

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा 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.843/Chny/2018**
(निर्धारण वर्ष / **Assessment Year: 1997-98**)
&

आयकर अपील सं./ **ITA No.844/Chny/2018**
(निर्धारण वर्ष / **Assessment Year: 2001-02**)

M/s. Sasi Enterprises No.18, 3 rd Street, Abhiramapuram, Chennai – 600 018.	बनाम/ Vs.	DCIT Central Circle II(2), Chennai.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AACFS-4669-P		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri T. Vasudevan (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri D. Hema Bhupal (JCIT)-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	30-03-2023
घोषणा की तारीख / Date of Pronouncement	:	23-06-2023

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member):

1. Aforesaid appeals by assessee for Assessment Years (AY) 1997-98 & 2001-02 arises out of the separate orders of learned first appellate authority. The appeal for AY 1997-98 arises out of the order of Ld. Commissioner of Income Tax (Appeals)-18, Chennai [CIT(A)] dated 27-12-2017 in the matter of an assessment framed by Ld. Assessing Officer

(AO) u/s 143(3) on 27.03.2000. The sole substantive ground that falls for our consideration is addition of Rs.16.47 Lacs u/s 68 of the Act. The assessee is stated to be a partnership firm. The registry has noted delay of 3 days in both the appeals which stand condoned.

2. The impugned issue stem from the fact that the assessee admitted loan of Rs.16.47 lacs from Mr. Ramachandran. The assessee filed address of the lender along with confirmation letter dated 27.02.2000 from M/s H.M.C. Fabrics Private Ltd. The loan was stated to be received through Indian Bank DD No.787070 dated 19.03.1997. The sworn statement of the lender was recorded wherein lender assured the authorities to furnish copies of account for M/s H.M.C. Fabrics Pvt, Ltd. as proof of sources for the remittances. However, he failed to do so. It was further found that M/s H.M.C. fabrics Pvt. Ltd. had not commended the production for the year ended 31.03.1994. The copies of final accounts for AYs 1995-96 to 1997-98 were not filed. The perusal of Bank account no. 1563 held by M/s H.M.C. Fabrics Pvt. Ltd. revealed that there was cash deposit of Rs.7.75 Lacs on 17.03.1997 and Rs.11.25 Lacs on 19.03.1997. Immediately thereafter, a cheque was issued and demand draft was taken in favor of the assessee. It was not possible for a company with a turnover of Rs.3.95 Lacs to advance huge loan of Rs.16.47 Lacs. Accordingly, it was held by Ld. AO that the assessee's own undisclosed cash was brought in the guise of loan from Mr. Ramachandran / M/s H.M.C. Fabrics Pvt. Ltd. and the same was not genuine and hence, added to the income of the assessee.

3. Before Ld. CIT(A), the assessee assailed the addition, inter-alia, on the ground that the lender had confirmed the fact of advancing the loan to the assessee. It was an admitted fact that Mr. Ravichandran was

assessed to Income Tax and drew money from M/s H.M.C. Fabrics Pvt Ltd. The assessee discharged the onus of proving the identity of the lender, the capacity of the creditor and the genuineness of the transaction. The assessee was not expected to prove the source of source as held by Hon'ble Supreme Court in the case of **M/s Lovely Exports (P.) Ltd. (216 CTR 195)** and in other case laws. During appellate proceedings, remand report was sought from Ld. AO wherein Ld. AO stated that the assessee did not discharge the duties to prove the capacity of the creditor and genuineness of the transaction. Considering the same, Ld. CIT(A) upheld the addition against which the assessee is in further appeal before us.

4. From the stated facts, it could be seen that the assessee has admitted loan of Rs.16.47 lacs from Mr. Ramachandran. In terms of requirement of Sec.68, the assessee was obligated to prove the identity of the lender, their respective creditworthiness and the genuineness of the transaction. During the course of assessment proceedings, the assessee filed address of the lender along with confirmation letter dated 27.02.2000 from M/s H.M.C. Fabrics Private Ltd. in support of the transaction. Undisputedly, the loan has been received through banking channels. Before DDIT (Inv.), the lender appeared and his sworn statement was recorded wherein the fact of loan was confirmed by the lender. However, the lender could not furnish the copies of account of M/s H.M.C. Fabrics Pvt. Ltd. as proof of sources for the remittances. The Ld. AO, upon perusal of bank statements, made factual recording that there was cash deposit in the account of M/s H.M.C. Fabrics Pvt. Ltd. which was used to issue bank draft in favor of the assessee. The Ld. AO also noted that the sale turnover of that entity was only Rs.3.95 Lacs and

therefore, the said entity could not advance huge loans to the assessee. Accordingly, the cash deposit so made was deemed to be the income of the assessee. However, in our considered opinion, the assessee had discharged its primary onus of fulfilling the three ingredients of Sec.68. The lender, in sworn statement, admitted the fact of granting of loan and thus, the assessee stood discharged. The onus was now on revenue to make further enquiries from the lenders to ascertain their financial capacity to lend the loans. The turnover alone could not be considered as source of loan as advanced to the assessee. In the absence of such a fact based-finding to prove that assessee's own money was routed through banking channels in the garb of loan, the impugned addition could not be sustained in law. The ratio of Hon'ble Supreme Court in the cited case law would support the case of the assessee. Therefore, we direct Ld. AO to delete the impugned addition. The assessee's appeal stand allowed accordingly.

Assessment Year 2001-02

5. The sole issue in AY 2001-02 is addition of Rs.18.17 Lacs. The assessee also assails the validity of reassessment proceedings on the ground of absence of any tangible material. Having heard rival submissions, the appeal is disposed-off as under.

6. The original return of income was scrutinized u/s 143(3) on 27-02-2004 determining the income at Rs.4.90 Lacs. Subsequently, it was seen that the assessee derived income from House Property for Rs.18.17 Lacs which was not disclosed in the return of income. Accordingly, the case was reopened and notice u/s 148 was issued on 17-03-2006 which is within 4 years from the end of relevant assessment year. The assessee objected to proceedings on the ground that there was no

escapement of income. The impugned figure represents profits of various years which was not credited to capital accounts but kept separately in the Profit & Loss Account. The impugned figure only represents accumulation of profits up-to 31.03.2001, the break of which was as follows: -

Accumulation of Profit up-to 31.03.1999 as shown in the Balance Sheet filed along with the return of income for AY 1999-2000	11,99,472/-
Add: Profit for the AY 2000-01	2,70,620/-
Add: Profit for the AY 2001-02	3,47,512/-
Accumulated Profits as on 31.03.2001	18,17,604/-

7. In support, the assessee filed copies of Balance Sheet and Income Tax Return for AY 1999-2000. However, it was noted that this Balance Sheet was different from the one submitted by the assessee along with the return of income. In the original Balance Sheet, only items of unsecured loans and sundry debtors were appearing on the liability side. In the given Balance Sheet, the assessee reflected Profit & Loss Account for Rs.11.99 Lacs which the assessee was required to clarify. The assessee defended its position and stated that the said Balance Sheet was filed before first appellate authority in appellate proceedings relating to AY 1993-94 and the same was taken cognizance of during those proceedings. However, Ld. AO rejected the same on the ground that the Balance Sheet relating to AY 2001-02 did not reflect any profit at all. The reconciliation statement now filed by the assessee on the basis of Balance sheet filed before first appellate authority could not be considered. Accordingly, the impugned addition was made.

8. During appellate proceedings, the assessee filed reconciliation of balance as on 31.03.1993 and 01.04.2001 along with financial

statements for various years. The assessee also assailed validity of reassessment proceedings on the ground that there was no escapement of income which was rejected by Ld. CIT(A). On merits, Ld. CIT(A) upheld the action of Ld. AO on the ground that the assessee did not carry out any business. The credit balance lying in Profit & Loss Account was to be credited to capital accounts of the partners. Aggrieved, the assessee is in further appeal before us wherein the assessee has challenged the validity of assessment proceedings besides contesting quantum additions on merits.

9. Since legal issue raised by Ld. AR goes to the root of the assessment and contest very validity of reassessment proceedings, we take up the same first. We find that the original return of income was scrutinized u/s 143(3). The case was reopened within 4 years. The perusal of assessment order would show that Ld. AO has not referred to any tangible material coming into his possession which would lead to formation of a belief that certain income escaped assessment in the hands of the assessee. Apparently, reassessment has been initiated on the same set of material as available before Ld. AO during original assessment proceedings. This being so, the reassessment proceedings would be nothing but review of the order which is impermissible. The case law of Hon'ble Supreme Court in the case of **Kelvinator of India Ltd. (2010; 320 ITR 561)** support the case of the assessee wherein it was held that in the absence of any new tangible material, the case could not be reopened on mere change of opinion. Respectfully following the same, we would hold that the reassessment proceedings were nothing but the review exercise undertaken by Ld. AO. Therefore, the reassessment proceedings are bad in law and hence, liable to be

quashed. We order so. Consequently, delving into the merits of the case has been rendered infructuous. The case law of Hon'ble High Court of Madras in **Cognizant Technology Solutions India (P.) Ltd. vs. ACIT (129 Taxmann.com 327)**, as referred to by revenue, is distinguishable on facts. In that case, the reasons recorded by Ld. AO revealed that certain relevant information and materials were not considered by Assessing Officer which would have to be taken into consideration while passing assessment order. The same is not the case here and there is no such allegation by Ld. AO in the present case. Accordingly, this case law renders no assistance to the case of the revenue.

Conclusion

10. Both the appeals stand allowed in terms of our above order.

Order pronounced on 23rd June, 2023

Sd/-
(V. DURGA RAO)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 23-06-2023
EDN/-

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त/CIT 4. विभागीय प्रतिनिधि/DR 5. गार्ड फाईल/GF