

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

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ITA No.795/Chny/2020
(निर्धारण वर्ष / Assessment Year: 2013-14)

&

आयकर अपील सं./ITA No.796/Chny/2020
(निर्धारण वर्ष / Assessment Year: 2014-15)

M/s. Lohajit Foundations Pvt. Ltd. No.138/105, Periyar Pathai, Choolaimedu, Chennai-600 094.	बनाम/ Vs.	ACIT (OSD), Corporate Ward-4(4), Chennai.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AABCL-6995-R		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Assessee by	:	Shri D. Palanivel (Advocate)– Ld. AR
प्रत्यर्थी की ओर से/ Revenue by	:	Shri AR.V. Sreenivasan(Addl.CIT) – Ld. DR

सुनवाई की तारीख/Date of Hearing	:	25-04-2023
घोषणा की तारीख /Date of Pronouncement	:	24-07-2023

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AY) 2013-14 & 2014-15 arise out of separate orders passed by the learned first appellate authority. However, the facts as well as issues are identical in both the years. For the purpose of adjudication, AY 2013-14 has been taken to be the lead year. This appeal arises out of the order dated

09.03.2020 passed by learned Commissioner of Income Tax (Appeals)-8, Chennai [CIT(A)] in the matter of an assessment framed by learned Assessing Officer (AO) u/s 143(3) r.w.s. 147 of the Act on 29.12.2018. The assessee has revised ground no.2 vide petition dated 26.09.2022. Considering the same, the grounds to be adjudicated are as under: -

1. The order of the learned Commissioner of Income Tax (Appeals) is bad in law, facts and circumstances of the case.
2. reopening of Assessment – Change of opinion
 - 2.1 The Commissioner of Income Tax (Appeals) ought to have appreciated that the reopening of assessment is merely change of opinion as evident from the various notices issued u/s 148 issued by the Assessing Officer.
 - 2.2 The Commissioner of Income Tax (Appeals) ought to have appreciated that the Assessing Officer having issued original notice u/s 148 on 14.03.2018 and not acted upon the same amounts to the reassessment proceedings of the return by the Assessing Officer.
 - 2.3 The Commissioner of Income Tax (Appeals) ought to have therefore appreciated that subsequent issuance of notices u/s 148 on 27.03.2018 and 28.03.2018 on the same reasons recorded for reopening is merely on the basis of change of opinion not permissible under the statute.
 - 2.4 The Assessing Officer has no jurisdiction u/s 147 to reopen the assessment on the same reasons recorded for reopening as in the earlier notice u/s 148 which was not acted upon.
 - 2.5 The Assessing Officer and the Commissioner of Income Tax (Appeals) ought to have appreciated that the reassessment order passed u/s 147 on the basis of subsequent notice u/s 148 dated 28.03.2018 is therefore invalid and void ab initio being on the basis of change of opinion.
3. The CIT(A) erred in not appreciating that the cash deposits in the bank considered in the assessment do not come under Section 68 of the IT Act.
4. The learned CIT(Appeals) erred in confirming the addition made by the learned Assessing Officer on a wrong, understanding of the settlement commission order in the case of one creditor.
5. The learned CIT(Appeals) erred in confirming the addition made by the learned Assessing Officer which is against the decision of the Madras High Court in the case of S. Kuppaswami Mudaliar vs Commissioner of Income Tax decided on 10th December, 1962 reported in 51 ITR 757 Mad.
6. The learned CIT(Appeals) erred in confirming the addition made by the learned Assessing Officer in wrongly considering the name of credit without appreciating that it is only the quantum of credit and not the nature of credit that is required to be proved.
7. The learned CIT(A) and the learned AO erred in not verifying that the creditors especially when the assessee furnished the confirmations from the creditors and also furnished their PA numbers.

As is evident, the assessee challenges the validity of reassessment proceedings on legal grounds. The assessee also challenges quantum additions on merits.

2. The Registry has noted delay of 143 days in the appeals, the condonation of which has been sought by the assessee by pleading that it was Covid-19 delay. We find that impugned order has been passed on 09-03-2020 and time available to prefer the appeals against the same falls within the lockdown situation arising out of Covid-19 Pandemic. The period of delay stand excluded for limitation purposes in terms of directions of Hon'ble Supreme Court in the case of Suo Motu Writ Petition (C) No.3 of 2020 dated 10-01-2022. Considering same, we condone the delay in both the appeals and admit the appeals appeal for adjudication. Having heard rival submissions and upon perusal of case records, our adjudication would be as under. The assessee being resident corporate assessee is stated to be engaged in the business of building installation at construction site.

Assessment Proceedings

3.1 The case was reopened since it transpired that the assessee made cash deposits of Rs.162.60 Lacs & Rs.191.12 Lacs in HDFC bank and Tamil Nadu Mercantile Bank respectively during the year. However, no return of income was filed by the assessee. A survey was conducted u/s.133A on 15-12-2018 at the residential premises of the Managing Director (MD) Mr. A. Muthu Palaniappan. It was found that Mr. A. Muthu Palaniappan was working in an office at monthly salary. No books of accounts of the assessee could be produced. In reply to question No.17 of recorded statement, the MD expressed inability to recollect the source for the cash deposit. Accordingly, the case was reopened and notice u/s

148 was issued on 28-03-2018 which was followed by statutory notices u/s 143(2) and 142(1). The assessee filed return of income on 30-04-2018 admitting 'nil' income. The authorized representative appeared and filed certain details in support of cash deposit.

3.2 It was noted by Ld. AO that the assessee made aggregate deposits of Rs.867.80 Lacs in HDFC Bank through cash and bank transfers out of which the assessee could substantiate sources only to the extent of Rs.705.20 Lacs except for an amount of Rs.47 Lacs which was received from one Shri Yuvaraj for which the assessee could not furnish requisite details. Accordingly, the amount of Rs.47 Lacs was held to be unexplained cash credit and added to the income of the assessee u/s 68.

3.3 Out of cash deposit of Rs.162.60 Lacs, deposit to the extent of Rs.115 Lacs was stated to be received from one Shri V. Venkatachalam as share application money. As per ledger extracts, the same was received on various dates. The Ld. AO alleged that the assessee could not substantiate the same and the onus was on assessee to prove the credits introduced in the books of account with documentary evidences. The proviso to Sec.68 was applicable which creates a deeming fiction that the explanation offered by the assessee would not be satisfactory unless the person in whose name such credit is recorded also offers an explanation about the nature and source of such sum so credited. The assessee could not discharge the onus and therefore, the cash deposit of Rs.162.60 Lacs was also treated as unexplained cash credit u/s 68.

3.4 Finally, the income was assessed at Rs.209.60 Lacs i.e., amount of Rs.47 Lacs as received from Shri Yuvaraj and cash deposit of Rs.162.60 Lacs which remained unsubstantiated.

Appellate proceedings

4.1 During appellate proceedings, the assessee filed settlement application of Shri V. Venkatachalam for AYs 2010-11 to 2016-17, computation of income tax and challans supporting payment of taxes by him. The assessee also filed confirmation letter from the said creditor. The assessee relied on various judicial pronouncements to assail the impugned additions.

With respect to amount of Rs.47 Lacs, it was submitted that the amount was transferred through banking channel. The assessee also pleaded that statement taken during survey proceedings would not hold any evidentiary value as per the decision of jurisdictional High Court in CIT vs Khader Khan Sons (300 ITR 157) and confirmed by Hon'ble Supreme Court (352 ITR 480).

4.2 The Ld. CIT(A) perused the Income Tax Settlement Application of Shri V. Venkatachalam and concurred with the factum of settlement. However, Ld. CIT(A) was not convinced that the declaration made by that individual for Rs.471.44 Crores included the amount given to the assessee. This claim was vague and had no co-relation to the amount admitted before the settlement commission. Therefore, the claim that the impugned amount was sourced out of sums offered to Settlement Commission was not conclusively proved. No findings were rendered on other additions as made by Ld. AO. Finally, the appeal was dismissed against which the assessee is in further appeal before us.

5. Assessment Year 2014-15

Facts in AY 2014-15 are more or less similar. A similar assessment was framed u/s 143(3) r.w.s. 147 on 29-12-2018. Notice u/s 148 was issued in identical background on 28-03-2018. The assessee admitted loss of

Rs.0.22 Lacs and filed various details as called for by Ld. AO. In this year, the assessee had deposited cash of Rs.473.12 Lacs in three bank accounts. Out of the same, an amount of Rs.417 Lacs was stated to be similarly sourced as Share application money from Shri V. Venkatachalam. However, Ld. AO held that the said amount was reflected in the Balance Sheet as cash loans and therefore, the assessee's explanation was not to be accepted. Further, the assessee could not furnish any documents as submitted to the Registrar of Companies in respect of share premium transactions. The assessee, in the survey statement, accepted that it had not obtained any loan from banks or other parties. Finally, entire cash deposit of Rs.473.12 Lacs was added to assessee's income u/s 68 of the Act. The adjudication of Ld. CIT(A) is on similar lines. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

6. From the fact, it emerges that in AY 2013-14, the additions have been made for cash deposit of Rs.162.60 Lacs out of which an amount of Rs.115 Lacs has been received by the assessee from one of its major shareholder Shri V. Venkatachalam. The said sum is stated to be received as share application money which is an undisputed fact. In support of the receipt of the same, the assessee had furnished confirmation letter from the said creditor on 03.12.2018. The said creditor has made declaration before Income Tax Settlement Application for AYs 2010-11 to 2016-17. In support of sources, the assessee furnished assessment year-wise details of total income as admitted by Shri V. Venkatachalam before Income Tax Settlement Commission for AYs 2010-11 to 2016-17 along with proof of payment of taxes. Similar

documents were furnished for AY 2014-15. Before us, the income offered by Shri V. Venkatachalam before Income Tax Settlement Application has been tabulated year-wise and the supporting documents, in that regard, have been placed on page nos.19 to 30 of the paper book. It could be seen that the additional income declared therein is more than Rs.431 Crores. The settlement order has been placed on page nos. 33 to 81 of the paper book.

7. We find that in terms of requirements of Sec. 68, the assessee was required to prove the identity of the party, their respective creditworthiness and genuineness of the transactions. Upon perusal of all these documents, it could be said that the assessee had duly discharged this onus as casted u/s 68. The identity of the creditor could not be in doubt since the creditor is major shareholder and made declaration before Settlement Commission. The creditworthiness is supported by the declarations made by the creditor in the settlement application. The genuineness of the transaction could also be not doubted since the assessee furnished confirmation from the said party during the course of assessment proceedings. Therefore, the ingredients of Sec.68 were duly fulfilled by the assessee and the onus was on revenue to dislodge the claim of the assessee. However, there is no material on record to hold that it was assessee's own unaccounted money which has flown to its bank accounts in the shape of cash credits. The conclusion of Ld. AO to make impugned addition u/s 68 is not based on any fact-based findings. In the light of given facts, it could be concluded that the assessee had discharged the initial onus of proving these transactions in terms of the requirements of Sec.68. The onus had shifted on Ld. AO to dislodge the assessee's documentary evidences

and bring on record cogent material to establish that the assessee generated unaccounted money and routed the same through banking channels in the garb of share-application money. Unless such an investigation is shown to have been carried out, the additions would not be sustainable in law since it is trite law that no addition could be made on the basis of mere suspicion, conjectures and surmises.

8. The Hon'ble Supreme Court in the case of **Lovely Exports P. Ltd. [319 ITR 5]**, dismissing revenue's appeal, observed as under: -

2. Can the amount of share money be regarded as undisclosed income under section 68 of IT Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment.
3. Subject to the above, Special Leave Petition is dismissed.

The ratio of said decision has subsequently been followed by various judicial authorities in catena of judicial pronouncements. The said decision has been followed by Hon'ble Bombay High Court in the case of **CIT Vs. Gagandeep Infrastructure Private Limited [80 Taxmann.com 272]** & subsequently in **CIT Vs. Orchid Industries Private Limited [88 Taxmann.com 502]**. The Hon'ble Delhi High Court followed the said decision in **Pr. CIT V/s Adamine Construction Pvt. Ltd. [107 Taxmann.com 84]** against which revenue's Special Leave petition was dismissed by Hon'ble Supreme Court which is reported at 107 Taxmann.com 85. Similar is the position of decision of Hon'ble Delhi High Court rendered in **Pr. CIT V/s Himachal Fibers Ltd. [98 Taxmann.com 72]** against which revenue's Special Leave Petition was dismissed by Hon'ble Supreme Court which is reported at 98 Taxmann.com 173. Similar is the decision of Hon'ble High Court of

Madhya Pradesh in **Pr. CIT V/s Chain House International Pvt. Ltd. [98 Taxmann.com 47]** against which revenue's Special Leave Petition has been dismissed by Hon'ble Supreme Court on 18/02/2019 which is reported at 103 Taxmann.com 435.

9. Therefore, on the facts and circumstances, the additions made to the extent of share application money as received from Shri V. Venkatachalam, in both the years, stand deleted.

10. In AY 2013-14, the assessee has received another amount of Rs.47 Lacs from one Shri Yuvaraj. Upon perusal of ledger extract of the said creditor, as placed on page no.83 of the paper-book, it could be gathered that the assessee has received an amount of Rs.25 Lacs on 04.01.2013 and another amount of Rs.22 Lacs on 11.01.2013. Both the credits are through banking channels by way of RTGS. In fact, the amount of Rs.22 Lacs has been returned back by the assessee in this year. The account has fully been adjusted during this year only. Therefore, these credits could not be treated as unexplained cash credit. The addition to that extent also stands deleted. We order so.

11. The remaining quantum of addition in AYs 2013-14 & 2014-15 is Rs.47.60 Lacs & Rs.56.12 Lacs respectively for which no details could be furnished by the assessee before lower authorities. The Ld. AR has sought another opportunity to substantiate the same. Accepting the same, we restore the impugned addition to that extent, in both the years, to the file of Ld. AO with a direction to the assessee to substantiate the same. The Ld. AO shall re-adjudicate the same after affording opportunity of hearing to the assessee.

12. The assessee has raised a legal ground challenging the validity of assessment proceedings. The prime argument of Ld. AR is that

reassessment order passed u/s 147 on the basis of subsequent notice issued u/s 148 on 28.03.2018 is invalid and amount to change of opinion. However, Ld. DR has controverted the same and placed on record AO's letter clarifying the factual position as under: -

2. The assessee company had not filed its return of income for the AYs 2013-14 & 2014-15 u/s 139 of the Act. As per the details available in the system database, the assessee had made cash deposit in HDFC Bank to the tune of Rs.1.63 crores and Rs.1.91 crores for the above two AYs respectively. Further, a survey u/s 133A was conducted in the assessee's premises on 15.02.2018 and a statement was recorded from Shri Muthu Palaniappan, Director of the assessee company, who could not give any explanation for the above cash deposits.

3. In view of the above, after recording reasons approval of the competent authority was obtained on 07.03.2018 and notice u/s 148 dated 14.03.2018 for the AYs 2013-14 & 2014-15 was issued manually. Subsequently, the procedure was updated in the system which resulted in issue of notice u/s 148 with DIN on a later date.

4. It is not a case where two independent reassessment proceedings were reopened simultaneously resulting in two reopening notices getting issued. For the same, single proceeding for the year, the AO had issued a manual notice and in order to update the proceedings in the system, had generated one with DIN. It is pertinent to highlight that both the notices for the same reassessment proceedings for the year were issued within a gap of 14 days, but before the due date available for reopening the assessment within four years.

5. In effect, through notices u/s 148 are double, the corresponding proceedings are only solitary. The Hon'ble supreme court in the case of Trustees of HEH The Nizams Supplemental Family Trust Vs Cit (2000) **242 ITR 381** (SC) had clearly expressed that there cannot be two assessment proceedings at the same time. In the case under consideration, for each of the year there are no two parallel proceedings but for only one. Hence the Hon'ble ITAT may be requested to strike down this infructuous ground of appeal.

After careful consideration, the corresponding legal grounds stand disposed-off as under.

13. From the records, it could be seen that initial notice u/s 148 was issued manually on 14.03.2018 after taking due approval from appropriate authority. Another unsigned notice was issued electronically on 27.03.2018. Accordingly, another notice was issued u/s 148 on 28.03.2018 electronically and signed both digitally and manually. Thus, the reassessment proceedings have been initiated only once. Only initial

notice has been issued manually and later on electronic notice has been issued. It could not be concluded that reopening has been done multiple times. All the notices issued to the assessee are within statutory framework only. No infirmity could be found in the same. Therefore, the legal grounds as urged by the assessee stand dismissed.

14. Both the appeals stands partly allowed in terms of our above order.

Order pronounced on 24th July, 2023

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य /ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated :24-07-2023
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF