

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' 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.: **218/Chny/2019**
निर्धारण वर्ष / Assessment Year: 2007-08

The Assistant Commissioner of
Income-tax,
Central Circle -3(3), Chennai
46, Nungambakkam High
Road, Chennai – 600 034.

M/s. Jai Guhan Venture
v. Properties private Limited,
Swathi Court, 41 Pent House,
No. 22, Vijayaraghava Road,
T. Nagar, Chennai – 600 017.
[PAN: AABCJ-7113-K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. S. Senthil Kumaran, CIT
प्रत्यर्थी की ओर से/Respondent by : Shri. R. Meenakshi Sundaram,
Advocate

सुनवाई की तारीख/Date of Hearing : 30.11.2022
घोषणा की तारीख/Date of Pronouncement : 04.01.2023

आदेश /ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-19, Chennai, dated 10.06.2018 and pertains to assessment year 2007-08.

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

"1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

2. The learned CIT(A) erred in directing the AO to delete the addition of Rs. 14,44,40,661/- in the assessment order passed u/s 153C r.w.s. 153A r.w.s. 144 of the Act on 3C.03.2015.

2.1 The learned CIT(A) ought to have appreciated the fact that the assessee did not furnish any evidence before the Assessing Officer during the course of assessment proceedings inspite of giving sufficient opportunities. Thus, the evidence furnished before the learned CIT(A) would not partake the character of 'Additional Evidence' The. learned CIT(A) has not specified which condition of Rule 46A has been fulfilled by the assessee. Even during the remand proceedings complete details were not furnished by the assessee .

2.2 The learned CIT(A) held that during the year under consideration no P&L account was prepared and only balance sheet was prepared which will show only capital items and do not reflect any receipts or income or payments or expenses of revenue nature. Accordingly, the details of advance received from Chennai Business Park P Ltd amounting Rs 15,49,28,540/- were not reflected in the balance sheet. The learned CIT(A) erred. treating the Advances of Rs.15,49,28,450 as being Revenue in nature, whereas any kind advances are Capital in nature.

2.3 The learned CIT(A) failed to appreciate the fact that the even revenue expense were accounted in the Balance Sheet by the assessee under the head Expenditure in Net Work in Progress on Land and Development expenses (Schedule-5). However, the advance Rs. 15,49,28,540/- was not shown under this head also. The assessee has not shown the advance of Rs. 15,49,28,450/- in its books of accounts.

2.4 The learned CIT(A) ought to have appreciated the fact that the addition was made by the AO based on the documents seized and marked as File No. 9(iii) from the premises Indo Asian Finance Limited.

3. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeal) may be set aside and that of the Assessing Officer be restored."

3. At the outset, we find that there is a delay of 129 days in filing appeal before the Tribunal for which the revenue has filed a petition along with affidavit, explaining reasons for delay in filing appeal. The Ld. DR, referring to affidavit filed by the revenue submitted that the order of the CIT(A) has been received by the office of the PCIT, Central-1, Chennai on 24.07.2018, and the revenue ought to have filed an appeal on or before 22.09.2018, but the appeal has been filed on 29.01.2019 with a delay of 129 days. The reasons for delay in filing of appeal is neither willful nor to derive any undue benefit, but due to circumstances beyond control of the appellant because the inspector who prepare papers for filing appeal forgot to obtain appeal authorization from the concerned authorities which resulted in delay. Therefore, the appeal filed by the revenue may be condoned in the interest of justice. The Id. Counsel for the assessee fairly agreed that the delay in filing the appeal may be condoned.

4. We have heard both the parties and considered relevant contentions of affidavit filed by the revenue and we find that delay in filing of appeal is neither willful nor to derive any undue benefit, but it was beyond the control of the revenue. Therefore, considering reasons given by the revenue, we condone delay in filing of appeal by the revenue and admit the appeal for adjudication.

5. The brief facts of the case are that, the assessee belongs to Challani Group of companies. A search and seizure u/s. 132 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was carried out in Challani group on 19.04.2012. During the course of search, a document called shareholder agreement was found and seized from Indo Asian Finance Ltd and identified as file no. 9(iii). From the document found during the course of search, it was noticed that M/s. India Land & Properties Ltd and M/s. Jaiguhan Venture Properties P. Ltd., agreed to start a joint venture, by the name and style of Chennai Business Park P. Ltd., with share holding ratio of 60% and 40% respectively. During the course of search, a statement from Mr. Padam J. Challani, one of the directors of

the assessee company was recorded and in reply he was stated that Chennai Business Park P. Ltd is a special purpose vehicle floated for purchase of properties at Kallapiran Puram near Madurantakkam, in order to develop a SEZ park. During post search proceedings, it was found from books of accounts for the year ending 31.03.2010, the appellant had received advance from Chennai Business Park P. Ltd and transferred land to Chennai Business Park P. Ltd.

6. Consequent to search, the case of the assessee was notified and notice u/s. 153C of the Act dated 16.10.2014 was issued to the assessee to furnish return of income for the assessment year 2007-08. The assessee did not comply with the same and hence, a reminder was sent to the assessee to file return of income. Finally, the assessee had filed return of income for assessment year 2007-08 on 14.01.2015 declaring nil total income. The case was taken up for scrutiny and during the course of assessment proceedings, the AO noticed that the assessee has shown large unsecured loans from various parties and also incurred huge expenses on purchase of land and another expenses. The assessee had also

transferred stock worth Rs. 14.44 crores to Chennai Business Park P. Ltd. Therefore, called upon the assessee to explain and furnish details of unsecured loans and also stock transferred to Chennai Business Park P. Ltd. The assessee neither furnished details nor complied with the requirements of the AO. Therefore, the AO passed exparte order u/s. 153 r.w.s. 144 of the Act and made addition of Rs. 14,44,40,661/- towards stock transferred to Chennai Business Park P. Ltd as unexplained cash credit u/s. 68 of the Act. The relevant findings of the AO are as under:

5. In the return filed, assessee company has shown a capital of Rs. 1,00,000/- and issued unsecured loans of Rs. 6,29,93,970/-. On the assets side, it has shown cash bank balances of Rs. 32,22,413/-, Loans and advances of Rs. 1,21,44,800/- and work in progress worth Rs.4,74,60,576/- and provisions of Rs. 2,81,904/-. From the it is seen that it has incurred expenses of Rs.19,19,01,237/- on purchases and other expenses. Out of this he has transferred stock of Rs.14,44,40,661/- to Chennai Park Pvt. Ltd. and has shown Rs.4,74,60,576/- as 'net work in progress. From the shareholders' agreement, document found and seized from Finance Ltd. and identified as File No.9 (iii), it is seen that M/s India Land & Properties Ltd. and the Jaiguhan Venture Properties P. Ltd. agreed to start a joint venture by the name and style of Chennai Business Park P. Ltd. with shareholding ratio of 60% and 40% respectively. Mr. Padam J. Challan, one of the directors of the assessee company stated in his sworn statement that Chennai Business Park P. Ltd. is special purpose vehicle related for purchase of properties at Kallapiran Puram near Madurantakkam order to develop an SEZ park. Thus the assessee company was incorporated on 22.06.2006 only for the purpose of acquiring and aggregating lands for Chennai Park P. Ltd. During the post search proceedings, it was found

that for the year 31.03.2010, it had received advances of Rs.29,52,10,874/- and transferred Rs.26,10,13,194/- without recognizing any profit in its books. In the current year too, it has transferred stock worth Rs.14,44,40,661/- to Chennai Business Park receiving any advance from Chennai Business Park and without recognizing any income. But the fund available to the company was only Rs.4,74,60,576/-. It has not received any advance from Chennai Business Park P. Ltd. this year. Hence, it is held that the acquisition of property transferred to Chennai Business Park was out of unknown sources and the amount is added u/s. 68 of the I.T. Act. Penalty proceedings u/s. 271(1)(c) of the Act are also initiated for furnishing inaccurate particulars."

7. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the Id. CIT(A), the assessee has filed additional evidences vide letter dated 17.12.2016 and relevant details of evidences filed by the assessee has been reproduced in para 5 of page 3 of Ld. CIT(A) order. During the appellant proceedings, the CIT(A) has furnished additional evidences filed by the appellant to the Assessing Officer to verify and offer his comments. The AO vide his remand report, commented on additional evidences filed by the assessee and their admissibility. The AO had also observed that the assessee has failed to file necessary evidences during the course of remand proceedings. The CIT(A) furnished a copy of remand report to the appellant for his rejoinder and the appellant vide letter 22.05.2018 offered

his comments on remand report submitted by the AO and explained its case. The sum and substance of the arguments of the appellant before the Ld. CIT(A), are that the assessee has received advance from Chennai Business Park P. Ltd, for purchase of land and the same has been utilized for acquiring land in the name of Chennai Business Park P. Ltd. Since, properties has been acquired in the name of Chennai Business Park P. Ltd, the appellant could not disclose amount received from Chennai Business Park P. Ltd and amount spent for acquiring land. Further, since the assessee had prepared balance sheet, it has declared only assets and liabilities, amount received from Chennai Business Park P. Ltd and payment of amount towards purchase of land is squared off before showing the net result.

8. The Ld. CIT(A) after considering relevant submissions of the assessee and also taken note of remand report submitted by the AO, had observed that the AO has made addition towards stock transferred to Chennai Business Park P. Ltd, on the ground that the appellant could not explain source for acquiring stock in trade, but fact remains that the appellant

has necessary evidences and proved that it has received amount from Chennai Business Park P. Ltd and spent for purchase of land in the name of Chennai Business Park P. Ltd, a special purpose vehicle created for development of SEZ park. The CIT(A), further observed that since the appellant had not prepared profit and loss account and has only prepared balance sheet, amount received from Chennai Business Park P. Ltd was not disclosed in the balance sheet. In other words, the assessee has explained source for investment in stock in trade transferred to Chennai Business Park P. Ltd. Therefore, opined that the AO has erred in making addition towards stock transferred to Chennai Business Park P. Ltd, because the assessee has explained source as out of amount received from Chennai Business Park P. Ltd, amounting to Rs. 15.49 crores. The relevant findings of the Id. CIT(A) are as under:

"8. *I have gone through the assessment order, grounds, written submissions, remand report, rejoinder to the remand report and case laws. As can be seen from the assessment order, the only addition is Rs.14,44,40,661 made under the head 'Investment from undisclosed sources'. The appellant's main contention is that in an assessment made u/s.153C rws. 153A, any addition contemplated in the assessment should be backed by seized document found in the main search party which could be connected with the 'other party'. Thus, as pointed by the AR, this addition has been made on the basis of bank statement and no material seized during the*

course of search. While contesting the above addition, the AR submitted that the addition was made by the AO on the basis of the balance sheet filed by the appellant along with the return of income. In the previous year relevant to AY.2007-08, since the appellant has not commenced business operations, no profit and loss account was prepared but only a balance sheet was prepared for the purpose of Companies Act. In the Schedules forming part of Balance Sheet as at 31.3.2007 being schedule 5 showing Net Work in Progress of land & Development Expenses' a sum of Rs.14,44,40,661 has been shown as Stock Transfer to Chennai Business Park P Ltd in addition to other expenses of Rs.4,74,60,576 grouped under the above 'Net work in-progress'.

8.1. As may be seen, since only a balance sheet was prepared which will show only capital items and do not reflect any receipts or income or payment or expenses of revenue nature, the details of amounts received from Chennai Business Park P Ltd amounting to a sum of Rs.15,49,28,540 was not reflected in the said balance sheet. Unfortunately in Schedule 5 regarding land purchased on behalf of Chennai Business Park Ltd, the appellant has described it in the said schedule 5 as 'Stock Transfer' giving the impression that the appellant is dealing in land which was sold to Chennai Business Park P Ltd by the appellant.

8.2. Therefore, the AO has assumed that the appellant has sold the land for a consideration of Rs.14,44,40,661 in Chennai Business Park P Ltd without having received the payment, the appellant has not disclosed the same in the balance sheet and consequently, assessed the sum of Rs.14,44,40,661 as income of the appellant and brought the same to tax. Since the assessment was made by the AO u / s.144 of the Act', no opportunity was given to the appellant to explain the factual position to the AO. The appellant has entered into a Memorandum of Understanding dated 7.8.2006 with M/s. India Land and Properties Ltd, under which they have agreed to acquire in the name of Chennai Business Park P Ltd', for setting up and develop a special Economic Zone that is being jointly promoted by

the appellant and the above said India Land and Properties Ltd and in which the appellant is holding 40% of the shares and the remaining 60% shares being held by India Land and Property Ltd. Under Memorandum of understanding dated 17.8.2006 (supra), the Joint venture partners have agreed to acquire in the name of Chennai Business Park P Ltd 600 acres of land for forming the Special Economic Zone and for which the responsibility for acquiring the land and meeting the expenses has been entrusted to the appellant Jaiguhan Ventures Properties Pvt Ltd. It was for this purpose, Chennai Business Park P Ltd has advanced 1 OF/ amounting to Rs.15,49,28,540 in the FY.2006-07 to Jaiguhan Venture Properties Pvt Ltd, the appellant. The above said Rs.15,49,28,540 is duly reflected in the books of Jaiguhan Ventures Properties Pvt Ltd in the account of Chennai Business Park P Ltd for the period 1.4.2006 to 31.3.2007.

8.3. *From the above, it can be seen that the impugned addition made by the AO, is not tenable inasmuch as an amount of Rs.15,49,28,540 which includes the contested amount of Rs.14,44,40,661 has been duly reflected in the books of accounts of the appellant in the account of Chennai Business Park P Ltd for the period 1.4.2006 to 31.3.2007. The AR's explanation that, since only a balance sheet was prepared which will show only capital items and do not reflect any receipts or income or payments or expenses of revenue nature the details of amounts received from Chennai Business Park P Ltd amounting to Rs. 15,49,28,540 were not reflected in the balance sheet, is plausible. Further, the objection of the AR that the AO while furnishing the remand report should have confined his report to the extent of admissibility of additional evidence as required by the CIT(A) is also correct. In the circumstances, the addition made of Rs. 14,44,40,661 is hereby deleted and the grounds of appeal is **allowed.**"*

9. The Ld. DR, submitted that the Ld. CIT(A) erred in deleting addition made towards unexplained cash credits by holding that addition made by the AO is not supported by any incriminating material, without appreciating fact that during the course of search, a document marked as file no. 9(iii) was found and seized from the premises of Indo Asian Finance Limited. The Ld. DR, further submitted that the Ld. CIT(A) has deleted addition without discussing how the assessee could explain source for stock transferred to Chennai Business Park P. Ltd, even though there is no disclosure in the balance sheet or in the books of accounts for the amount received from Chennai Business Park P. Ltd.

10. The Ld. Counsel for the assessee, on the other hand referring to various documents submitted that the source for acquiring stock in trade transferred to Chennai Business Park P. Ltd is advance received from said party. The appellant has received advance of Rs. 15.49 crores and spent Rs. 14.44 crores for acquiring land in the name of Chennai Business Park P. Ltd. Since, the land has been acquired in the name of special purpose vehicle, the appellant did not disclosed amount

received from Chennai Business Park P. Ltd in the balance sheet. The AO misread the balance sheet and made addition towards stock transferred to Chennai Business Park P. Ltd as unexplained cash credit.

11. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The sole basis for addition towards stock transferred to Chennai Business Park P. Ltd, amounting to Rs. 14.44 crores is a document found in the course of search in the case of Challani Group in the premises of Indo Asian Finance Limited. As per document found during the course of search, the share holder agreement between the India Land & Properties Ltd and Jaiguhan Venture Properties P. Ltd, was entered into to start a joint venture in the name of Chennai Business Park P. Ltd, with share holding ratio of 60% & 40%, respectively. Further, Chennai Business Park P. Ltd, a special purpose vehicle was created for acquiring land and developing a SEZ park. During the course of assessment proceedings, the AO noticed that, although the assessee has shown huge unsecured loans from various parties and working in progress, but could not explain

transactions with necessary evidences. The AO, further observed that the appellant has shown stock transferred at Rs. 14.44 crores to Chennai Business Park P. Ltd without offering any income and also could not explain source for stock transferred. Therefore, he has made addition towards stock transferred as unexplained credit u/s. 68 of the Act. The Ld. CIT(A) has deleted addition made by the AO on the ground that the appellant could able to explain source for stock transfer and as per explanation furnished by the assessee, the appellant had received advance from Chennai Business Park P. Ltd and has acquired land in the name of Chennai Business Park P. Ltd.

12. Having heard both the sides, we find that during the assessment proceedings, the assessee is not cooperative which is evident from fact that inspite of various opportunities, the assessee could not furnish any evidences to justify its case. Although, the appellant has furnished certain evidences before the Ld. CIT(A), and the Ld. CIT(A) had called for remand report, but during remand proceedings, the appellant could not file additional details called for by the AO to verify

the claim of the assessee. Although, the AO has given negative comments on admissibility of additional evidences filed by the assessee, the CIT(A) has admitted additional evidences and deleted addition made by the AO towards stock transfer amounting to Rs. 14.44 crores by holding that the appellant had received advance amount of Rs. 15.49 crores from Chennai Business Park P. Ltd, and said amount has been utilized for acquiring stock in trade transferred to Chennai Business Park P. Ltd, a special purpose vehicle. We find that, the sole argument of the appellant before the CIT(A) is that amount received from Chennai Business Park P. Ltd, was never disclosed, because the appellant did not prepare profit and loss account in the impugned assessment year. The appellant has filed ledger extract copy of Chennai Business Park P. Ltd in the books of the assessee and explained that it has received advance of Rs. 15.49 crores. The appellant further claimed that by inadvertent error, it has shown advance utilized for purchase of land in the name of Chennai Business Park P. Ltd as stock transferred. Otherwise, it has passed journal entries to square up advance received and amount spent for acquiring land in the name of Chennai

Business Park P. Ltd. No doubt, the argument of the Ld. Counsel for the assessee appears to be correct going by fact that the appellant has filed ledger account copy of Chennai Business Park P. Ltd in the books of the appellant. We further, noted that the argument of the appellant that it could not disclose advance received from Chennai Business Park P. Ltd in the balance sheet because it has shown net amount under the head work in progress with a corresponding entry in unsecured loan, also appears to be correct. But, fact remains that these documents were never filed before the AO, nor confronted by the CIT(A) to AO before deleting additions made towards stock transferred to Chennai Business Park P. Ltd. Since, the appellant has filed various evidences for the first time before the CIT(A), and further the CIT(A) could not give proper reasons while deleting addition made towards stock transferred to Chennai Business Park P. Ltd, we are of the considered view that the issue needs to go back to the file of the Assessing Officer for further verification and thus, we set aside the order passed by the Ld. CIT(A) and restore the issue back to the file of the AO and direct the Assessing Officer to re-examine the case of the assessee in light of various

additional evidences including ledger extract of Chennai Business Park P. Ltd in the books of the appellant and decide the issue in accordance with law.

13. In the result, appeal filed by the revenue is treated as allowed for statistical purposes.

Order pronounced in the court on 04th January, 2023 at Chennai.

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)
न्यायिकसदस्य/Judicial Member

Sd/-
(जी. मंजुनाथ)
(G. MANJUNATHA)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 04th January, 2023

JPV

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 |