

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

श्रीमहावीर सिंह, उपाध्यक्ष एवंश्री मनोज कुमार अग्रवाल, लेखा सदस्यके समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A No.:257/CHNY/2021
निर्धारण वर्ष/ Assessment Year 2016 - 2017

The Income Tax Officer,
Non-Corporate Ward – 9(1),
Wanaparthi Block, Aayakar Bhavan,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.
(अपीलार्थी/**Appellant**)

Mrs. Rakhi,
Vs. Prince Paradise Apartment,
No.75, Jermiah Road,
Vepery, Chennai – 600 007.
PAN : AKTPR 0768F
(प्रत्यर्थी/**Respondent**)

Department by : Mr. P. Sajit Kumar, JCIT
Assessee by : None

सुनवाई की तारीख/Date of Hearing : 08.09.2022
घोषणा की तारीख/Date of Pronouncement : 08.09.2022

आदेश / O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the Revenue is arising out of the order passed by the Commissioner of Income Tax (Appeals)-10, Chennai in Appeal No.ITA No.65/CIT(A)-10/2018-19; dated 04.09.2020. The assessment was framed by the Income Tax Officer, Non-Corporate Ward – 9(5), Chennai for the Assessment Year 2016 – 2017 u/s.143(3) of the Income

Tax Act, 1961 (hereinafter "the Act") vide order dated 24.12.2018.

2. At the outset, it noticed that this appeal of the Revenue is time barred by limitation by 204 days. However, the Income Tax Officer, Non-Corporate Ward - 9(1), Chennai vide letter dated 03.09.2021 has clarified that the delay period is covered by the order of the Hon'ble Supreme Court vide order dated 27.04.2021 in Miscellaneous Application No.665/2021 in SMW(C) No.3/2020. As the period of delay is covered by the order of the Hon'ble Supreme Court dated 27.04.2021, the computation of delay of 204 days is not attributable in this case. The Hon'ble Bench took into cognizance the Order of the Hon'ble Supreme Court and admits the appeal of the Revenue for adjudication on merits.

3. The only issue in this appeal of the Revenue is against the order of the Commissioner of Income Tax (Appeals) in deleting the addition made by the Assessing Officer in regard to the unexplained sundry creditors

amounting to Rs.1,68,00,910/- by admitting the additional evidences in violation of Rule – 46 of the Income Tax Rules, 1962 (hereinafter “the Rules”). For this, the Revenue has raised the following Ground Nos. 2 to 4, as under:

"2. The learned Commissioner of Income Tax (Appeals) erred in deleting the addition of Rs.1,68,00,910/- as unexplained sundry creditor.

3. The learned Commissioner of Income Tax (Appeals) erred and omitted to rebut the statement submitted by the Assessee which is a part of the Assessment Order for the Assessment Year 2016 – 2017. Thus, the Commissioner of Income Tax (Appeals) ought to have held that the money received from M/s. Global Impex is nothing but the Assessee’s own money and has to be taxed u/s.68 of the Income Tax Act, 1961.

4. Considering the facts and circumstances of the case, whether the Commissioner of Income Tax (Appeals) is correct to allow the appeal of the Assessee in respect of the addition made towards the disallowance of various expenses of Rs.1,68,00,910/- without providing an opportunity to the Assessing Officer under Rule – 46A of the Income Tax Rules, 1962 in which it is stated that the Assessee has invested / deposited the money in M/s. Global Impex and the same was withdrawn

to invest in property. The learned Commissioner of Income Tax (Appeals) erred in holding that the money received from M/s. Global Impex as loan without rebutting the letter submitted by the Assessee."

4. We have heard the Senior Departmental Representative, Mr. P. Sajit Kumar, JCIT. None was present from the Assessee's side despite the date of hearing noted by the learned Counsel for the Assessee on behalf of the Assessee.

5. The brief facts of the case are that the Assessee being an individual filed her return of income for the relevant Assessment Year 2016 - 2017 on 03.08.2016. The Assessing Officer during the course of the assessment proceedings noticed from the accounts of the Assessee that she is not having any business income but in the balance sheet showing huge amounts of sundry creditors of Rs.1,68,00,910/-. The Assessing Officer required the Assessee to give the names of the creditors and the Assessee had filed the details, as under:

[1] Global Impex - Rs.1,62,05,910/-

[2] Purple Silver Jewellery - Rs.5,95,000/-

The Assessee explained the nature of the sundry creditors that it has taken loan from M/s. Global Impex towards purchase of a property amounting to Rs.3,57,79,910/- and had invested in the past ten years with M/s. Global Impex which she received during the Financial Year 2014 - 2015 for the purchase of the property. Now, during the relevant Assessment Year 2016 - 2017, the balance amount of Rs.1,62,05,910/- was of the sundry creditors and this is a borrowed amount.

6. The Assessing Officer concluded that this amount of Rs.1,68,00,910/- is nothing as sundry creditors but it is the Assessee's own income and for this he observed as under:

"Based thereon, it is concluded that the Assessee's contention that she is into money lending business is not correct but whereas she is engaged in varied transactions for which details are not disclosed or explained. From the contradictory statement of the Assessee's Authorized Representative as mentioned in paragraph No.7.1, it is evident that the amount of Rs.1,68,00,910/- shown as sundry creditor is

nothing but Assessee's own income. Thus, the assessment is completed."

Aggrieved, the Assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) after considering the remand report of the Assessing Officer and relying upon the remand report, observed the same in paragraph No.6.3, as under:

"6.3 During the Appellate proceedings, vide letter in I.T.A. No.65/CIT(A)-10/2018-19; dated 22.11.2019, a remand report was sought by my learned predecessor. As the remand report was not received by this office vide letter No.ITA No.65/CIT(A)-10/2018-19; dated 13.01.2020, a reminder was issued to the Assessing Officer to furnish the remand report. Thereafter, the Assessing Officer vide letter in F.No. Remand Report/NCW9(5)/19-20; dated 24.02.2020 furnished the remand report. A copy of the remand report was also provided to the appellant seeking comments. Thereafter, the appellant submitted the rejoinder to the remand report. The relevant portion of the remand report with respect to the issue under consideration is reproduced here under for ready reference."

"Assesses's contention that "Income earned on loans given on interest and

interest paid on loans borrowed forms a definite business income. Hence, there is no business income is incorrect and the application of money in respect of the sundry creditors for a sum of Rs.1,68,00,910/- is valid" cannot be accepted as there is no scope of business activity being established by the Assessee. With regard to the sundry creditor of Rs.1,68,00,910/- claimed by the Assessee during the Financial Year 2015 - 2016 relevant to the Assessment Year 2016 - 2017, an amount of Rs.1,62,05,910/- has been admitted by the Assessee as money borrowed from Global Impex as application of funds relating to the business borrowed during the Financial Year 2014 - 2015 of Rs.3,57,79,910/-. Whereas, for the Assessment Year 2015 - 2016 which was under scrutiny an amount of Rs.3,57,79,910/- has been admitted by the Assessee as her past investments with M/s. Global Impex and the same being utilized towards the purchase of a Metrozone property at Koyambedu Village Egmore Nungambakkam Taluk."

7. The Commissioner of Income Tax (Appeals) finally deleted the addition by considering the sundry creditors of M/s. Global Impex amounting to Rs.1,62,05,910/- by observing in paragraph No.6.4, as under:

"6.4 I have perused the findings of the Assessing Officer as per the assessment order as well as the remand report. I have also perused the findings of the Assessing Officer with respect to the issue under consideration (transaction with M/s Global Impex) as per the assessment order u/s.143(3) for the Assessment Year 2015 - 2016. I have also considered the written and oral submissions of the Authorized Representative as well as the documentary evidence furnished during the Appellate proceedings. The following are the relevant for deciding the issue under consideration and simultaneously the issue under consideration is also adjudicated as under:

(i) The brief facts of the case are that the Appellant received loan in the earlier years from M/s Global Impex which is a proprietary concern of Mr. Dheeraj Jain (brother-in-law of the Appellant). The opening balance of the loan received as on 01.04.2013 was Rs.42,34,197/-. Thereafter, during the Financial Year 2014 - 2015, the Appellant had received loan of Rs.3,15,25,004/- which was also partly utilized for the purchase of Metrozone

property. The very same Assessing Officer has completed the assessment in the case of the Appellant for the Assessment Year 2015 – 2016; wherein the loan transaction as a source of investment has been accepted for the purchase of the property after examining the issue. This fact is stated both in the assessment order for the Assessment Year 2015 – 2016 as well as 2016 – 2017. During the Financial Year 2014 – 2015, the Appellant has repaid the loan of Rs.54,291/- and the opening balance of the loan as on 01.04.2015 was Rs.3,57,79,910/-. During the year under consideration, i.e. Financial Year 2015 – 2016, the appellant has repaid Rs.1,95,74,000/- and the closing balance as on 31.03.2016 is Rs.1,62,05,910/-.”

Aggrieved, the Revenue had now come in appeal before the Tribunal.

8. The only grievance of the Revenue now before us is that, the Commissioner of Income Tax (Appeals) had admitted the evidences at the back of the Assessing Officer in violation of Rule – 46 of the Income Tax Rules, 1962. We noted that the Commissioner of Income Tax (Appeals) has obtained the remand report from the Assessing Officer

as noted in his Appellate order and the Assessing Officer has admitted this amount of Rs.1,62,05,910/-. Even now before us, the Revenue's Counsel could not controvert on the same. Hence, we confirm the order of the Commissioner of Income Tax (Appeals) in deleting the addition. In regard to M/s. Purple Silver Jewellery, the creditors of Rs.5,95,000/-, we noted that this amount was explained by the Assessee that, this was duly reflected on account of the purchase of certain silver articles and that the Assessing Officer has not taken any adverse view and thereby the Commissioner of Income Tax (Appeals) had considered the same as explained by observing in paragraph No.6.4 (viii), as under:

"(viii) As regards to the addition on account of Purple Jewellery, the Appellant has submitted the copy of the bill dated 16.12.2014 issued by M/s. Purple Jewellery for an amount of Rs.5,95,000/- inclusive of VAT. As per this bill, the Appellant has purchased certain silver articles which are duly reflected in the Balance Sheet of the Appellant for the Assessment Years 2015 - 2016 and 2016 - 2017. Although, it was purchased during the

Financial Year relevant to the Assessment Year 2015 – 2016, the Assessing Officer has not taken any adverse inference in the scrutiny assessment order u/s.143(3) for the Assessment Year 2015 – 2016. The Assessing Officer has not brought any material on record to establish that the transaction is not genuine. In any case, the provisions of Section 4(1), is otherwise also not applicable for this transaction as the same was not a trading liability and was never claimed as an expense. Further, it was also submitted that the said amount is also the opening balance for the year under consideration and the Assessing Officer is not competent to make addition for the same during the year under consideration. I am also in agreement with the contention of the Appellant that an item purchased during the Financial Year relevant to the Assessment Year 2015 – 2016, which is also accepted in the scrutiny assessment for the said year, could not have been treated as unexplained sundry creditors in the subsequent year being Assessment Year 2016 – 2017, especially when the Assessing Officer has neither made any enquiry nor brought any material on record to establish the contention of the Assessing Officer and the same is not a trading liability.”

We find no infirmity in the order of the Commissioner of Income Tax (Appeals) and thus we

confirm the order of the Commissioner of Income Tax (Appeals) in deleting the addition.

9. In the result, the appeal of the Revenue in I.T.A No.:257/CHNY/2021 is dismissed.

Order pronounced in the court on 8th September, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 8th September, 2022

IA, Sr. PS

आदेशकीप्रतिलिपिअग्रेषित/Copy to: 1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF