

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री मंजुनाथ. जी, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष
**BEFORE SHRI MANJUNATHA. G, ACCOUNTANT MEMBER AND
SHRI MANOMOHAN DAS, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.825/Chny/2018
निर्धारण वर्ष /Assessment Year: 2010-11
&
C.O No.71/Chny/2018

The Income Tax Officer,
Ward-2,
Pollachi.

Smt. R. Shanti,
Vs. 23-B, New No.22-B,
Rahim Layout,
Villupuram – 605 602.
[PAN: BZUPS-1508-R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent/
Cross Objector)

आयकर अपील सं./ITA Nos.826 & 827/Chny/2018
निर्धारण वर्ष /Assessment Years: 2009-10 & 2010-11
&

C.O Nos.72 & 73/Chny/2018

The Income Tax Officer,
Ward-1,
Villupuram.

Shri M. Vivekanandan,
Vs. (Legal Representative of Late M.
Sasikala)
No.34, Rahim Layout,
KK Road, Villupuram – 605 602
[PAN: BZLPS-7258-H]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent/
Cross Objector)

आयकर अपील सं./ITA Nos.713 & 714/Chny/2019
निर्धारण वर्ष /Assessment Years: 2009-10 & 2010-11

Shri N. Erulappan,
No.1, 1st Floor,
Thiruvengadam Street, Adyar,
Chennai – 600 020.

The Income Tax Officer,
Vs. Ward-1,
Kumbakonam.

[PAN: AAJPE-2224-P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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अपीलार्थी की ओर से/ Assessee/ : None
Cross Objector by
प्रत्यर्थी की ओर से /Revenue by : Shri P. Sajit Kumar, JCIT
सुनवाई की तारीख/Date of Hearing : 29.08.2023
घोषणा की तारीख /Date of Pronouncement : 31.08.2023

आदेश / ORDER

Per Bench:

These bunch of eight appeals filed by three different assesseees are directed against separate but identical orders of Commissioner of Income Tax (Appeals)-3, Coimbatore, dated 01.01.2018 & Commissioner of Income Tax (Appeals)-1, Thiruchirapalli, dated 18.12.2018, and pertains to Assessment Years 2009-10 & 2010-11. Since, facts are identical and issue is common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

2. At the outset, the assessee submitted that the appeal filed by the assessee for assessment year 2009-10 in ITA No: 713/Chny/2019 is time barred by 15 days for which necessary petition for condonation of delay along with affidavit explaining the reasons for the delay has been filed. The assessee further submitted that he could not file appeal within the time allowed under the Act, because he was in hospital for heart throat and other ailments and was advised for bed rest. The delay

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in filing appeal is neither intentional nor willful but for the unavoidable reasons, therefore, delay may be condoned in the interest of advancement of substantial justice.

3. The learned DR, on the other hand, strongly opposing condonation of delay petition filed by the assessee submitted that the reasons given by the assessee do not come within the ambit of reasonable and bonafide reasons, which can be considered for condonation of delay and hence, appeal filed by the assessee may be dismissed as not maintainable.

4. Having heard Id. DR and considered the petition filed by the assessee for condonation of delay, we are of the considered view that reasons given by the assessee for not filing the appeal within the time allowed under the Act comes under reasonable cause as provided under the Act for condonation of delay and hence, delay in filing of appeal is condoned and appeal filed by the assessee for assessment year 2009-10 in ITA No: 713/Chny/2019 is admitted for adjudication.

5. The Revenue has filed more or less common grounds in their appeals in all three cases and the only issue emanates from grounds of appeal filed by the assessee and the appeal filed by the Revenue is

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estimation of net profit on total receipts assessed by the A.O as income. Therefore, we deem it not necessary to reproduce grounds of appeal filed by the Revenue in all the three cases. The assessee, Shri N. Erulappan, was also raised more or less common grounds for both the A.Ys and therefore, we deem it not necessary to reproduce the grounds of appeal filed by the assessee. The assessee, Smt. R. Shanthi & Smt. M. Sasikala, represented by her Legal Representative, Shri M. Vivekandan has also filed more or less common grounds in their cross objections and therefore, we deem it not necessary to reproduce grounds of cross objections.

6. The brief facts are that, the assessment of Smt. R. Shanti, Proprietor of M/s. Thirumurthy Software and Solutions, Smt. Late M. Sasikala, Rep. by L.R M. Vivekanandan, Proprietor of M/s. Om Muruga Engineering & Developers and Shri N. Erulappan, have been concluded based on credits found in their bank accounts. The summary of such credits taxed in each of the assessee for A.Y 2009-10 and 2010-11 are as under:

Name of the Assessee	AY	Bank	Credits (Rs)	Credit assessed(Rs)	Sub-total (Rs)
M. Shanthi (BZUPS 1508R) Prop. Thirumurthy Software and solutions	2010-11	ICICI	28152000	28152000	5,94,52,000
		Axis	31300000	31300000	
M. Sasikala (BZLPS7258H) Prop. Om Muruga Engineers	2009-10	ICICI	14365202	14365202	1,81,80,202

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& Developers, LR by M. Vivekanandan					
		Axis	3815000	3815000	
	2010-11	ICICI	44297834	35249834*	6,02,49,834
	Axis	25000000	25000000		
N.Erulappan (AAJPE2224P) Prop.Devaki Developers	2009-10	ICICI	152051584	152051584	16,10,64,006
		HDFC	9012422	9012422	
	2010-11	ICICI	158682589	158682589	15,86,82,589
Grand Total			46,66,76,631	457628631	45,76,28,631

7. The assessees claimed before the A.O that, the source for the credits in their bank account as to amounts received from M/s. EDAC Engineering Ltd. as contract receipts and said transactions has been facilitated by one Shri M. Nandakumar of M/s. EDAC Engineering Ltd. through Shri N. Erulappan and Shri S.Kesavan. The A.O has captured the amount released by M/s. EDAC Engineering Ltd. to three assessees amounting to Rs. 22,40,74,347/- and the summary of such money released are identifies as under:

Sl.No.	Name of the Party	Amount (Rs)
1	Om Muruga Engineers & Developers. Prop. M. Sasikala	1,17,30,000
2	N.Erulappan, Prop. Of Devaki Developers	7,98,00,000
3	Devaki Developers/Sarvana Engineers. Prop. N.Erulappan	13,25,44,347
	Total	22,40,74,347

8. All the assessees claimed that, M/s. EDAC Engineering Ltd. has released the above sums in the guise of awarding a civil contract to Shri N. Erulappan and Shri S. Kesavan. In turn, Shri N. Erulappan has

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transferred amount to Smt. R. Shanti and Smt. M. Sasikala. The statement of Shri N. Erulappan and Shri S. Kesavan was recorded, where they have stated that they did not execute any contract work, but instead, as instructed by N. Nandakumar of M/s. EDAC Engineering Ltd., withdraw the money from their bank account and handed over back to Shri Nanda Kumar. The A.O did not accept the explanation of the assessee and according to the A.O, all the assessees could not substantiate their claim with necessary evidences. Therefore, taking into account relevant facts and explanation of the assessee, the A.O concluded the assessment in the case of Smt. R. Shanthi and M. Sasikala and made additions towards total credits in bank account u/s. 69A of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). However, in the case of N. Erulappan, the A.O considered total credits in bank account as contract receipts and estimated 8% net profit on total receipts and added back to total income.

9. All the assessees have preferred an appeal before CIT(A). Before CIT(A), they have filed a detailed written statements and explained the transactions between the assessee and M/s. EDAC Engineering Ltd., and claimed that sum received from said company is not for carrying out any civil contract work, but the same has been released by Shri N. Nandakumar and the amount has been withdrawn

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from the bank and handed over back to Shri N. Nandakumar. The CIT(A) taking into account relevant facts and also considering the nature of transactions, estimated 1% net profit on total credits assessed by the A.O as income, by observing that the assessee is only a facilitator of bogus transactions carried out by M/s. EDAC Engineering Ltd. through Shri N. Nandakumar and further, carried out said transactions for nominal commission. In the case of Shri N. Erulappan, the Ld. CIT(A) has enhanced the assessment and directed the A.O to assess total credits found in his bank account as income of the assessee as against the estimation of income @ 8% on total receipts by the A.O. Being aggrieved by the order of Ld. CIT(A), the Revenue is in appeal before us in the case of Smt. R. Shanthi and Smt. M. Sasikala and the assessee has filed cross objections. In the case of N. Erulappan, the assessee is in appeal before us against the order of Ld. CIT(A).

10. None appeared for the assessee, despite the case was posted for hearing on number of occasions, which is evident from the records that the case was posted for hearing right from 13.08.2018 to 29.08.2023. The assessee neither appeared, nor sought any adjournment therefore, the appeals filed by the Revenue and as well as the assessee and also cross objections filed by the assessee are

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disposed off on the basis of material available on record after hearing the Ld. D.R for the Revenue.

11. We have heard the Ld. D.R, Shri P. Sajit Kumar, JCIT and perused the relevant materials available on record. We find that the sole basis for the A.O to make additions in all three cases is some found credited in bank account of the assesseees. The assesseees claimed before the A.O that source of the credit in their bank account is amount received from M/s. EDAC Engineering Ltd. It was further explained that, they have received amount from the company as contract receipts, but they did not carry out any civil contract work for the company. It was further stated that Shri N. Nandakumar of M/s. EDAC Engineering Ltd., has approached them to facilitate the transactions in the guise of civil contract works and withdraw money from the bank account and handed over to Shri N. Nandakumar. We find that the A.O has identified amount released by M/s. EDAC Engineering Ltd. to three assesseees and total sum released by said company was at Rs. 22,40,74,347/-. As against this, the A.O assessed sum of Rs. 45,76,28,631/- in three assesseees hands for two assessment years. From the above, it is very clear that the A.O has not carried out necessary verification to ascertain the nature of credits found in the bank account and the source of said credits. We further

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noted that Smt. R. Shanti and Smt. M. Sasikala have stated in their statements that they had received money from Shri N. Erulappan and Shri R. Kesavan. Therefore, if at all the claim of the above two assesseees are correct then, the money needs to be identified by the A.O by taking into account relevant bank statements of all three assesseees. Further, it was submissions of Ld. D.R that the very same amount released by M/s. EDAC Engineering Ltd. has been disallowed in their assessment on the ground that said payment is bogus in nature. It was further argued that the ITAT has allowed partial relief in the case of M/s. EDAC Engineering Ltd. These are oral submissions and there is no evidence before us to verify the claim of the Ld. D.R. Further, the first appellate authority in the case of Smt. R. Shanti and Smt. M. Sasikala has estimated 1% profits/commission on total credits found in the bank account of the both assesseees. However, in the case of N. Erulappan, although the A.O has estimated 8% profit on total credits for both assessments, but the Ld. CIT(A) has enhanced the assessment and directed the A.O to assess total credits found in bank account. From the above, it appears that the Department has taken a contrary view in different assesseees case on very same credits found in bank account and received from M/s. EDAC Engineering Ltd. Since, the credits considered by the A.O in the assessments of three

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assesseees is more than the amount claimed to have been released by M/s. EDAC Engineering Ltd., in our considered view the issue needs fresh examination from the A.O to identify the nature and source of credits found in bank account of all three assesseees. Further, if the claim of the Ld. D.R is correct that the ITAT has allowed partial relief in the case of M/s. EDAC Engineering Ltd. then, the findings given by the Tribunal in the case of M/s. EDAC Engineering Ltd. also needs to be considered by the A.O to conclude the assessment. Therefore, for all these reasons, the appeals filed by the Revenue in the case of Smt. R. Shanti and Smt. M. Sasikala and consequent cross objections filed by both the assesseees and also the appeal filed by Shri N. Erulappan for both assessment years needs to go back to the file of the A.O for further verification of facts. Thus, we set aside the orders passed by first appellate authority in all three cases and restore the issue in three cases to the file of the jurisdictional A.O and direct the A.O to re-verify the case with reference to claim of the assessee that source of credits found in their bank account is out of amount received from M/s. EDAC Engineering Ltd. The A.O is also directed to refer to the order passed by the ITAT in the case of M/s. EDAC Engineering Ltd. to arrive at a proper conclusion in the case of all these three assesseees. We further direct the Revenue, if possible all three cases should be consolidated

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to one A.O for better appraisal of facts and assess the income in accordance with law.

12. In the result, appeals by the Revenue in ITA Nos.825, 826 & 827/Chny/2018 and appeals by the assessee in ITA Nos.713 & 714/Chny/2019 and Cross Objections by the assessee in C.O Nos.71, 72 & 73/Chny/2018 are allowed for statistical purposes.

Order pronounced on 31st August, 2023.

Sd/-
(मनोमोहन दास)
(Manomohan Das)
न्यायिक सदस्य/Judicial Member

Sd/-
(मंजुनाथ. जी)
(Manjunatha. G)
लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 31st August, 2023.
EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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