

आयकर अपीलीय अधिकरण “सी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” 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, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.1706/Chny/2018
(निर्धारण वर्ष / Assessment Year: 2014-15)

M/s. Alpha Reality No.1-A, 4 th floor, Jhava Plaza, Nungambakkam High Road, Nungambakkam, Chennai-600 034.	बनाम/ Vs.	ACIT Non-Corporate Circle-3, Chennai
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAJFA-8210-B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri N. Arjunraj (CA)- Ld.AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri P. Sajit Kumar (JCIT)-Ld. Sr. DR

सुनवाईकी तारीख/ Date of Hearing	:	18-10-2023
घोषणाकी तारीख / Date of Pronouncement	:	01-11-2023

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2014-15 arises out of the order of learned Commissioner of Income Tax (Appeals)-4, Chennai [CIT(A)] dated 12-03-2018 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 23-11-2016. The grounds taken by the assessee read as under:

1. The order of the Commissioner of Income Tax (Appeals) - 4, Chennai dated 12.03.2018 in I.T.A.No.132/2016-17/A.Y.2014-15/CIT(A)-4 for the above-mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.
2. The CIT (Appeals) erred in sustaining the disallowance of the claim of bad debts aggregating to Rs.40 Lakhs based on the findings recorded in para 19 to para 38 of the

impugned order in the computation of taxable total income without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that the reasons stated for sustaining the disallowance of the bad debts were wrong, erroneous, unjustified, incorrect and not sustainable in law and ought to have appreciated that the conditions prescribed for making the said claim were fulfilled and complied with concurrently, thereby vitiating the related findings.

4. The CIT (Appeals) failed to appreciate that the analysis of the financial statements for coming to the conclusion for rejecting the claim of bad debts was wholly unjustified and ought to have appreciated that the claim for bad debts should be reckoned as revenue/business loss thereby vitiating the related findings.

5. The CIT (Appeals) failed to appreciate that the evidence filed in relation thereto were completely overlooked and brushed aside and further ought to have appreciated that the decisions cited in support were in fact applied out of context.

6. The CIT (Appeals) erred in confirming the disallowance of business loss of Rs.45,50,105/- in the computation of taxable total income without assigning proper reasons and justification.

7. The CIT (Appeals) went wrong in recording the findings in this regard from para 39 to para 41 of the impugned order without assigning proper reasons and justification.

8. The CIT (Appeals) failed to appreciate that the presumptions/conclusions of reached on the nature of business activity pursued by the Appellant were incorrect, thereby vitiating the related findings.

9. The CIT (Appeals) erred in enhancing the assessment on two counts without assigning proper reasons and justification and ought to have appreciated that the enhancement of the assessment on two independent issues was wrong, erroneous, unjustified, incorrect and not sustainable in law.

10. The CIT (Appeals) failed to appreciate that the power of enhancement was wrongly used on the facts and in the circumstances of the case and ought to have appreciated that the issues considered for enhancement were admittedly not arising out of the assessment order, thereby vitiating the related findings.

11. The CIT (Appeals) erred consequently in bringing to tax Rs.1,03,00,000/- pertaining to the ledger account of 'Periya Palayam' after rejecting the explanation offered in relation thereto on the application of section 68 of the Act without assigning proper reasons and justification.

12. The CIT (Appeals) failed to appreciate that the assessment of the enhanced amount pertaining to Periya Palayam account was wrong, erroneous, unjustified, incorrect and not sustainable in law and ought to have appreciated that the provisions of section 68 of the Act had no application to the facts in relation thereto, thereby vitiating the findings from para 44 to para 55 of the impugned order.

13. The CIT (Appeals) erred in enhancing the assessment further to the extent of Rs.94,78,000/- which amount related to certain journal entries of the partners in the books of the Appellant presumably on the application of section 68 of the Act without assigning proper reasons and justification.

14. The CIT (Appeals) failed to appreciate that the provisions of section 68 of the Act had no application to the facts of the case and ought to have appreciated further that the enhancement of such sum which according to the Appellant has not emanated from the assessment order was bad in law.

15. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.

As is evident, the assessee is aggrieved by confirmation of certain additions as well as enhancement made by learned first appellate authority.

2. The Ld. AR advanced arguments supporting the case of the assessee. To support the same, our attention has been drawn to various documents as placed on record. The Ld. AR also filed written submissions on enhancement. The Ld. Sr. DR, on the other hand, supported the findings rendered by lower authorities and cited various judicial decisions in support of the same. Having considered case records as well as judicial decisions and after hearing rival submissions, our adjudication would be as under. The assessee being resident firm is stated to be have earned rental income during the year.

Assessment Proceedings

3.1 During assessment proceedings, it transpired that the assessee's main source of income was rental income which was assessed under 'Income from House Property' and the same was eligible for standard deduction of 30% u/s 24. However, the assessee also prepared Profit & Loss Account and claimed various business expenditure which resulted into business loss to the assessee. In the Profit & Loss Account, apart from rental income, the assessee credited business income of Rs.1.20 Lacs, in support of which the assessee could not produce any evidence. The Ld. AO assessed the said income as 'Income from other sources' and therefore, there no remained no business income for the assessee.

3.2 In the computation of income (extracted on Page No.4 of the assessment order), the assessee claimed standard deduction of 30% against rental income. In the Business head, the assessee suo-moto disallowed various expenditure aggregating to Rs.181.29 Lacs and arrived at business loss of Rs.45.50 Lacs which form the subject matter of this appeal. Out of this amount, an amount of Rs.40 Lacs was claimed as 'write-off of bad-debts'. The Ld. AO disallowed the same on the ground that to claim the write-off of debts, it has to be shown as income in earlier years. In the Balance Sheet of earlier year i.e., 2013-14, the assessee did not have any debtors and therefore, this claim could not be allowed. Further bad debts should have arisen from the business of the assessee whereas in the present case, the assessee did not have any business but only earning rental income which was offered as 'Income from house property'. Accordingly, this deduction was denied.

3.3 The Ld. AO also held that the business loss of Rs.45.50 Lacs was claimed against 'income from house property'. It was seen that the assessee did not earn any business income for several years and the assessee could not demonstrate the nature of business receipts of Rs.1.20 Lacs. The assessee failed to submit any satisfactory response also, in this regard. Therefore, Ld. AO held that apart from bad-debts of Rs.40 Lacs, other expenditure to the extent of Rs.5.50 Lacs was also to be disallowed. In other words, the business loss consisting of bad-debts and certain business expenditure was fully ignored. Finally, the income of the assessee was assessed at Rs.154.16 Lacs which consist of Income from House Property for Rs.152.96 Lacs and income from other sources for Rs.1.20 Lacs.

Appellate Proceedings

4.1 The Ld. CIT(A) concurred with observation of Ld. AO that before making deduction of bad-debts, the requirement of Sec.36(2) was to be fulfilled which provide that no deduction shall be allowed unless such debt or part thereof had been taken into account in computing the income of the assessee. In the present case, in the Balance Sheet for AY 2013-14 would show that there were no debtors. Further, the assessee did not have any business income but earned rental income which was offered and assessed under the head 'Income from house property'. Accordingly, the aforesaid disallowance was confirmed. During appellate proceedings, the assessee contended that the amount written-off as bad-debts was trade advance of Rs.435 Lacs given in respect of purchase of land at Kundrathur from three persons. However, the said party was not in a position to fulfill the obligation or repay the advance and accordingly, a part of the advance was written-off in the books of account. The Ld. CIT(A) noted that though the advances were made during AY 2006-07, however, no such investment was admitted by the assessee in the Balance Sheet. There was no corresponding credit entry in the Profit & Loss Account either as sales / income etc. No evidence was furnished that the advance was in the nature of trade-debt. No evidence could be furnished with respect to advance made by the assessee. Therefore, in the light of settled legal position, the action of Ld. AO in making the said disallowance was confirmed.

4.2 The disallowance of other business expenditure was also confirmed by observing that in the absence of documentary evidences to prove the genuineness of business income of Rs.1.20 Lacs, the receipts

were correctly categorized as 'Income from other sources'. Though the assessee mentioned certain stock of unsold plots in the Balance Sheet, the same was not shown as closing stock in the P&L Account. Therefore, it was to be concluded that the assessee did not have any business income. Also, there has to be connection of expenses claimed with business receipts which was not there in the present case. Finally, the disallowance of other business expenditure was also confirmed.

4.3 The Ld. CIT(A) also identified one more issue and proposed enhancement. The same stem from the observation of Ld. CIT(A) that the assessee received amounts in cash on regular interval on account of 'Periya Pallyam' which was being deposited in the bank account maintained with Indian Overseas Bank. None of the cash entries was shown in the relevant cash book. The ledger account of 'Periya Pallyam' has been extracted on para-45 of the order. The aggregate deposits in the account were Rs.103 Lacs and the corresponding credit was given to the five partners of the firm. Accordingly, the assessee was confronted with the same.

4.4 It was submitted by the assessee that 'Periya Pallyam' denotes vacant land held by the partners. The vacant lands were sold during the year by the partners whereas the consideration was received by the firm. However, the assessee failed to produce / furnish relevant sale deeds / sale agreements along with ITR and books of accounts of the partners despite various opportunities. Finally, Ld. CIT(A) held that the genuineness of sources of credits of Rs.103 Lacs remained unsubstantiated and therefore, the said amount was added as unexplained cash credit u/s 68. The Ld. CIT(A) further held that there

was credit in the accounts of each of the partners to the extent of Rs.20.60 Lacs, the genuineness of which also could not be proved by the assessee. Therefore, another amount of Rs.94.78 Lacs was to be added further u/s 68. In other words, Ld. CIT(A) made aggregate enhancement of Rs.197.78 Lacs. Aggrieved, the assessee is in further appeal before us challenging the jurisdiction of Ld. CIT(A) to make the enhancement as well as challenging the addition on merits.

Our findings and Adjudication

5. So far as the issue of bad-debts is concerned, it is undisputed fact that the assessee does not have any business income. The nature of meagre business income of Rs.1.20 Lacs as reflected by the assessee, has remained unsubstantiated. The rental income as earned by the assessee has been offered as well as accepted as income from house property. In the last Balance Sheet, the assessee does not have any debtors. The assessee failed to substantiate that the conditions of Sec.36(2) were duly fulfilled so as to lay claim on deduction u/s 36(1)(vii). It also emerges that the assessee has advances sum of Rs.435 Lacs to three joint owners and the transaction, apparently, has not materialized. The mere advances would not constitute sundry debtors of the business. Another fact is that there is no basis to make partial claim of Rs.40 Lacs in this year. A mere write-off of advances for purchase of property, in our considered opinion, do not fall u/s 36(1)(vii) and therefore, the deduction thereof as rightly been denied to the assessee. We confirm this addition. The corresponding grounds raised by the assessee stand dismissed.

6. So far as the business expenses of Rs.5.50 Lacs is concerned, upon perusal of financial statements, it could be seen that the same are in the nature of staff salary, depreciation on building, vehicle running and maintenance and audit fees etc. Though the assessee has not earned any business income, still it has to incur certain minimum expenditure to maintain the corporate personality. Considering this fact, we direct Ld. AO allow 25% of remaining expenditure of Rs.5.50 Lacs. The corresponding grounds stand partly allowed.

7. So far as the enhancement made by Ld. CIT(A) is concerned, Ld. AR has assailed the same on the ground that the same was beyond the jurisdiction of Ld. CIT(A). The Ld. AR submitted that the scope of enhancement would be very limited and restricted only to issues adjudicated and considered by the Assessing Officer in the assessment order and therefore, Ld. CIT(A) has no jurisdiction to consider and adjudicate new / independent issues. Reliance has been placed on the decision of Hon'ble Supreme Court in the case of **Shapoorji Pallonji Mistry (44 ITR 891)**; the decision of Hon'ble Delhi High Court in the case of **Sardari Lal & Co. (251 ITR 864)**; the decision of Chennai Tribunal in **Melongos India P. Ltd. vs. ITO (ITA No.863/Chny/2019)**.

The Ld. Sr. DR, on the other hand, submitted that the power of Ld. CIT(A) is co-terminus with the powers of Ld. AO and the same include the power to take up new issues also. Reliance has been placed on the decision of Hon'ble High Court of Madras in the case of **Megatrends Inc. Vs. CIT (Writ Appeal No.276 of 2016 dated 22.08.2016)** to support the same.

8. We find that as per the provisions of Sec.251(1)(a), Ld. CIT(A) while disposing-off the appeal may confirm, reduce, enhance or annul the assessment. As per sub-section (2), Ld. CIT(A) shall not enhance an assessment unless the assessee has been provided with a reasonable opportunity of hearing against such an enhancement. It is settled position that Ld. CIT(A) has wide powers and he has the same powers as an assessing officer has. The power of Ld. CIT(A) extends to the extent of examining not only those aspects of the assessment about which the assessee makes a grievance but his powers range over the whole assessment to correct the AO not only with regard to a matter raised by the assessee in appeal but also with regard to any other matter which has been considered by the AO and determined in the course of assessment. If an income is the subject-matter of consideration by the AO and even though the AO might have come to the conclusion that that income is not subject to tax, still it would be open to the CIT(A) to take different view and to bring that income to tax. However, Ld. CIT(A) has no power to travel beyond the subject-matter of the assessment and he is not entitled to assess new sources of income. To do so would not in be in the nature of enhancing the assessment but adding a new assessment to the assessment done by Ld. AO is impermissible. It is not open for Ld. CIT(A) to introduce in the assessment a new source of income rather he has to remain confine himself to those items of income which were the subject-matter of original assessment. This is the view of Hon'ble Supreme Court in the case of **Shapoorji Pallonji Mistry (44 ITR 891)**. Considering this decision, Hon'ble Delhi High Court in the case of **Sardari Lal & Co. (251 ITR 864)** held as under: -

6. A similar question has been examined by the Apex Court, as noted above, on several occasions. We do not think it necessary and appropriate to proliferate this judgment by making reference to all the decisions. A few of the important ones need to be noticed. One of the earliest decisions on the point was in CIT v. Shapoorji Pallonji Mistry [1962] 44 ITR 891 (SC). The matter related to corresponding provisions of the Indian Income-tax Act, 1922. It was held inter alia that in an appeal filed by the assessee, the AAC has no power to enhance the assessment by discovering a new source of income not considered by the ITO in the order appealed against. A similar view was expressed in CIT v. Rai Bahadur Hardutroy Motilal Chamaria [1967] 66 ITR 443 (SC). That also related to a case under section 31(3) of the old Act. It was held that the power of enhancement under section 31(3) was restricted to the subject matter of assessment or the source of income, which had been considered expressly or by clear implication by the Assessing Officer from the point of view of taxability and that the AAC had no power to assess the source of income, which had not been taken into consideration by the Assessing Officer. It is to be noted that strong reliance was placed by the learned counsel for the revenue on the decision of the Apex Court in CIT v. Nirbheram Daluram [1997] 224 ITR 610 . It was submitted that a different view was expressed about the scope and ambit of the power of the first appellate authority vis-a-vis the sources considered by the Assessing Officer and even if the action of the first appellate authority related to a new source of income not considered by the Assessing Officer, it was not impermissible. It is to be noted that in Union Tyres case (supra), this decision was also considered by this Court in the background of what had been stated in Nirbheram Daluram's case (supra) and it was observed that there was really no difference from the view expressed earlier in Shapoorji Pallonji Mistry's case (supra) and Rai Bahadur Hardutroy Motilal Chamaria's case (supra) .

7. The learned counsel for the revenue also submitted that this conclusion of the Division Bench needs a fresh look. We have considered this submission in the background of what had been stated by the Apex Court in Jute Corpn. of India Ltd.'s case (supra) and Nirbheram Daluram's case (supra). In Jute Corpn. of India Ltd.'s case (supra), the Apex Court while considering the question whether the AAC has jurisdiction to allow the assessee to raise an additional ground in assailing the order of assessment before it, referred to Shapoorji Pallonji Mistry's case (supra), and draw a distinction between the power to enhance tax on discovery of a new source of income and granting a deduction on the admitted facts supported by the decision of the Apex Court. Relying on certain observations made by the Apex Court in CIT v. Kanpur Coal Syndicate [1964] 53 ITR 225, the Apex Court held that powers of the first appellate authority are coterminous with those of the Assessing Officer and the first appellate authority is vested with all the wide powers, which the subordinate authority may have in the matter. In Nirbheram Daluram's case (supra), the decisions of Kanpur Coal Syndicate's case (supra) and Jute Corpn. of India Ltd.'s case (supra) were also considered and it was observed by the Apex Court that the appellate powers conferred on the first appellate authority under section 251 were not confined to the matter, which had been considered by the ITO, as the first appellate authority is vested with all the wide powers of the Assessing Officer may have while asking the assessment, but the issue whether these wide powers also include the power to discover a new source of income was not commented upon. Consequently, the view expressed in Shapoorji Pallonji Mistry's case (supra) and Rai Bahadur Hardutroy Motilal Chamaria's case (supra) still holds feet. It may

be noted that the issue was considered in CIT v. McMillan & Co. [1958] 33 ITR 182 (SC). Referring to a decision of the Bombay High Court in Narrondas Manordass v. CIT [1957] 31 ITR 909, it was held that the language used in section 31 is wide enough to enable the first appellate authority to correct the ITO not only with regard to a matter which has been raised by the assessee but also with regard to a matter which has been considered by the Assessing Officer and determined in the course of assessment. It is also relevant to note that in the Jute Corpn. of India Ltd.'s case (supra), the Apex Court inter alia observed as follows:

". . . The AAC, on an appeal preferred by the assessee, had jurisdiction to invoke, for the first time, the provisions of rule 33 of the Indian Income-tax Rules, 1922, for the purpose of computing the income of a non-resident even if the ITO had not done so in the assessment proceedings. But, in Shapoorji Palloniji Mistri [1962] 44 ITR 891, this Court, while considering the extent of the power of the AAC, referred to a number of cases decided by various High Courts including the Bombay High Court judgment in Narrondas Manordass [1957] 31 ITR 909 and also the decision of this Court in McMillan & Co. [1958] 33 ITR 182 and held that, in an appeal filed by the assessee, the AAC has no power to enhance the assessment by discovering new sources of income not considered by the ITO in the order appealed against. It was urged on behalf of the revenue that the words 'enhance the assessment' occurring, in section 31 were not confined to the assessment reached through a particular process but the amount which ought to have been computed if the true total income had been found. The Court observed that there was no doubt that this view was also possible, but having regard to the provisions of sections 34 and 33B, which made provision for assessment of escaped income from new sources, the interpretation suggested on behalf of the revenue would be against the view which had held the field for nearly 37 years. . . ." (p. 692) [Emphasis supplied]

8. Looking from the aforesaid angles, the inevitable conclusion is that whenever the question of taxability of income from a new source of income is concerned, which had not been considered by the Assessing Officer, the jurisdiction to deal with the same in appropriate cases may be dealt with under section 147/148 and section 263, if requisite conditions are fulfilled. It is inconceivable that in the presence of such specific provisions, a similar power is available to the first appellate authority. That being the position, decision in Union Tyres' case (supra) of this Court expresses the correct view and does not need re-consideration. This reference is accordingly disposed of.

9. The aforesaid decisions have been followed by Chennai Tribunal in the case of **Melongos India Pvt. Ltd. (ITA No.863/Chny/2019 dated 06.05.2022)**. This decision also considers the decision of Hon'ble High Court of Madras in the case of **CIT Vs T.T. Krishnamachari & Co. (223 ITR 224)**. The bench finally held that the enhancement made by Ld. CIT(A) on altogether new issues is without authority of law. Similar is

another decision of this Tribunal in **Dr. S. Mahalakshmi & ors. (ITA No.1616/Chny/2018 order dated 29.10.2018)**, a copy of which has been placed on record.

10. In the case law of Hon'ble High Court of Madras in **Megatrends Inc. Vs. CIT (Writ Appeal No.276 of 2016 dated 22.08.2016)**, as referred to by revenue, the facts were different. In this decision, the enhancement show cause notice issued by Ld. CIT(A) u/s 251 was in writ appeal before Hon'ble High Court. The Hon'ble Court dismissed the appeal by giving liberty to the assessee to make his submissions before first appellate authority in response to show cause notice. In that case the issue on the status of the assessee was considered by Ld. AO and the very same issue was again raised by the first appellate authority in the show cause notice u/s 251. The same is evident from the following observations of Hon'ble High Court: -

38. While considering the scope and powers of the appellate authority, under the Income Tax Act, 1961, courts have consistently held that the power of the first appellate authority are coterminous with that of the Assessing Officer and that the appellate authority can do what the Assessing Officer ought to have done and also direct the latter to do what he has failed. Appeal is also continuation of original proceedings and unless some fetters are placed upon the powers of the appellate authority by express words, the appellate authority can exercise all the powers as that of the original authority. If the Assessing Officer, has erred in concluding the status of the assessee as a firm, it cannot be said the Commissioner of Appeals, has no jurisdiction to go into the issue.

It is evident that the subject matter of enhancement was an issue which was considered and concluded by Ld. AO. Therefore, this case law is distinguishable on facts. In the present case, Ld. CIT(A) has identified altogether new issues which was never the subject matter of assessment by Ld. AO.

11. In the light of aforesaid legal position, we would hold that the impugned enhancement of Rs.197.78 Lacs as made by Ld. CIT(A) was beyond the jurisdiction of first appellate authority and therefore, deleted. The corresponding legal ground stand allowed which render delving into the merits, mere academic in nature.

12. The appeal stands partly allowed in terms of our above order.

Order pronounced on 1st November, 2023

Sd/-

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखासदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 01-11-2023
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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