

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

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

आयकर अपील सं./ITA No.1298/Chny/2013
निर्धारण वर्ष /Assessment Year: 2003-04

&

Cross Objection No.128/Chny/2013
[in ITA No.1298/Chny/2013]
निर्धारण वर्ष /Assessment Year: 2003-04

The Income Tax Officer,
Business Ward-II(1),
Chennai.

v. Smt.Usha Anandan,
No.97 & 98, R.K.Mutt Road,
Chennai-600 028.
[PAN: AABPU 0407 E]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent/Cross-Objector)

आयकर अपील सं./ITA No.964/Chny/2017
निर्धारण वर्ष /Assessment Year: 2004-05

Smt.Usha Anandan,
No.97 & 98, R.K.Mutt Road,
Chennai-600 028.
[PAN: AABPU 0407 E]

v. The Income Tax Officer,
Non-Corporate Ward-2(1),
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Department by : Mr.Prabhu Mukunth
Arunkumar,
Sr. Standing Counsel

Assessee by : Mr.R.Sivaraman, Adv.

सुनवाई की तारीख/Date of Hearing : 17.02.2022

घोषणा की तारीख /Date of Pronouncement : 28.02.2022

:: 2 ::

आदेश / ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

The appeal filed by the Revenue and Cross Objection filed by the assessee are directed against the order of the Commissioner of Income Tax (Appeals)-6, Chennai, dated 27.12.2012 and pertains to assessment year 2003-04. The assessee had also filed appeal against the order of the Commissioner of Income Tax (Appeals)-2, Chennai, dated 06.03.2017 and for the assessment year 2004-05. Since, the facts are identical and issues are common, for the sake of convenient, the appeal filed by the Revenue and Cross Objection filed by the assessee are being heard together and disposed off, by this consolidated order.

ITA No.1298/Chny/2013 & CO No.128/Chny/2013 for the AY 2003-04:

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

1. *The order of the learned CIT(A) is contrary to the law and facts of the Case.*
2. *The id CIT(A) erred in quashing the re assessment proceedings u/s.147 of the Act;*
 - 2.1 *The CTT(A) failed to appreciate that the AO had reason to believe that income has escaped assessment which was formed on the basis of a tangible material in possession of the AO in the form of affidavit produced before the Hon'ble High Court that construction of the building was completed in the previous year relevant to the assessment year under consideration;*
 - 2.2 *The Id CIT(A) ought to have appreciated the fact that in this case the return was processed u/s. 143(1) and the case was reopened u/s.147 after a period of four years and before six years which is well within the time limit prescribed under the Act;*
 - 2.3 *Reliance is placed on the decision of the Apex Court in the case of Rajesh Shaverji Stock Brokers Ltd. (291 ITR 500) wherein it has been held that mere intimation u/s.143(l) cannot be treated as assessment and the reopening u/s.147 is valid in law;*

:: 3 ::

2.4 It is submitted that according to the Explanation under Sec. 149(1)(a) & (b), in determining the income escaping assessment as per this section, the provisions of Explanation 2 to Sec. 147 shall apply as they apply for the purposes of that section. The assessee's case is covered under clause (b) of Explanation 2 to Sec. 147 of the Act and the reopening of assessment is valid in law.

2.5 The Id CIT(A) ought to have appreciated the fact that the completion certificate has been issued by an authority from State Government which had once again been confirmed by the Assistant Commissioner Zone X along with 3 other Engineers on 21.12.2010 in which they have stated that "Completion Certificate shall be issued only if the completed building satisfies the sanctioned plan in all aspects". Which implies that the building has been completed as per approved plan on the date of issue of such a certificate.

2.6 The Id CIT(A) ought to have appreciated the fact that if the assessee is following project completion method, all the expenses should have been incurred in the year in which the construction had been completed i.e., in the financial year 2002-03 which had merely been brought forward to financial year 2003-04 only because the assessee had sold the flats during that year and had sufficient income to explain the expenditure incurred.

2.7 The Id CIT(A) ought to have considered the assessee's husband's statement before the Judicial Authority which reads: "I further submit that I have completed the construction and got the completion certificate dated 20.01.2013 from the Corporation of Chennai and subsequently obtained electricity connection."

2.8 The Id CIT(A) ought to have appreciated the fact that completion certificate issued by Corporation of Chennai on 20.01.2003 cannot vary from place to place and person to person. Completion cannot be at different dates for Income Tax Department, Corporation of Chennai, Madras High Court etc., depending on the place and reason.

3. The Id CIT(A) erred in deleting the additions made towards Unexplained Cash Credits in the bank account: Rs.28.49 lacs, Unexplained credit in the bank account: Rs. 4 lacs, Unexplained loan by V Anandan : Rs. 4 lacs, Unexplained advance from Mr & Mrs Saravanan; Rs.6.31 lacs and Unconfirmed sundry creditors: Rs.3.77 lacs.

3.1 The Id CIT(A) failed to consider the above issues on merits and only relied upon the documentary evidences produced by the assessee on the above additions / disallowances;

3.2 The Id CIT(A) failed to consider the remand report given by the AO on 30.11.2011 regarding the loan received from bank authorities and the statement recorded from the Bank Manager with regard to the inspection of the properties;

3.3 The Id CIT(A) ought to have called for a remand report on other issues wherever relief was granted based on the documentary evidences furnished before the CIT(A) under Rule 46A since the assessee could not prove these expenses / loans with proper evidences before the AO at the time of scrutiny proceedings;

4. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer be restored.

:: 4 ::

3. The brief facts of the case are that the assessee is an individual and engaged in the business of civil construction, filed its return of income for the AY 2003-04 on 29.03.2004 declaring total income of Rs.1,26,500/-. The assessment has been, subsequently re-opened u/s.147 of the Act, for the reasons recorded, as per which, during the FY relevant to the AY 2003-04, the assessee has constructed a building at Dr.No.93 & 98, R.K.Mutt Road, Mandaveli, Chennai, and the construction was completed in the accounting year 2002-03 relevant to the AY 2003-04 as evident from the records of Corporation of Chennai. The reasons recorded for re-opening, further stated that actual expenditure for construction of flat, basement, car park and jewellery shop was not shown in the statement that accompanied the return of income. Therefore, the AO was of the opinion that income chargeable to tax had escaped assessment and thus, notice u/s.148 of the Act was issued and served on the assessee. In response to the notice issued u/s.148 of the Act, the assessee filed a letter dated 15.04.2010 and stated that return of income was filed on 29.03.2004, be treated as return filed in response to notice issued u/s.148 of the Act. The case was taken up for scrutiny and during the course of assessment proceedings, the AO noticed that the assessee had constructed a building at R.K.Mutt Road, Mandaveli, Chennai, during the FY relevant to the AY 2003-04, however, expenditure incurred for construction was not shown in the return of income. The AO further noted that as per the WP No.1202/2006 filed by Mr.V.Anandan, husband of the assessee, before the

:: 5 ::

Hon'ble High Court of Madras, clearly stated that building construction was completed and Completion Certificate was obtained from Corporation of Chennai on 20.01.2003. Therefore, called upon the assessee to explain as to why addition should not be made towards amount incurred for construction of building as unexplained expenditure u/s.69 of the Act. In response to show cause notice, the assessee submitted that, although the husband of the assessee filed a sworn affidavit before the Hon'ble High Court of Madras in connection with the case filed against the Asst. Executive Engineer, for obtaining electricity connection, but the claim of the assessee that the building Completion Certificate was obtained on 20.01.2003 is only for the limited purpose for obtaining electricity and water connection. But, the building has been subsequently completed in the FY relevant to the AY 2004-05 and expenditure incurred for construction was duly declared in the return for the AY 2004-05.

4. The AO, however, was not convinced with the explanation furnished by the assessee and according to the AO, the building construction was completed in the FY relevant to the AY 2003-04, which is evident from the fact that the assessee had obtained Completion Certificate on 20.01.2003 from the Corporation of Chennai and thus, opined that expenditure incurred for construction of building should be assessed for the AY 2003-04 but not for the AY 2004-05. Therefore, after considering the relevant details filed by the assessee, has made addition of Rs.40,59,983/- towards expenditure

:: 6 ::

incurred for construction of building as unexplained expenditure u/s.69C of the Act. Similarly, the AO had made additions towards unexplained credits in the bank accounts of the assessee to the extent of Rs.28,49,651/- on the ground that the assessee has failed to explain the nature and source of credits found in United Bank of India, Mylapore Branch. The AO had also made addition towards unexplained credit to the capital account of the assessee at Rs.4,00,000/- and had also made unexplained loan taken from Mr.V.Anandan on the ground that the assessee could not produce necessary evidence to justify the loan taken from her husband. Similarly, the AO had made addition towards advance received from Mrs.Kanthi Saravanan amounting to Rs.6,31,000/- on the ground that no proof or confirmation from Mrs.Kanthi Saravanan has been filed. Likewise, the AO had also made addition towards unproved sundry creditors of Rs.3,77,275/-.

5. Being aggrieved by the Assessment Order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has challenged re-opening of assessment on the ground that re-opening of assessment is bad in law, because the AO has failed to arrive at reason to believe that any income chargeable to tax has escaped assessment. The assessee further contended that the AO has relied upon the Completion Certificate to form reasonable belief of escapement, but, Completion Certificate cannot indicate suppression of income, since income will arise only when the flats are sold not when the building is completed. The

:: 7 ::

assessee had also challenged the addition made by the AO towards various additions including unexplained expenditure incurred for construction of building.

6. The Ld.CIT(A) after considering the relevant submissions of the assessee and also taken note of various facts, opined that the re-opening of assessment u/s.147 of the Act is bad in law, because the AO has formed reasonable belief of escapement of income only on the basis of Completion Certificate of building issued by the Corporation of Chennai, without establishing the fact that the assessee has made payment for the construction and the same is unexplained. The Ld.CIT(A) has discussed the issue in light of various evidences filed by the assessee, including the building demolition and re-construction permission obtained from the authorities in the month of November, 2002 and observed that when the demolition permission itself was obtained in November, 2002, the argument of the AO that the building was completed in the month of January, 2003 itself cannot be accepted. Therefore, the Ld.CIT(A) opined that the reasonable belief of escapement of income formed by the AO is without any basis and thus, the Ld.CIT(A) opined that re-opening of assessment is bad in law and thus, quashed the re-assessment order passed by the AO.

7. The Ld.CIT(A) had also deleted the additions made by the AO towards addition on unexplained expenditure u/s.69C of the Act, on the ground that

:: 8 ::

Sec.69C of the Act would come into play only when the payments were made, but not accounted for in the books. The AO has failed to provide any iota of evidence to state that the construction has been finished by the assessee from sources not explained. Since, the construction of building was completed in the FY 2004-05 and the assessee has explained the sources for construction of building, the AO was erred in applying the provisions of Sec.69C of the Act to make addition towards construction expenses for the AY 2003-04. Accordingly, deleted the additions made by the AO. Likewise, other additions such as unexplained credits in the bank accounts, unexplained loan from Mr.V.Anandan and unexplained credits from Mrs.Kanthi Saravanan, the Ld.CIT(A) deleted the additions made by the AO by holding that advance taken from Mrs.Kanthi Saravanan towards sale of flat, has been treated as income in the next year and thus, the same cannot be treated as unexplained income. The unexplained credit in the bank account and in the capital account of the assessee also do not stand on footing, since all were thoroughly explained before the AO. Therefore, directed the AO to delete the additions. Likewise, the Ld.CIT(A) deleted the additions made towards unproved sundry creditors by holding that once expenditure incurred for building has been treated as unexplained, then creditors arises out of said expenditure, cannot be treated as unproved, because it results into double addition. Aggrieved by the Ld.CIT(A)'s order, the Revenue is in appeal before us.

:: 9 ::

8. The Ld.DR submitted that the Ld.CIT(A) erred in quashing re-assessment order passed u/s.143(3) r.w.s147 of the Act, without appreciating the fact that the AO had reason to believe that income had escaped assessment, which was formed on the basis of tangible material in possession of the AO in the form of Affidavit produced before the Hon'ble High Court of Madras that construction of the building was completed in the previous year relevant to the AY under consideration. The Ld.DR further submitted that the Ld.CIT(A) ought to have appreciated the fact that in this case, the return was processed u/s.143(1) and the case was re-opened u/s.147 of the Act, after a period of four years and before six years and thus, the re-opening of assessment is valid in law. The Ld.CIT(A) without appreciating all these evidences, simply quashed the re-assessment order passed by the AO by holding that the AO has not formed reasonable belief of escapement of income.

9. The Ld.AR for the assessee, on the other hand, supporting the order of the Ld.CIT(A), submitted that the AO had formed reasonable belief of escapement of income on the basis of building Completion Certificate issued by the Corporation of Chennai that the building was completed in the FY 2002-03 relevant to the AY 2003-04 without any tangible material in the possession of the AO to believe that there is an escapement of income on account of unexplained expenditure. The Ld.AR further submitted that although in the Affidavit filed before the Hon'ble High Court of Madras, it

:: 10 ::

was stated that the building construction was completed on 20.01.2003, but fact remains that said building Completion Certificate was obtained for limited purpose of getting power connection. However, fact remains that the building has been completed in the FY 2003-04 relevant to the AY 2004-05, where the assessee has explained expenditure incurred for construction of building. The assessee has produced all the evidences to prove that the building construction was completed in the FY relevant to the AY 2004-05, including Metro Water Board and Electricity Board payment vouchers dated 22.04.2003 and 24.07.2003 respectively. As per which, the building was completed in the AY 2004-05. The AO only on the basis of Certificate issued by the Corporation of Chennai, came to the conclusion that income chargeable to tax had escaped assessment without any live nexus between the escapement of income and reasons recorded for re-opening of assessment. The Ld.CIT(A) after considering the relevant facts has rightly held that the re-opening of assessment is invalid and thus, quashed the re-assessment proceedings.

10. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The provisions of Sec.147 of the Act deals with re-assessment and as per which, if the AO has reason to believe that any income chargeable to tax has escaped assessment which comes to his notice, subsequently in the course of the proceedings, then, the AO may re-open the assessment for that

:: 11 ::

assessment year. Therefore, from the provisions of Sec.147, it is abundantly clear that re-opening of assessment, should be based on reasonable belief of escapement of income and such reasonable belief should be formed on the basis of fresh tangible material come to the possession of the AO subsequent to completion of assessment u/ss.143(1)/143(3) of the Act. In the present case, the AO has formed reasonable belief of escapement of income on the basis of Completion Certificate of building issued by the Corporation of Chennai dated 20.01.2003 as claimed by the assessee in the Affidavit filed before the Hon'ble High Court of Madras in connection with dispute with TNEB. Except this, reasons recorded by the AO does not show any light on tangible material, which suggest escapement of income. In our view, Completion Certificate may throw a light on completion of building in a particular year, but it cannot indicate suppression of income, unless the AO demonstrate with other tangible material that the assessee has completed construction of building in the year 2003 and has incurred expenditure for construction of building and further, the same is unexplained. Merely from the Completion Certificate, it cannot be presumed that income has escaped assessment. At best, the Completion Certificate may be a reason for suspicion that some expenses have not been accounted or expenses incurred for the construction of building, is not met out of known source of income. In this case, the AO has attempted to link the Completion Certificate with the accounting of the expenditure and has opined that the assessee had

:: 12 ::

allegedly not accounted the entire expenditure in the year under appeal. Even though, the material relied upon by the AO does not show escapement of income. We further noted that except Completion Certificate, there is nothing in the possession of the AO to form a reasonable belief that expenditure incurred for construction of building is unexplained and it is taxable u/s.69C of the Act. Therefore, we are of the considered view that there is no live nexus between reasons recorded for re-opening of assessment and material relied upon by the AO to form such reasonable belief. On the other hand, the evidences filed by the assessee clearly shows that the building construction was completed in the FY relevant to the AY 2004-05 and the assessee has accounted expenditure incurred for construction in the relevant assessment year. The other evidences filed by the assessee including Metro Water and Electricity payment receipts also clearly shows that the building was completed in the AY 2004-05 but not in the AY 2003-04 as alleged by the AO. In our considered view, the AO has re-opened the assessment on the basis of suspicion that building was completed in the FY relevant to the AY 2003-04 and the assessee has incurred expenditure for building, which is unexplained, but such belief of the AO is without any evidence. The AO has not brought out any evidence to show that the assessee had made payment for expenses for the year under appeal, but has merely contended that since the Completion Certificate was obtained in the year under appeal, all expenses on construction ought to be brought into account in the year under appeal.

:: 13 ::

Therefore, we are of the considered view that the re-opening of assessment by the AO is based on suspicion, presumption, conjectures and surmises, which is not permissible in law. In our considered view, direct nexus or live link between the reasons and formation of belief, is necessary. In the absence of direct nexus between the reasons and formation of belief, the re-opening of assessment u/s.147 is bad in law. In this case, there is no direct nexus or live link between the reasons and formation of belief of escapement. Because, the AO has formed belief of escapement of income on the basis of Completion Certificate, but such Completion Certificate may give an input for believing that building is completed, but it cannot suggest escapement of income on account of expenditure incurred for construction of building. Therefore, we are of the considered view that in the absence of reasonable belief of escapement of income, the assessment cannot be re-opened. The Ld.CIT(A) after considering the relevant facts has rightly held that re-opening of assessment is bad in law. Hence, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the Revenue.

11. The Revenue has taken various grounds challenging deletion of additions made towards unexplained expenditure incurred for construction of building, additions made towards unexplained cash credit in the bank account of Rs.28,49,651/-, unexplained credit in the capital account of Rs.4,00,000/-, unexplained loan from Mr.V.Anandan of Rs.4,00,000/-,

:: 14 ::

unexplained advance from Mrs.Kanthi Saravanan of Rs.6,31,000/- and unconfirmed sundry creditors of Rs.3,77,275/-. We find that although the Revenue has challenged deletion of various additions made by the AO, but because the re-assessment proceedings u/s.147 of the Act, held to be invalid and re-assessment order passed by the AO u/s.143(3) r.w.s.147 of the Act, is quashed, we are of the considered view that the other additions made by the AO becomes academic in nature. Hence, other grounds taken by the Revenue are dismissed as infructuous.

12. In the result, the appeal filed by the Revenue in ITA No.1298/Chny/2013 is dismissed.

CO No.128/Chny/2013

13. The assessee has filed Cross Objection and taken a ground in support of order of the Ld.CIT(A) and also an alternative ground to reduce the additions made towards expenditure incurred for construction of building as unexplained expenditure to the extent of amount shown in 'work in progress' account in the balance sheet for the year under appeal. Since, we have quashed re-assessment proceedings and consequent re-assessment order passed u/s.143(3) r.w.s.147 of the Act, the Cross objection filed by the assessee becomes infructuous and thus, the same is dismissed as not maintainable.

:: 15 ::

14. In the result, the Cross Objection filed by the assessee in CO No.128/Chny/2013 is dismissed as infructuous.

ITA No.964/Chny/2017 for the AY 2004-05:

15. The assessee has raised the following grounds of appeal:

- 1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interest of the appellant and at any rate is opposed to the principles of equity, natural justice and fair play.*
- 2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.*
- 3. For that the reassessment is bad in law.*
- 4. For that the Assessing Officer failed to comply with the statutory requirements.*
- 5. For that the Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.3 lakhs as unexplained cash credit u/s.68.*
- 6. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the provisions of section 68 are not invocable in the facts and circumstances of the case.*
- 7. For that the Commissioner of Income Tax (Appeals) erred in enhancing the taxable income of the appellant.*
- 8. For that the Commissioner of Income Tax (Appeals) erred in relying on the petition of a person (tax evasion petitioner) unrelated to the instant case of the appellant.*
- 9. For that the Commissioner of Income Tax (Appeals) erred in not granting the appellant an opportunity to cross examine the tax evasion petitioner.*
- 10. For that the Commissioner of Income Tax (Appeals) erred in adding a sum of Rs.40,59,983/- as unexplained expenditure being the cost of construction.*
- 11. For that the Commissioner of Income Tax (Appeals) erred in concluding that the sum of Rs.40,59,983/- having been added u/s.69C in the hands of the appellant in Assessment Year 2003-04 is not allowable as a deduction in the Assessment Year 2004 - 05.*
- 12. For that the Commissioner of Income Tax (Appeals) erred in applying proviso to section 69C and consequently disallowing the cost of construction of Rs.40,59,983/-.*

:: 16 ::

13. For that the Commissioner of Income Tax (Appeals) erred in adding a sum of Rs. 18, 68, 5007- towards the cost of construction of the basement and ground floor as unaccounted expenditure.

14. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the cost of construction of the basement has already been included in the cost of construction of the building

15. For that the Commissioner of Income Tax (Appeals) failed to appreciate that without constructing the basement it would not have been possible to complete the construction of the entire building.

16. For that the Commissioner of Income Tax (Appeals) erred in upholding the cost of construction of the basement arrived at by the Assessing Officer.

17. For that the appellant objects to the levy of interest u/s.234B

PRAYER

For these grounds and such other grounds that may be urged before or during the hearing of the appeal it is most humbly prayed that the Hon'ble Tribunal may be pleased to

(a) Quash the order of reassessment, and / or

(b) Delete the addition of Rs.3 lakhs made u/s.38, and / or

(c) Delete the disallowance of cost of construction of Rs.40,59,983/-, and / or

(d) Delete the addition of Rs.18,68,500/- made on account of unaccounted cost of construction of basement, and / or

(e) Pass such other orders as the Hon'ble Tribunal may deem fit.

16. The brief facts of the case are that the assessee has filed its return of income for the AY 2004-05 on 31.03.2005 admitting a total income of Rs.52,175/-. The assessment has been, subsequently re-opened u/s.147 of the Act and the assessment has been completed u/s.143(3) r.w.s.147 of the Act and determined total income at Rs.4,52,175/- by making additions towards variation in construction receipts amounting to Rs.1,00,000/- and also additions towards unexplained cash credit in capital account of Rs.3,00,000/-. The assessee carried the matter before the First Appellate Authority and challenged the additions made by the AO towards variation

:: 17 ::

in the income admitted towards construction charges and unexplained cash credits in capital introduction. The assessee had also challenged re-opening of assessment. The Ld.CIT(A) for the reasons stated in his appellate order dated 06.03.2017, rejected the legal ground taken by the assessee challenging re-opening of assessment on the ground that there is a tangible material in the possession of the AO to form a reasonable belief of escapement of income and thus, re-opening of assessment is valid. The Ld.CIT(A) had also sustained additions made by the AO towards difference in construction receipts and unexplained cash credits in capital account.

17. Further, the Ld.CIT(A) issued a proposal for enhancement of income on the basis of inputs received from Tax Evasion Petitioner. According to the Ld.CIT(A), the assessee has constructed an extra building admeasuring 1850 sq.ft. and the same has been not disclosed in the return of income filed for the AY 2004-05. Therefore, show cause notice was issued to the assessee and called up the assessee to explain, as to why, the enhancement should be made for amount incurred for construction of additional building. In response, the assessee claimed that the AO has made additions towards construction expenses u/s.69C of the Act as unexplained for the AY 2003-04 and the assessee has challenged the additions made by the AO in appeal before the Ld.CIT(A) and the Ld.CIT(A) very categorically held that the building construction was completed in the FY relevant to the AY 2004-05 and thus, deleted additions made by the AO

:: 18 ::

towards expenditure incurred for construction of building and thus, the same cannot be considered for the AY under consideration. The assessee had also objected the proposal of the Ld.CIT(A) in enhancement of income to the extent of construction cost incurred for alleged additional construction of building of 1850 sq.ft. and argued that once the AO held that the building construction was completed in the FY relevant to the AY 2003-04, then it cannot be held that the basement of the building and jewellery shop was constructed in the AY 2004-05. The Ld.CIT(A) after considering the relevant submissions of the assessee and also Tax Evasion Petition filed by Dr.V.S.Jaganathan, forwarded the evidences to the AO for his Remand Report. The AO has submitted a Remand Report dated 16.10.2014 and observed that assessment has been completed for the AY 2003-04 and has made various additions including additions towards expenditure incurred for construction of building. Further, as regards additional building constructed by the assessee on the basis of Tax Evasion Petition, the AO observed that the assessee has constructed 1850 sq.ft. in the basement area, which has been let out to a factory and jewellery shop. The AO had also arrived at average cost of construction of the building and observed that cost of construction of building works out to Rs.1,010/- per sq.ft. and for 1850 sq.ft. of additional building, the estimated cost of construction would be Rs.18,68,500/-.

:: 19 ::

18. The Ld.CIT(A) after considering relevant submissions of the assessee, Tax Evasion Petition filed by the third party and Remand Report of the AO and also taken into account the appellate order of the Ld.CIT(A) for the AY 2003-04 observed that the AO has made additions towards entire expenditure incurred for construction in the FY 2002-03 relevant to the AY 2003-04. However, the Ld.CIT(A) has deleted the additions made by the AO by holding that the building construction was completed in the FY relevant to the AY 2004-05. Therefore, the Ld.CIT(A) opined that although the AO has made additions towards construction expenses for the AY 2003-04 after analyzing the evidences, the Ld.CIT(A) has deleted the additions made by the AO. Therefore, the Ld.CIT(A) opined that based on direct application of provisions of Sec.69C of the Act, the expenditure incurred for construction of building needs to be assessed for the AY 2004-05. Accordingly, directed the AO to disallow the claim of cost of construction of Rs.40,59,983/-. Similarly, the Ld.CIT(A) has enhanced the assessment and made additions of Rs.18,68,500/- towards cost incurred for construction of additional building of 1850 sq.ft. by taking into account average cost inferred by the assessee for construction of building. Aggrieved by the Ld.CIT(A), the assessee is in appeal before us.

19. The first issue that came up for our consideration from Ground No.3 of assessee's appeal is additions made towards unexplained cash credits into capital account. The AO has made additions towards unexplained cash

:: 20 ::

credits in the capital account of the assessee on the ground that the assessee has failed to prove the sources for credits found in the capital account.

20. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. Although, the assessee claims to have received cash loan of Rs.3,00,000/- from her husband, Mr.V.Anandan. the assessee has failed to prove the claim with necessary evidences. Although, the assessee has filed her personal cash book and claimed that loan transactions with her husband were recorded in her personal cash book, but the claim of the assessee was an afterthought. Therefore, we are of the considered view that the assessee has failed to prove the source for a sum of Rs.3,00,000/- introduced in the capital account by way of cash and hence, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the assessee.

21. The next issue that came up for our consideration from assessee's appeal is addition of Rs.40,59,983/- u/s.69C of the Act as unexplained expenditure. We find that although the Ld.CIT(A) had recorded categorical findings that addition made by the AO towards expenditure incurred for construction of building in the FY relevant to the AY 2003-04, has been deleted by the Ld.CIT(A), but he went on to make additions only on the ground that expenditure incurred for construction of building is unexplained. We find that the reasons given by the Ld.CIT(A) to make

:: 21 ::

additions towards construction expenses for the impugned AY is not correct , because when the assessee has claimed that construction of building was completed for the AY 2004-05 and further, expenditure incurred for construction of building was duly recorded in the books of accounts of the assessee with known source of income, then, the Ld.CIT(A) cannot invoke the provisions of Sec.69C of the Act, to make additions towards expenditure incurred for construction of building u/s.69C of the Act. It was not a case of the Ld.CIT(A) that the assessee has not disclosed expenditure incurred for construction of building. In fact, the Ld.CIT(A) has accepted the fact that the assessee has recorded expenditure in the books of accounts and further, source for such expenditure has been explained. Once having accepted the fact that the assessee has recorded expenditure in the books of accounts and has also explained source for such expenditure, then the Ld.CIT(A) cannot make additions towards expenditure u/s.69C of the Act merely, for the reason that the Ld.CIT(A) has deleted the addition made by the AO for construction expenses in the earlier AY 2003-04. Therefore, we are of the considered view that the reasons given by the Ld.CIT(A) to make additions towards construction expenses u/s.69C of the Act as unexplained expenditure is contrary to the provisions of Sec.69C of the Act and thus, we are not inclined to uphold the findings of the Ld.CIT(A) and thus, we direct the AO to delete the additions made towards construction expenditure u/s.69C of the Act.

:: 22 ::

22. The next issue that came up for our consideration from assessee's appeal is enhancement of income to the extent of additional construction of 1850 sq.ft. and cost incurred for construction. The Ld.CIT(A) has enhanced the assessment and made additions of Rs.18,68,500/- towards cost of construction incurred for 1850 sq.ft. building in the basement and ground floor of the building. The assessee has challenged enhancement of income made by the Ld.CIT(A) in light of certain judicial precedents, including the decision of the Hon'ble Delhi High Court in the case of CIT v. Sardari Lal reported in 251 ITR 864 (Delhi) argued that the Ld.CIT(A) does not have power to enhance the assessment, in case, the proposed enhancement is on account of the issue other than the issue challenged by the assessee before the Ld.CIT(A). We do not find any forces in the arguments of the assessee for the simple reason that the subject matter of the appeal before the CIT(A) was with reference to the additions made by the AO towards cost of construction and thus, we are of the considered view that the proposed enhancement on account of expenditure incurred for additional construction of 1850 sq.ft. building is linked to the issue before the Ld.CIT(A) and thus, there is no merit in the ground taken by the assessee challenging the enhancement of assessment and thus, the same is rejected.

23. Coming back to the enhancement of assessment, the Ld.CIT(A) has enhanced the assessment towards cost incurred for construction of 1850

:: 23 ::

sq.ft. building in the basement and ground floor of the building constructed by the assessee. The assessee has not denied construction of 1850 sq.ft. building in the basement floor. However, it was the arguments of the assessee before us that without construction of basement, the building construction cannot be completed and thus, when the assessee has incurred certain expenditure for building, it also includes cost of construction incurred for basement floor. We have given our thoughtful consideration to the reasons given by the Ld.CIT(A) to make additions towards cost of construction of 1850 sq.ft. building in light of arguments of the assessee and we ourselves do not subscribe to the arguments of the assessee for the simple reason that it is an admitted fact that the assessee has not disclosed additional construction of 1850 sq.ft. building in the basement. The assessee had also not accounted cost incurred for additional building constructed in the basement. Further, cost of construction accounted by the assessee pertains to building constructed and admitted by the assessee, but it does not include cost incurred for basement. Even this fact was brought out by the Tax Evasion Petitioner in the petition filed before the authorities, as per which, the assessee had constructed additional building in violation of sanctioned building plan to the extent of 1850 sq.ft. and cost incurred for said building was also not accounted in the books of accounts of the assessee. Therefore, we are of the considered view that there is no error in the reasons given by the Ld.CIT(A) to enhance the assessment and direct the AO to make additions towards cost incurred

:: 24 ::

for additional construction of building. Hence, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the assessee.

24. In the result, appeal filed by the assessee in ITA No.964/Chny/2017 is partly allowed.

25. In the result, appeal filed by the Revenue in ITA No.1298/Chny/2013 & Cross Objection filed by the assessee in CO No.128/Chny/2013 are dismissed and appeal filed by the assessee in ITA No.964/Chny/2017 is partly allowed.

Order pronounced on the 28th day of February, 2022, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 28th February, 2022.

TLN, Sr.PS

Sd/-

(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

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