

आयकर अपीलिय अधिकरण, 'ए' (एस एम सी) न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL,
'A' (SMC)BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ITA No.: 895/CHNY/2023

निर्धारण वर्ष/Assessment Year: 2011-12

M /s. G F Brothers Exim Private
Limited,
Old No.7, New No.16,
Vellaiyan Road,
Kotturpuram,
Chennai 600 085.

The Deputy Commissioner
Vs. of Income Tax,
Central Circle 1(4)
Chennai.

[PAN: AACCG 0648P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri G. Suresh, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 01.01.2024

घोषणा की तारीख/Date of Pronouncement

: 01.01.2024

आदेश /ORDER

This appeal filed by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-16, Chennai in ITA No.168/CIT(A)-16/2013-14, dated 21.07.2023. The assessment was framed by the Deputy Commissioner of Income Tax, Central Circle I(4) (i/c), Chennai-34 for the assessment year 2011-2012 u/s.143(3) of the Income Tax Act, 1961 (hereinafter 'the Act'), vide order dated 28.03.2013.

2. At the outset, it is noticed that the assessee has raised seventeen grounds but on query from the Bench, Id. Counsel for the assessee stated that he is withdrawing all the grounds except ground no.2, which reads as under:-

'2. The CIT(Appeals) -16, Chennai erred in assuming jurisdiction under Section 251(2) of the Act to enhance the taxable total income and consequently erred in adding back a sum of Rs.6,54,60,000/- being the sum received from M/s Darlington Investments Pvt. Ltd, Singapore as income of the appellant without assigning proper reasons and justification''.

Ld. Counsel for the assessee has not pressed grounds 1 to 17 except ground No.2 as reproduced above, hence ground No.2 is only adjudicated.

3. The brief facts of the case are that search and seizure action was conducted on the residential premises of Shri. Vijay M Pai u/s. 132 of the Act on 14.12.2010 and during the course of search proceedings, certain incriminating materials in the form of investment details of the assessee M/s. G F Brothers Exim P. Ltd was found and seized under ANN/VM/LS/S dated 14.12.2010. The Id. Assessing Officer noticed that assessee has received inward remittance of ₹6,88,00,000/- from M/s. Darlington Investments P Ltd, Singapore and this fact was recorded by the Id. Assessing Officer in para 6 which reads as under:-

'6. During the course of assessment proceedings, vide this office letter dt.8/3/2013, the assessee was asked to produce details with regard to the receipt of Rs.6,58,23,500/- and cheque deposits of Rs.15 lakhs and Rs.31 lakhs and payment to M/s.S.M. Apparels to the extent of Rs.6,88,00,000/-.

(1) In response to the same, vide letter dt. 12/3/2013, copy of investment agreement with M/s. Darlington Investments P Ltd., copy of forward inward remittance certificate issued by M/s.Lakshmi Vilas Bank Ltd., Mylapore, Chennai and copy of books of accounts for the period from 1/4/10 to 31/3/11. Subsequently, vide letter dt.20/3/2013, the assessee filed sworn affidavit of Shri Vijay M Pai in which it is stated as under:

"That the sum of Rs.6,88,00,000/- has been received from M/s. Darlington Investments Pte. Ltd., Singapore as an investment, for which an investment agreement was entered into besides obtaining forward inward remittance certificate and filing the necessary forms with the Reserve Bank of India".

4. The Id. CIT(A) during the course of assessment proceedings noticed that no addition was made on this account and Id. CIT(A) required the assessee to explain the source of the same. The assessee filed various details but CIT(A) issued enhancement proposal u/s.251 (2) of the Act for making addition on account of unexplained investment made in M/s. Darlington Investments P Ltd. The Id. CIT(A) enhanced the addition of ₹6,54,50,000/- and the decision of Id. CIT(A) in para 6.7 which reads as under:-

'6.7 Thus in view of the above detailed findings, unexplained income of the appellant company stands enhanced to Rs. 6,54,50,000/-, and the test of creditworthiness in the case of M/s Darlington Investments Pte Ltd. stands defeated. The addition made by the Assessing Officer amounting to Rs.46,00,000/- stands deleted. Both these deposits stand substantiated by passing the test of identity, credit worthiness and genuineness. The said deposits are made to obviously legalise a transaction under the other Statutory Acts as well as Income-tax Act, 1961. Further the appellant company as well as its unsecured loan creditors (as on date) do not loose financially, as all the amounts were transferred to M/s S.M. Apparels Pvt. Ltd'

5. Now, Id. Counsel for the assessee before me only requested that assessee has filed all the evidences before the Id. CIT(A) who has not

examined the issue properly and the Id. CIT(A) has not examined the bank statements of M/s. Darlington Investments P Ltd and these investments obtained from inward remittance and inward remittance certificate and necessary permissions letter were also filed. When this was put to Id. Senior Departmental Representative he agreed that these details were filed before the Id. CIT(A) but the Id. CIT(A) had not gone through details and without examining the same enhanced the income of the same. Hence, he prayed that the matter can be restored back to the file of the Assessing Officer for fresh consideration. For this proposition Id. Counsel also agreed.

6. I have heard rival contentions and gone through the facts and circumstances of the case. Assessee has received investments in foreign remittance from Singapore and all the clearance from RBI were obtained. The only issue needed examination is the source for this money in terms of Section 68 of the Act as proposed by the Id. CIT(A) and the same need to be examined and hence, I set aside the order of the Id. CIT(A) and that of the Id. Assessing Officer and remit the issue back to the file of the Assessing Officer who will examine the entire investments of foreign remittance received from M/s. Darlington Investments P Ltd, Singapore under section 68 of the Act denovo. In terms of the above discussions, I remit the issue back to the file of the Id. Assessing Officer for fresh consideration.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court at the time of hearing on 1st January, 2024 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated:- 01.01.2024
KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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