

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA Nos.	निर्धारण वर्ष / A.Y.	अपीलार्थी / Appellant	प्रत्यर्थी / Respondent
1488/Hyd/2018	2012-13	The Income Tax Officer, Ward-1(1), Hyderabad	M/s. Amanchind Infrastructure Private Limited, Hyderabad [PAN: AAHCA2913J]
1810/Hyd/2018	2012-13		

निर्धारिती द्वारा / Assessee by: Shri Manoj Kumar Daga, AR
राजस्व द्वारा / Revenue by: Ms. L. Sunitha Rao, CIT-DR

सुनवाई की तारीख/Date of hearing: 28/09/2022
घोषणा की तारीख/Pronouncement on: 28/09/2022

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Challenging the orders passed by the learned Commissioner of Income Tax (Appeals)-1, Hyderabad ("Ld. CIT(A)"), in the case of M/s. Amanchind Infrastructure Private Limited ("the assessee") for the assessment year 2012-13, Revenue preferred these appeals. For the sake of convenience, we dispose of these appeals by this common order.

2. Brief facts of the case are that the assessee is a private limited company, engaged in the business of real estate. The assessee filed its return of income for the assessment year 2012-13 on 30/09/2013

declaring an income of Rs. 1,18,167/-. During the course of assessment proceedings, learned Assessing Officer noticed that the assessee debited an amount of Rs. 5.5 lakhs towards increase of the share capital to the profit and loss account stating that the same represents the expenses/fees paid for increase in the authorised capital of the company, which according to the learned Assessing Officer is capital in nature and, therefore, added to the income of the assessee. Apart from this, learned Assessing Officer noticed short term borrowings of Rs. 7,68,96,000/- from several persons and entities during the financial year 2011-12 but failed to substantiate the borrowings with any evidence much less the cogent evidence.

3. Further, according to the learned Assessing Officer, one of the creditors by name Shri Y. Venkateswara Rao to the tune of Rs. 2,54,48,000/- stated before the DDIT that his bank book was utilized by Shri Satish Khanna, Director of the assessee company in a way that the said Director used to take Shri Y. Venkateswara Rao to bank, deposit the amounts in the account of Shri Y. Venkateswara Rao, and with the help of the blank signed cheques of Shri Y. Venkateswara Rao, amounts used to be diverted to the assessee's account by Shri Satish Khanna. In respect of other loan creditors also, according to the learned Assessing Officer, no evidence whatsoever is produced to substantiate the same. Learned Assessing Officer, therefore, by order dt. 31/03/2015 passed under section 143(3) of the Income Tax Act, 1961 (for short "the Act") made a total addition of Rs. 7,74,46,000/- to the income of the assessee.

4. Aggrieved, the assessee preferred appeal before the Ld. CIT(A). In the first instance, Ld. CIT(A) deleted the addition of Rs. 2,55,48,000/- on account of Shri Y. Venkateswara Rao, Rs. 25 lakhs on account of Shri K. Madhukar Rao, Rs. 3,94,58,000/- on account of Shri Vipin Chopra through M/s. Anil Traders and M/s. Gagan Enterprises but confirmed the addition of Rs. 60 lakhs on account of Shri Anjaiah Goud, Smt. Aparna Goud, Shri

Arjun Goud and Smt. Savithri Goud. Challenging the deletions, Revenue preferred ITA No. 1488/Hyd/2018.

5. Subsequently, at the instance of the assessee, by way of letter dt. 21/06/2018 stating that by inadvertence, the amounts said to have been received from M/s. RVR Infrastructure to the tune of Rs. 25 lakhs and Shri Satish Khanna to the tune of Rs. 1,20,64,510/- missed the attention of the Ld. CIT(A), Ld. CIT(A) passed an order dt. 06/07/2018 under section 154 of the Act, deleting those two additions also. Subsequent to this order, Revenue preferred ITA No. 1810/Hyd/2018 challenging comprehensively the deletions made in respect of Shri Y. Venkateswara Rao, Shri Madhukar Rao, Shri Vipin Chopra, M/s. RVR Infrastructure Ltd., and Shri Satish Khanna.

6. It is the submission of the learned DR that the specific contention of the learned Assessing Officer in the assessment order is that insofar as Shri Y. Venkateswara Rao is concerned, as against the alleged statement of Shri Y. Venkateswara Rao before the DDIT absolutely there is no material to contradict the same, but unfortunately, Ld. CIT(A) shifted the burden to the learned Assessing Officer to prove that the submissions made by Shri Y. Venkateswara Rao are not incorrect. According to the learned DR, when once certain statement is recorded in discharge of the official duties by the DDIT, it is for the assessee to establish that Shri Y. Venkateswara Rao stands to gain by speaking something falsehood against late Shri Satish Khanna. Even in respect of Shri Madhukar Rao, except filing the confirmation in respect of the advance of Rs. 25 lakhs, no evidence to prove the creditworthiness of Shri Madhukar Rao is filed. As far as Rs. 3,94,58,000/- on account of M/s. Anil Traders and M/s. Gagan Enterprises through Mr. Vipin Chopra is concerned, no evidence is produced even at the first appellate stage. Coming to Rs. 25 lakhs said to have been advanced by M/s. RVR Infrastructures and Rs. 9.9 lakhs received from Shri Satish Khanna also Ld. CIT(A) relied upon the confirmation made by these

parties before the police and also on the premise that these amounts were routed through bank. Learned DR further submitted that while appreciating various contentions involved in this matter regard must be had to the common course of natural events, human conduct and public and private business in their relation to the facts involved in this case. She submitted that even after a long lapse of time, the parties did not confirm their providing these funds to the assessee and such a fact goes against the interest of such parties.

7. Per contra, learned AR submitted that Shri Satish Khanna unfortunately committed suicide not being able to bear with the financial vicissitudes and in his suicide note he mentioned that various creditors were troubling him and, therefore, all the creditors, due to the fear of police likely to involve them in cases, are not coming forward and claim the amounts advanced by them and that is the reason why the assessee is unable to produce any of the creditors or confirmations from them. He further submitted that Ld. CIT(A) is right in her approach while believing this possibility in view of cases between Shri Y. Venkateswara Rao and the assessee. He also supported the observations of the Ld. CIT(A) in respect of Shri Vipin Chopra that in the absence of any further investigation regarding the submissions of Shri Vipin Chopra, it is clear as to why borrower would not come and accept loan from a dead loan giver. In respect of Shri K. Madhukar Rao, learned AR submits that confirmation letter in respect of the advance of Rs. 25 lakhs was produced before the learned Assessing Officer and Ld. CIT(A) was right in accepting the same. He justified the action of the Ld. CIT(A) in accepting the confirmations of M/s. RVR Infrastructure Ltd., and Shri Satish Khanna before the police and also because the amounts were routed through banking channels. He, therefore, submits that absolutely there are no grounds to interfere with the findings of the Ld. CIT(A) and the appeals are to be dismissed accordingly.

8. We have gone through the record in the light of the submissions made on either side. There are various creditors. Ld. CIT(A) upheld the addition made in respect of Gouds to an extent of Rs. 60 lakhs. There is no appeal by the assessee. Now coming to the case of Shri Y. Venkateswara Rao, there is no dispute that Shri Y. Venkateswara Rao stated before DDIT, Unit-1(1), Hyderabad that during the period of 2010, he was in deep financial stress, due to which he was to oblige Shri Satish Khanna to make use of his bank account wherein Shri Satish Khanna was depositing the amounts and immediately transferring the same to the account of the assessee by using the signed blank cheques of Shri Y. Venkateswara Rao by paying some petty commission for each transaction. It is the specific statement of Shri Y. Venkateswara Rao before the authorities that the source for cash deposits in his accounts, which were ostensibly credited to his name in the accounts of the assessee, was in fact the cash deposits which were made by Shri Satish Khanna in his account.

9. As against this, no material is forthcoming to discredit such statement. Before the Ld. CIT(A) the assessee submitted that such a statement was taken behind the back of the assessee without affording an opportunity to cross examine him. This the Ld. CIT(A) referred as the assessee raising the issue relating to cross examination. It is not the finding of the Ld. CIT(A) that the assessee sought an opportunity to cross examine Shri Y. Venkateswara Rao or that said request was turned down by the learned Assessing Officer. Apart from this, the statement of Shri Y. Venkateswara Rao before the DDIT is well corroborated by the conduct of Shri Y. Venkateswara Rao in not claiming the amount said to have been lent to the assessee. Certainly the denial of the transaction of Shri Y. Venkateswara Rao lending the amounts to assessee is not in the interest of Shri Y. Venkateswara Rao. When a man acts detrimental to his interests, it cannot slightly be said that he was speaking something falsehood. Record does not reveal that at any point of time, the assessee sought an opportunity to cross examine Shri Y. Venkateswara Rao. In the absence of

any such request, non-cross examination of Shri Y. Venkateswara Rao is not a ground to vitiate his statement. Here the statement and conduct go hand in hand pointing to a fact against the assessee. We, therefore, have no hesitation to uphold the findings of the learned Assessing Officer and to this extent we find it difficult to agree with the Ld. CIT(A).

10. Coming to the lending of Rs. 1,32,50,000/- on behalf of M/s. Anil Traders and Rs. 2,62,08,000/- on behalf of M/s. Gagan Enterprises by Mr. Vipin Chopra, learned Assessing Officer recorded that though the notices under section 133(6) of the Act was served there was no response from the said person. It is the contention of the assessee that the said person received Rs. 5 crores from Shri Satish Khanna by mortgaging the property, which was taken possession by the bank. In all business exigency, the assessee should have taken up some steps for recovery of Rs. 5 crores or at least the balance after setting off the amounts lent by Shri Vipin Chopra.

11. Ld. CIT(A) in her order observed that the learned Assessing Officer should have conducted further enquiry or investigation pursuant to the contentions raised by the assessee in respect of the borrowings from Shri Vipin Chopra. So also, certain confirmation letters were submitted by the assessee in respect of the loans said to have been advanced by M/s. Anil Traders, M/s. Gagan Enterprises, Shri Madhukar Rao and Shri Satish Khanna. Record does not reveal that any enquiry or investigation is done pursuant to this confirmation letters as to the creditworthiness of these people. In the facts and circumstances of the case, we are of the considered opinion that ends of justice would be met if necessary enquiry is made in this direction. We, therefore, set aside the findings of the Ld. CIT(A) in respect of the loans advanced by M/s. Anil Traders, M/s. Gagan Enterprises, Shri Madhukar Rao and M/s. RVR Infrastructure. Learned Assessing Officer will give a reasonable opportunity to the assessee to substantiate their contentions and if the assessee fails to substantiate the same, presumption that such money belongs to the assessee only could be

drawn. Assessee will produce all the material evidence before the learned Assessing Officer.

12. In the result, appeals of the Revenue are treated as partly allowed for statistical purposes.

Order pronounced in the open court on this the 28th day of September, 2022.

Sd/-
(RAMA KANTA PANDA)
ACCOUNTANT MEMBER
Hyderabad,
Dated: 28/09/2022

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

TNMM

Copy forwarded to:

1. Income Tax Officer, Ward-1(1), Hyderabad.
2. M/s. Amanchind Infrastructure Private Limited, Plot No. 92C, Road
No. 12, Banjara Hills, Hyderabad.
3. CIT(Appeals)-1, Hyderabad.
4. Pr.CIT-1, Hyderabad.
5. DR, ITAT, Hyderabad.
6. GUARD FILE

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