

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **2304/CHNY/2017**

निर्धारण वर्ष/Assessment Year: 2011-12

Shri Seshasayee Rajasekar,
Plot No.E, Door No.56/60,
Venkataratnam Nagar,
Adyar, Chennai – 600 020.

The ACIT,
vs. Business Circle – IV,
Chennai.

PAN: ADGPR 4411B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri D. Anand, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 12.04.2023

घोषणा की तारीख/Date of Pronouncement

: 10.05.2023

आदेश / O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-4, Chennai in ITA No.345/2013-14 A.Y.2011-12/CIT(A)-4 dated 21.12.2016. The assessment was framed by the ACIT, Business Circle IV, Chennai for the assessment year 2011-12 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 27.02.2014.

2. The first issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in making addition of unsecured loans by invoking the provisions of section 68 of the Act amounting to Rs.7,98,38,000/- from 2706 creditors. For this, assessee has raised ground Nos.1 to 10 which are exhaustive and argumentative and hence, need not be reproduced.

3. Brief facts are that the assessee is an individual who is Proprietor of M/s. Bavina Enterprises engaged in the business of construction and contract work. The assessee during the financial year 2010-11 relevant to assessment year 2011-12 claimed to have received money / unsecured loan from 2706 persons to the tune of Rs.8,69,60,000/-. Similarly, the AO noted in his assessment order that the assessee has also received money / unsecured loan from 1007 persons to the tune of Rs.3,00,00,000/- in financial year 2008-09 relevant to assessment year 2009-10. For assessment year 2009-10, assessee went in settlement with the Department under VSVS scheme. The AO during the course of assessment proceedings required the assessee to file the details of unsecured loan including the PAN number, confirmation and source of credit entry received from each of the person. The assessee filed only a list of unsecured loans of 2706 persons i.e., name and address of

these persons but could not furnish PAN number or confirmation from a single person. In order to verify the authenticity of assessee's claim, the AO randomly verified eight person from the list of creditors u/s.133(6) of the Act deputing an inspector for this purpose. The enquiry report of the inspector noted that on the given address of these 8 persons, no such person is residing and the address of all the persons are incorrect, which is claimed by assessee as unsecured loan or creditors. The AO confronted the enquiry report of the inspector to the assessee, but the assessee could not file any details in regard to the unsecured loan / cash credits to the extent of Rs.7,98,38,000/-. Accordingly, the AO added these as unexplained cash credit u/s.68 of the Act by observing in para 10 as under:-

“10. In view of the above, it is to be noted that when he is able to prove the genuineness of his investment, why he cannot prove the genuineness of his creditors, if the said creditors are prudent. The modus operandi is to convert the unaccounted cash to accounted investment through proper channel. Hence, the amount claimed as creditors are introduced as cash in his bank account (cash credit are verified in the bank statement) and investment through proper channel. Further it is established that the assessee has no intention to prove the cardinal principles implied under section 68 of the I.T. Act and has furnished inaccurate particulars with an intent to conceal his particulars of income tend to evade tax for which penalty under section 271(1)(c) is inevitable. Hence, in view of the above, the whole unsecured loan of Rs.7,98,38,000/- introduced during the A.Y.2011-12 is being disallowed and added back to the total income u/s 68 of the IT Act.”

Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) also required the assessee to submit following details, as given in para 20 of his order

“20. During the course of appellate proceeding, why did the order sheet entry dated 20/10/2016, the Ld.A.R. was requested to furnish the following information to establish the genuineness and credit worthiness of the cash creditors:

- I. Name and complete present address of the cash creditors;
- II. Their identity proof;
- III. The nature of source of income in their hands;
- IV. PAN and address of income tax office where they are/have been filing income tax return;
- V. Their contact numbers and email addresses.
- VI. Whether the unsecured loans have been repaid, if yes, the date and year when the same were repaid.

The assessee before CIT(A) argued that the cash credits were in the form of unsecured loans, later on took a different stand and contented that these were investments made by those cash creditors towards investment in car project proposed by the assessee in the company called M/s. Bavina Cars Pvt. Ltd. But this contention of the assessee was factually found incorrect by the CIT(A) because these entries were actually unsecured loan in cash of crowd funding as claimed by assessee. Despite many opportunities, the assessee could not file any evidence before CIT(A) and CIT(A) accordingly confirmed the addition made by AO treating the unexplained cash credits as income of the assessee u/s.68 of the Act. Aggrieved, now assessee is in appeal before the Tribunal.

5. Before us, the Id.counsel for the assessee Shri D. Anand only made mercy petition and stated that matter be remitted back to the file of the AO so that he can file some evidences. When a query was put by the Bench that what sort of evidence he is having he could file before Tribunal, but he shown his inability to file the same. He only took the plea that the amount are only crowd funding and he is not aware of the current address of the creditors because they are in number 2706 and it is not possible to gather the confirmations.

6. On the other hand, the Id. Senior DR supported the order of AO and that of the CIT(A).

7. After hearing both the sides and going through the facts of the case, we noted that these are cash credits added by the AO amounting to Rs.7,98,38,000/- introduced during financial year 2010-11 relevant to assessment year 2011-12. The assessee before AO and CIT(A), apart from names and address (address on test check basis confirmed by AO was found to be wrong address) no other documents like confirmation, PAN number or details of bank account etc., could not be produced. Admittedly, the assessee has received these loan credits from 2706 persons amounting to Rs.8,69,60,000/- and ultimately the AO added a sum of Rs.7,98,38,000/- which was found as unexplained cash credits. The

assessee could not prove the identity, credit worthiness and genuineness of the creditors in term of section 68 of the Act. Even now before us, the assessee could not produce anything to prove the identity, credit worthiness and genuineness of transaction. Hence, we have no alternative except to confirm the orders of the lower authorities. Accordingly, this issue of assessee's appeal raised by way of ground Nos. 1 to 10 is dismissed.

8. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in making disallowance of 30% of expenses in the absence of books of accounts, bills and vouchers.

9. Brief facts are that the AO during the course of assessment proceedings required the assessee to produce audited books of accounts, bills and vouchers and other evidences to support his claim of expenses claimed at Rs.95,38,606/-. As the assessee failed to produce the audited books of accounts, bills and vouchers or any other evidences in support of his claim, the AO disallowed 30% of total expenses claimed at Rs.95,38,606/- i.e., Rs.28,61,580/- and added back to the returned income of the assessee. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) also confirmed

the action of the AO as the assessee could not produce any evidence despite innumerable opportunities of being heard was provided to him. Aggrieved assessee came in appeal before the Tribunal.

10. We have heard rival contentions and gone through facts and circumstances of the case. Even before us, assessee could not produce any documents in support of his claim of expenses as claimed in the accounts amounting to Rs.95,38,606/-. Since there was no bills and vouchers, the AO has rightly estimated the disallowance at 30% of the total expenses and disallowed a sum of Rs.28,61,580/-. We find no infirmity in the order of lower authorities and hence, we confirm the same. This issue of assessee's appeal is dismissed.

11. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 10th May, 2023 at Chennai.

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 10th May, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त /CIT

4. विभागीय प्रतिनिधि/DR

5. गार्ड फाईल/GF.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT