

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
Before Shri Duvvuru RL Reddy, Judicial Member &
Shri S. Jayaraman, Accountant Member

आयकर अपील सं./I.T.A. No.783/Chny/2019
निर्धारण वर्ष/Assessment Year: 2013-14

The Deputy Commissioner of
Income Tax, Corporate Circle 1(1),
Chennai 600 034.

M/s. AVA Cholayil Healthcare Pvt. Ltd.,
Vs. 1583, J. Block, 6th Avenue, 15th Main
Road, Chennai 600 102.

[PAN: AAICA2178A]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

Department by : Shri G. Chandrababu, Addl. CIT
Assessee by : Mrs. Pushya Sitaraman, Advocate
सुनवाई की तारीख/ Date of hearing : 03.02.2021
घोषणा की तारीख /Date of Pronouncement : 11.03.2021

आदेश /O R D E R

PER DUVVURUL RL REDDY, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the
Id. Commissioner of Income Tax (Appeals) 4, Chennai dated 28.12.2018
relevant to the assessment year 2013-14. The Revenue has raised the
following grounds:

- "1. The order of the Ld. CIT(A) is contrary to law, facts and circumstances of the case.*
- 2. The Ld. CIT(A) erred in giving relief to the assessee by deleting the disallowance of Rs.44,22,711/- for AY 2013-14 & Rs.45,56,529/- for AY 2014-15 claimed under section 36(1)(iii) when the assessee company has not produced any evidence regarding the transaction for validating the claim that it arose*

out of a family settlement during FY 2007-08 during the assessment proceedings. The Ld. CIT(A) erred in not giving opportunity to the AO under Rule 46A for verifying the claim of the impugned family settlement during appellate proceedings.

3. *The Ld. CIT(A) failed to appreciate the assessee was not able to establish the nexus between the business and the loans and the impugned interest to stake a claim of deduction under section 36 of the Act.*
4. *The Ld. CIT(A) failed to appreciate that the assessee has entered into a colourable transaction to reduce net profit by not offering income accruable/receivable on advances that have been made interest-free to sister concerns.*
5. *The Ld. CIT(A) erred in giving relief to the assessee by deleting the addition of Rs.6,55,20,000/- being LTCG short reported by the assessee, without verifying whether the conditions laid down in Proviso 1 and Proviso 2 to section 50C were satisfied or not by the assessee.*
6. *For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the ld. CIT(A) be set aside and that of the AO restored.”*

2. The first effective ground raised by the Revenue relates to deletion of disallowance of ₹.44,22,711/- claimed under section 36(1)(iii) of the Income Tax Act, 1961 [“Act” in short]. On perusal of the balance sheet, the Assessing Officer has noticed that the assessee has a secured borrowings of ₹.3,78,96,800/- and has debited an interest in the profit and loss account to an extent of ₹.55,92,800/-. On verification of the records, the Assessing Officer noticed that the assessee has advanced interest free loan to its sister concern viz., Cholayil Products and Services to an extent of ₹.2,99,68,284/-. Since the assessee has extended interest free loan to its sister concern on

the secured borrowings for which the assessee has debited interest, the Assessing Officer worked out proportionate interest to be disallowed under section 36(1)(iii) of the Act at ₹.44,22,711/- and brought to tax. On appeal, the Id. CIT(A) deleted the disallowance.

3. Aggrieved, the Revenue is in appeal before the Tribunal. The Id. DR submitted that during the course of appellate proceedings, by considering the submissions and evidence on the transaction for validating the claim that transaction arose out of a family settlement during the financial year 2007-08, the Id. CIT(A) deleted the disallowance made under section 36(1)(iii) of the Act without giving an opportunity to the Assessing Officer, which is in violation of the Rule 46A and pleaded for setting aside the appellate order. On the other hand, the Id. Counsel for the assessee supported the order passed by the Id. CIT(A).

4. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. On perusal of the appellate order, we find that against the transaction of ₹.2.99 crores, by considering and agreeing the reasoning of the AR of the assessee that the transaction arose out of a family settlement/partition and no such loan was never ever given by the assessee, the Id. CIT(A) decided the issue in favour of the assessee. While doing so, the Id. CIT(A) has not given an opportunity to the Assessing Officer for filing remand report on the materials/

documentation brought on record afresh, which were considered by the Id. CIT(A). Accordingly, we set aside the order of the Id. CIT(A) on this issue and remit the matter back to the file of the Assessing Officer to verify and decide the issue afresh in accordance with law after affording an opportunity of being heard to the assessee. Thus, the ground raised by the Revenue is allowed.

5. The next ground raised by the Revenue relates to deleting the addition of ₹.6,55,20,000/- being LTCG short reported by the assessee, without verifying whether the conditions laid down in Proviso 1 and Proviso 2 to section 50C of the Act were satisfied or not by the assessee. On perusal of the records, the Assessing Officer observed that the assessee has sold four plots situated at Injambakkam for a consideration of ₹.2.16 crores. The assessee has not registered the sale deed. Thus, the assessee was sought for to submit the guideline value adopted in the computation, which was submitted by the assessee as of and valid between 01.08.2007 to 31.03.2012 for the survey numbered plots for which the sales took place during the above period with the valuation ranging from ₹.500 per sq. ft. to ₹.750 sq.ft. However, after noticing from the website, the revised guideline values after 01.04.2012 @ ₹.3000 per sq. ft. for the above said plots sold, the Assessing Officer determined the consideration at ₹.3,96,00,000/- [3300 x 4 plots x 3000] and ₹.4,75,20,000/- [3960 sq. ft. x 4 plots x ₹.3000] and

arrived the capital gains at ₹.8,54,21,990/-. Accordingly, the difference of ₹.6,55,20,000/- was brought to tax. On appeal, after considering the submissions of the assessee as well as various case, the Id. CIT(A) deleted the addition.

6. We have considered the rival submissions and also perused various documents furnished in the form of paper book of the assessee. In this case, it is an undisputed fact that the assessee has received the advance of ₹.18,00,000/- by way of cheque bearing No. 797311 on 05.03.2012, which were duly reflected in the agreement for sale executed on 26.03.2012, wherein the sale was agreed for a consideration of ₹.2,16,00,000/-. However, since the assessee has not registered the sale deed, the Assessing Officer was of the opinion that the assessee ought to have been received the sale consideration as per revised guideline value effective from 01.04.2012 and thereby determined the LTCG as per revised guideline value without any material on record of receipt of excess amount out of the sale transaction. On appeal, the Id. CIT(A) deleted the addition by following various decisions. Before us, by way of paper book, the assessee has filed copy of various decisions including the recent judgement in the case of CIT v. Vummudi Amarendran [2020] 120 taxmann.com 171 (Madras), wherein, the Hon'ble Jurisdictional High Court has held that amendment by insertion of proviso to section 50C(1) of the Act introduced with effect from

01.04.2017 which provides that where date of agreement, fixing amount of consideration and date of registration for transfer of capital assets are not same, value adopted or assessed or assessable by stamp valuation authority on date of agreement may be taken for purpose of computing full value of consideration for such transfer seeks to relieve the assessee from undue hardship and, thus, should be taken to be retrospectively effective. In view of the decision of the Hon'ble Madras High Court, the Assessing Officer is directed to examine the issue in line with the above judgement and decide the issue afresh in accordance with law after affording an opportunity of being heard to the assessee. Thus, the ground raised by the Revenue is allowed for statistical purposes.

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

Order pronounced on the 11th March, 2021 at Chennai.

Sd/-
(S. JAYARAMAN)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 11.03.2021

Vm/-

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.