direct the assessing officer to disallow the expenses incurred on account of construction at 7.5% of Rs.4,63,77,138/-, which comes to Rs.34,78,285/-. The appellant gets relief of RS.57,97, 143/- on this count. The ground taken is **partly allowed.**”*

4. The learned DR submitted that the learned CIT(A) has erred

in deleting the amount credited to the bank account of M/s. Rajkishore Engineering and Constructions Pvt.Ltd. was adjusted against the dues from assessee company M/s. Rajkishore Developers Pvt.Ltd. without verifying the actual transaction between the two companies. The learned DR further submitted that the learned CIT(A) has failed to consider the details of construction done by M/s. Rajkishore Engineering and Constructions Pvt.Ltd. for the assessee company as also the fact that whether M/s. Rajkishore Engineering and Constructions Pvt.Ltd. had admitted this amount as its income before allowing the relief to the assessee. The learned DR also submitted that the learned CIT(A) erred in admitting the additional evidences filed by the assessee without giving opportunity of the Assessing Officer as envisaged under rule 46A of I.T.Rules, 1962 in gross violation of principles of natural justice. Therefore, the appeal may be set aside to the file of the Assessing Officer to re-examine the issues afresh in accordance with law.

5. The learned AR for the assessee, on the other hand, submitted that although the assessee has filed necessary details before the Assessing Officer because the Revenue has taken a ground

challenging violation of Rule 46A of the I.T.Rules, 1962, the issue may be set aside to the file of the Assessing Officer to re-examine the issue in the light of the various evidences filed by the assessee to justify its claim.

6. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. It is a well settled principle of law that when additional evidences are filed before the appellate authority, it is the duty of the appellate authority to confront those additional evidences to the Assessing Officer for his comments and obtain necessary reports from the Assessing Officer on admissibility of the additional evidences and veracity of such additional evidences filed before deciding the issues. No doubt, the appellate authority had powers to examine issue on its own but when the appellate authority has decided the issue on its own without calling for remand report from the Assessing Officer, then the appellate authority should give detailed reasons in support of its conclusions, otherwise it amounts to violation of Rule 46A of I.T.Rules, 1962. In this case, on perusal of the order of learned CIT(A), we find that although the assessee has filed additional evidences in support of its case, but the learned CIT(A) has

decided the issues without confronting those documents to the Assessing Officer for his comments in violation of Rule 46A of I.T.Rules, 1962. Therefore, we are of the considered view that the issue needs to be go back to the file of the Assessing Officer to reexamine the additional evidences filed by the assessee in support of its claim for which both counsel for the assessee and Revenue have agreed . Accordingly, we set aside the issue to the Assessing Officer and direct him to re-consider the issues in the light of the additional evidences filed by the assessee .

7. In the result , the appeal filed by the Revenue is treated as allowed for statistical purposes.

Order pronounced in the open court on 4th December, 2020

Sd/- (धुव्वुरु आर.एल रेड्डी) (Duvvuru RL Reddy) न्यायिक सदस्य /Judicial Member	Sd/- (जी. मंजुनाथ) (G.Manjunatha) लेखा सदस्य / Accountant Member
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चेन्नई/Chennai,
दिनांक/Dated 4th December, 2020
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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