

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 3091/CHNY/2019
निर्धारण वर्ष / Assessment Year: 2012-13

The ACIT,
Non-Corporate Circle 7(1),
Chennai – 34.

Shri S. Moorthy,
v. No.25, Muthumari Amman Koil
Street, Navalur Nagar,
Anna Nagar West,
Chennai – 600 040.
PAN: AFBPM7143Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri G. Chandrababu, Addl.CIT
: Shri D. Anand, Advocate

सुनवाई की तारीख/Date of Hearing

: 25.02.2021

घोषणा की तारीख/Date of Pronouncement

: 10.03.2021

आदेश /O R D E R

Per G. MANJUNATHA, AM:

This appeal filed by the Revenue is directed against order of learned Commissioner of Income Tax (Appeals)-7, Chennai, dated 28.08.2019 and pertains to assessment year 2012-13.

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

1.1 CIT(A) erred in deleting the addition made on account of unexplained cash credit u/s68 of the IT Act and Unexplained commission expense u/s69C by holding that once the books of accounts of assessee are rejected the same cannot be relied upon for making addition u/s68 or u/s69 of the Act.

1.2 CIT(A) ought to have appreciated the fact that the addition was made in the absence of evidence/no explanation about the nature and source of the credits to the tune of Rs.1.63 crores and the same was agreed by the assessee as his undisclosed income for the AY 2012-13 by voluntarily disclosed vide sworn statement u/s131 of the income-tax Act,1961 on 13/02/2015.

1.3 CIT(A) erred in relying the decision of ITAT, Lucknow in the case of ITO vs. MS Builders Pvt. Ltd in ITA 564/LKW/2011, dated 26/05/2013, which is factually distinguishable from the facts of the assessee's case.

1.4 CIT(A) omitted to consider that the fact that it is not necessary that books of account must be rejected before making any addition u/s 68 vide decision of ITAT, Amritsar in the case of Devinder Singh vs ACIT (101 TTJ 505).

1.5 CIT(A) failed to call for remand report from the AO to complete the enquiries against the issue raised by the assessee and submit factual report on assessee's submissions when the assessee was ready to submit more information in support of his claim as stated in the grounds of appeal.

1.6 CIT(A) erred in deleting the addition on account of unexplained commission expenses u/s 69C of the Act for Rs. 15,66,000/- by holding that once the books of accounts of assessee are rejected the same cannot be relied upon for making addition u/s68 or u/s69 of the Act.

1.7 CIT(A) ought to have appreciated the fact the assessee failed to substantiate the expenses the relevant documents and the deduction of TDS on it.

3. The brief facts of the case are that the assessee is engaged in the business of real estate development, filed his return of income for the assessment year 2012-13 on 16.10.2012 declaring total income of Rs.24,13,820/-. The case was selected for

scrutiny and the assessment has been completed u/s. 143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') on 16.02.2015 determining total income at Rs.2,16,19,520/- by inter-alia making addition towards unexplained credit u/s.68 of the Act towards unsecured loans at Rs.1,62,55,000/-, addition towards profit from business on estimated basis by adopting 12.5% profit on gross receipts at Rs.13,84,700/- and addition towards unexplained commission expenses at Rs.15,66,000/-.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before CIT(A). Before the CIT(A), the assessee challenged the additions made by the AO towards cash credits u/s.68 of the Act, on the ground that when books of accounts were rejected u/s.145(3) of the Act and profit is estimated, then same books of accounts cannot be considered for invoking provisions of section 68 to make addition towards unsecured loan, because in order to invoke provisions of section 68 of the Act, the essential condition is that the credit should be in the books of accounts maintained by the assessee. The assessee has also challenged addition on merits by filing necessary evidences including confirmation letters from the

creditors and argued that the assessee had discharged his burden to prove the identity, genuineness of the transactions and credit worthiness of the parties. Similarly, the assessee has challenged additions made towards unexplained commission u/s.69C of the Act, on the ground that when books of accounts are rejected u/s.145(3) of the Act, no further additions can be made towards any expenditure because estimation of profits would take care of expenses incurred in the business.

5. The Id.CIT(A) after considering relevant submissions of the assessee and also taken note of the fact that the AO has rejected books of accounts u/s.145(3) of the Act, and estimated profit at the rate of 12.5% on the gross sales, deleted additions towards unsecured loans u/s.68 of the Act, on the ground that when books of accounts are rejected, the same books cannot be relied upon for making addition u/s.68 or 69 of the Act. Accordingly, deleted additions made by the AO towards unsecured loan and unexplained commission. Aggrieved by the CIT(A) order, the Revenue is in appeal before us.

6. The Id.DR submitted that the Id.CIT(A) erred in deleting additions made on account of unexplained credit u/s.68 of the Act

and unexplained commission expenses u/s.69C of the Act, by holding that once the books of accounts are rejected, the same books cannot be relied upon for making additions, ignoring the fact that it is not necessary that to make addition u/s.68 of the Act, books of accounts must be there. In a case, where there is no relationship between credits and business activity of the assessee, even though the AO has estimated business profits by rejecting books of accounts, still additions can be made towards unexplained credits u/s.68 of the Act. The Id.DR further submitted that it is a matter of fact that the assessee could not file any evidence to justify unexplained credit and unexplained commission before the AO and further agreed that unexplained credit represents his income from business and accordingly the AO has made additions. Therefore, the Id.CIT(A) was erred in deleting additions on technical ground ignoring the fact that the assessee has surrendered additional income.

7. The Id.AR, on the other hand strongly supporting order of the Id.CIT(A) submitted that the Id.CIT(A) has rightly appraised the fact in light of certain judicial precedents including the decision of Hon'ble High Court of Rajasthan in the case of CIT vs.

G.K. Contractor, (2009) 19 DTR 0305 that once books of accounts are rejected by invoking provisions of section 145(3), no separate addition can be made on account of cash credit u/s.68, even though the assessee has failed to discharge its onus of proof in explaining the amount shown in the books of account as credits. The AR further submitted that even otherwise the assessee has discharged his burden by filing necessary evidences including confirmation letters from the creditors to prove the identity, genuineness of transactions, credit worthiness of the parties. No doubt, the assessee could not produce the parties in person before the AO, but it is a matter of fact that confirmation letters have been filed along with their PAN numbers. Once, identity has been proved by filing confirmation letter, then merely because the parties were not produced additions cannot be made u/s.68 of the Act. He further submitted that the assessee has also filed necessary evidences to prove that the assessee has repaid the loans in the subsequent financial year through banking channel. Therefore, once the loans taken by the assessee are genuine which are supported by necessary evidences and further the assessee has repaid the loan in subsequent financial year, the

same cannot be considered as unexplained credit u/s.68 of the Act.

8. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. It is an admitted fact that the AO has rejected books of account u/s.145(3) of the Act and estimated profit from the business by adopting 12.5% net profit on gross receipts. It is also an admitted fact that once books of account are rejected u/s.145(3) of the Act, no further additions can be made by relying upon same books of account either in respect of cash credits u/s.68 of the Act or unexplained commission expenses u/s.69C of the Act, because in order to invoke provisions of section 68 of the Act, it is essential that credit should be from the books of account of the assessee maintained for that year. Once, the books of account maintained by the assessee is treated as no longer in existence by rejecting those books u/s.145(3) of the Act, then for all purposes including for the purpose of section 68 of the Act, said books of account ceased to exist and hence, those books cannot be relied upon to make addition towards unexplained credit u/s.68 of the Act. This legal position is

supported by the decision of Hon'ble High Court of Rajasthan in the case of CIT vs. G.K. Contractor, *supra*, where it was clearly held that "AO having estimated the profit by applying a higher net profit rate to total contract receipts after rejecting assessee's books of account by invoking the provisions of section 14(3), no separate addition can be made on account of cash credit u/s.68, even though the assessee has failed to discharge its onus of proof in explaining the amount shown in the books of account". The Hon'ble High Court of Punjab and Haryana, in the case of CIT vs. Aggarwal Engg. Co., (2008) 302 ITR 0246 had considered an identical issue and held that "no separate addition on account of cash credit and on account of unexplained payments for purchases made outside the books can be made once the net profit rate is applied on contract receipts of an assessee for estimating his income from contract work". The Hon'ble High Court of Allahabad in the case of CIT vs. Banwarilal Banshidhar, (1998) 229 ITR 0229 had taken a similar view and held that "where income is assessed at G.P. rate by rejecting the books of assessee u/s.145(3), no disallowance can be made separately u/s.40A(3) of the Act". Therefore, from the above, it is very clear that to make additions u/s.68 or 69 of the Act, the essential

condition is books of account should be maintained by the assessee for the relevant financial year. If books of account of the assessee are rejected and income is estimated by applying certain profit rate, it would take care of all expenses necessarily to be incurred for earning profit and hence, when profit is estimated no separate addition can be made towards unexplained commission u/s.69 of the Act. The Id.CIT(A) after considering relevant facts has rightly held that the AO is erred in making addition towards cash credit u/s.68 of the Act and unexplained commission u/s.69C of the Act, when the books of account were rejected u/s.145(3) of the Act.

9. Be that as it may. But fact remains that the assessee has furnished necessary evidences to prove the identity, genuineness of transactions and credit worthiness of the creditors. In fact, the AO has admitted the fact that the assessee has filed confirmation letters from all creditors. But, the AO has rejected confirmation letters for the simple reason that the confirmation letters filed by the assessee are stereo typed. It is an admitted fact that once initial burden was discharged to prove the identity of the creditors, then the burden shifts to the Revenue to prove

otherwise. In this case, although the assessee has filed necessary evidences to prove the identity of the creditors, but the AO has rejected the evidences filed by the assessee, just because the assessee could not produce the parties in person. Further, the assessee has also placed necessary evidences to prove that the said unsecured loan has been subsequently repaid by cheques in the next financial years. The assessee has filed ledger extract of creditors to support his arguments. From the above, we find that amounts invested by co-promoter during the assessment year 2012-13 amounting to Rs.80,00,000/-. A sum of Rs.42,80,000/- was repaid through banking channels in the assessment year 2013-14 and balance sum of Rs.37,20,000/- was repaid by cash. Similarly, out of Rs.82,52,000/- loans taken from various parties during assessment year 2012-13, a sum of Rs.43,00,000/- has been repaid in the assessment year 2013-14 through banking channels. A balance sum of Rs.16,49,500/- was repaid during the assessment year 2014-15 in a cheque and a sum of Rs.14,29,500/- was repaid in cash and remaining balance outstanding amount of Rs.9,00,000/- was fully repaid during the assessment year 2015-16. Therefore, once loans taken by the assessee are genuine which are supported by necessary

evidences and further said loans were repaid in subsequent financial year by cheques then said loans cannot be considered as unexplained cash credit u/s.68 of the Act. Therefore, we are of the considered view that the AO was erred in making additions towards cash credit u/s.68 of the Act and unexplained commission u/s.69C of the Act. The Id.CIT(A) after considering relevant submissions has rightly deleted additions made by the AO. Therefore, we do not find any error or infirmity in the findings recorded by the CIT(A). Hence, we are inclined to uphold the findings of the CIT(A) and dismiss appeal filed by the Revenue.

10. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the court on 10th March, 2021 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. Durga Rao)

न्यायिक सदस्य/Judicial Member

Sd/-

(जी. मंजुनाथ)

(G. Manjunatha)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 10th March, 2021

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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