

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

माननीय श्री वी. दुर्गाशिव, न्यायिक सदस्य एवं

माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।

BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND

HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.3030/Chny/2018**

(निर्धारण वर्ष / **Assessment Year: 2015-16**)

Shri Chinnasamy Mani No. 10, 13 th Street, J.B. Estate, Avadi, Chennai – 600 054.	बनाम/ Vs.	ACIT Non Corporate Circle -7(1), Chennai.
स्थायी लेखा सं./जी आइ आर सं./ PAN/GIR No. AGMPM-3506-H		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

आयकर अपील सं./ **ITA No.3078/Chny/2018**

(निर्धारण वर्ष / **Assessment Year: 2015-16**)

ACIT Non Corporate Circle -7(1), Chennai.	बनाम/ Vs.	Shri Chinnasamy Mani No. 10, 13 th Street, J.B. Estate, Avadi, Chennai – 600 054.
स्थायी लेखा सं./जी आइ आर सं./ PAN/GIR No. AGMPM-3506-H		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Assessee by	:	Shri S. Sridhar (Advocate) – Ld. AR
प्रत्यर्थी की ओर से/ Department by	:	Shri G. Johnson (Addl. CIT) – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	14-09-2022
घोषणा की तारीख / Date of Pronouncement	:	14-09-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid cross appeals for Assessment Year (AY) 2015-16 arises out of the order of learned Commissioner of Income Tax

(Appeals)-7, Chennai [CIT(A)] dated 27.08.2018 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) of the Act on 26.12.2017.

The grounds raised by the assessee read as under:

1. The order of The Commissioner of Income Tax (Appeals) 7, Chennai dated 27.08.2018 in I.T.A.No.66/CIT(A)-7/2017-18 for the above-mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.
2. The CIT (Appeals) erred in partly sustaining the addition of various credits appearing in the capital account as per the findings recorded in para 8.1 of the impugned order in the computation of taxable total income without assigning proper reasons and justification.
3. The CIT (Appeals) failed to appreciate that the partial sustenance of the addition invoking section 68 of the Act was wholly unjustified and ought to have appreciated that the complete data furnished at all stages would negate the partial sustenance of the said addition while explaining the complete/full source as well as the genuineness of the entry while vitiating the findings in para 8.1 of the impugned order.
4. The CIT (Appeals) failed to appreciate that the conditions prescribed cumulatively to apply the provisions of section 68 of the Act for the amounts sustaining in para 8.1 of the impugned order were not satisfied on various facets thereby vitiating the cryptic findings recorded in relation thereto.
5. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.

The grounds raised by the Revenue read as under:

1. The Order of the learned Commissioner of Income Tax (Appeals) is contrary to the Law and facts of the case.
2. The CIT(A) erred in deleting the addition with regard to the increase in capital to the extent of Rs.4,50,45,351/- by holding that the same was duly explained by the assessee by relying only the bank statements.
3. The CIT(A) erred in relying only the bank statement analysis for the period 2013 to 2015 without insisting the assessee to furnish the corresponding capital account of the concerned year while deleting the addition.
4. The CIT(A) failed to consider the fact that the assessee had not furnished the reconciliation statement with regard to increase in capital account as per bank statements and the capital account of the corresponding year, either at the time of assessment proceedings or at the time of appeal proceedings.
5. The CIT(A) failed to consider the fact that there is a difference between the FDs' balance as per schedule-II of the financials filed along with the return of income by the assessee and the working of the CIT(A).
6. The CIT(A) ought to have appreciated the fact that the assessee had shown the FD balances 'in various banks as on 31/03/2015 amounting to Rs.4,12,87,184 as per schedule-II of the financials, which was different from the workings of the CIT(A).

7. The CIT(A) omitted to consider the fact that no FIRC's were filed in support of the claim made by the assessee stating that increase in bank funds and subsequently increase in capital account were made out of GBP account.

8. The CIT(A) omitted to call for remand report u/r.46A, when the assessee furnished any details/fresh evidence in support of its claim during the appellate proceedings, on which the CIT(A) relied on the same and allowed the ground of the assessee.

As is evident, the sole subject matter of appeals is addition u/s 68 for Rs.527.88 Lacs.

2. The Ld. Sr. DR pleaded for violation of Rule 46A and submitted that the documents / explanation which led to adjudication in the impugned order was never confronted to Ld. AO and therefore, the same was in violation of Rule 46A of Income Tax Rules, 1962. These rules empower CIT(A) to accept additional evidence in certain specified circumstances. The rules further provide that in such cases, a copy of such additional evidence will be sent to concerned AO who can examine the evidence or documents or cross examine the witness produced by the appellant. The AO may also produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant. After cross-examination of additional evidence by the assessing officer, such assessing officer produce a report before the CIT(A) containing the observations made by them. The CIT(A) after considering both additional evidence application by the appellant and assessing officer report on such additional evidence, decide as to whether to accept or reject the additional evidence.

3. The Ld. AR, on the other hand, submitted that the sufficient details were supplied by the assessee. The Ld. AR also assailed the additions as sustained in the impugned order.

4. Having heard the rival submissions and after due consideration of relevant material on record, our adjudication would be as under.

Assessment Proceedings

5.1 The assessee being resident individual is stated to be engaged as distributor of inhaler products. The assessee work for M/s Copley Scientific Ltd., UK and the assessee receives income in foreign currency being GBP (£). The assessee declared income of Rs.39.78 Lacs which was subjected to scrutiny assessment. It transpired that the assessee withdrew funds from GBP (£) account and deposited the same in Indian Bank Accounts. Accordingly, there was increase in capital. The assessee was asked to produce all bank account as well cash flow analysis between the banks.

5.2 However, assessee produced only ICICI bank with A/c 602205039723 along with GBP Account A/c 603806000026 which was held by Ld. AO insufficient to substantiate the claim. It was noted that the opening balance in Account No. 602205039723 was Rs.14.98 Lacs only whereas increase in capital was for Rs.527.88 Lacs. The capital introduction should be to the tune of Rs.14.98 Lacs plus current year's profit of Rs.9.25 Lacs and not Rs.527.88 Lacs as claimed by the assessee. Finally, in the absence of sufficient details, Ld. AO added the amount of Rs.527.88 Lacs to the income of the assessee.

Appellate Proceedings

6.1 It was submitted that the income earned from AY 2009-10 onwards was held in EEFC Account No.603806000026 maintained in GBP with ICICI bank. To comply with RBI directions, funds were transferred from GBP account to other accounts and amounts were invested in fixed deposits. The assessee stated to have offered income

on presumptive basis in earlier years and it was submitted that the bank balance as on 31.03.2015 was out of funds received in GBP Account from AY 2009-10 which was already offered for taxation in earlier years. The assessee also filed the Bank statements of various bank accounts. Accordingly, the assessee assailed the findings of Ld. AO.

6.2 During appellate proceeding the assessee filed Return of Income from AYs 2009-10 2015-16, bank statements, Balance Sheet As on 31.03.2015 and statement of foreign exchange received. The Ld. CIT(A) held that the claim of the assessee that it was filing returns under presumptive scheme was not in order.

6.3 Proceeding further, Ld. CIT(A) tabulated the cash flow chart as submitted by the assessee during appellate proceedings. The same has been given on Page-6 of the impugned order. The assessee arrived at total Bank Balance as on 31.03.2015 for Rs.518.28 Lacs. However, Ld. CIT(A) after examining the tabulation, upheld the addition of Rs.77.43 Lacs (Rs.6.58 Lacs + Rs.70.85 Lacs) and deleted the balance addition. The said adjudication has given rise to cross-appeals before us.

Our findings and Adjudication

7. Upon perusal of assessment order, it could be seen that the assessee's capital balance has shown increase of Rs.527.88 Lacs. The Ld. AO held that the capital introduction should be to the tune of Rs.14.98 Lacs plus current year's profit of Rs.9.25 Lacs and not Rs.527.88 Lacs as claimed by the assessee. The assessee could not substantiate the same and could not file the documentary evidences to support the same.

8. During appellate proceedings, the assessee, for the first time, filed copies of return of income of earlier years along with statement of account and cash flow statement. The Ld. CIT(A) also refuted the claim of the assessee that it was offering income in earlier years on presumptive basis. Finally, Ld. CIT(A) upheld the addition of Rs.77.43 Lacs and deleted the balance addition without rendering a finding as to how the remaining amount was substantiated by the assessee. It could also be seen that evidences / documents were considered by Ld. CIT(A) without calling remand report from Ld. AO and without confronting the same to Ld. AO. The same is in violation of Rule 46A.

9. Considering the facts and circumstances of the case, we set aside the impugned order and restore the matter back to the file of Ld. AO for fresh adjudication with a direction to the assessee to substantiate the credits made in the books of account. Needless to add that adequate opportunity of hearing shall be granted to the assessee.

10. The appeal of the revenue as well as of the assessee stands allowed for statistical purposes.

Order pronounced on 14th September, 2022.

Sd/-

(V. DURGA RAO)

न्यायिकसदस्य / JUDICIAL MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 14-09-2022

JPV

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखासदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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