

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

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री मंजूनाथा.जी, माननीय लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.436/Chny/2021
निर्धारण वर्ष/Assessment Year: 2015-16

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| M/s.KP Construction, 19/10 F2, Rangarajapuram, 4 th Street, Saidapet, Chennai. [PAN: AAIFK 7611 H] | v. | The Asst. Commissioner – of Income Tax, Central Circle-1(4), Chennai. |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

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| अपीलार्थी की ओर से/ Appellant by | : | Shri G. Baskar, Advocate & Shri Kathir, Advocate & Ms.S.Revathy, CA |
| प्रत्यर्थी की ओर से /Respondent by | : | Shri P. Sajit Kumar, JCIT |
| सुनवाईकीतारीख/Date of Hearing | : | 21.03.2024 |
| घोषणाकीतारीख /Date of Pronouncement | : | 05.04.2024 |

आदेश / ORDER

PER V. DURGA RAO, JM:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-18, Chennai, dated 31.08.2021, and pertains to assessment year 2015-16.

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2. The assessee has raised the following grounds of appeal:

1. *The order of the CIT(A) is wrong, contrary to facts and against the principles of natural justice.*
2. *The CIT(A) failed to note that there being no show cause notice sent to the Appellant proposing the addition of Rs.4,88,225/-, nor an opportunity given to respond, and the order being passed in a hurry at the fag end resulting in non-application of mind at the assessment and Approving Authority level the order of assessment is liable to be annulled as being in violation of the principles of natural justice.*
3. *The CIT(A) erred in not deleting the addition of undisclosed income made to the extent of Rs. Rs.4,88,225/- u/s.115BBE.*
4. *The CIT(A) failed to appreciate the explanation offered by the Appellant in respect of the unexplained credit of Rs. 4,88,195/- of M/s. Motherland Marbles.*
5. *The CIT(A) erred in not noting that Rs.4,88,195/- was actually an opening balance and did not relate to this year and hence could not be added in this Year.*
6. *The CIT(A) also failed to note since it was only an opening balance, there was no transaction during the previous year, hence the confirmation filed by M/s. Motherland Marbles stating that there was NO transaction with the Appellant was correct, and erred in not cancelling the addition.*
7. *The CIT(A) though recorded that it was a meager difference of Rs.30/- noticed, while carrying out confirmation of sundry creditors amounting to Rs.5,24,63,971/- to his satisfaction, failed to delete the disallowance.*

3. The assessee has also raised the following additional grounds of appeal:

1 . *The order of the CIT(A) is erroneous as the same is opposed to the facts of the case and provisions of law.*

2. Lack of Satisfaction:

2.1. *The order of assessment passed by the AO is illegal and void as the same has been initiated without recording of proper satisfaction as mandated by the Act.*

2.2. *The AO having failed to record satisfaction as per section 153C of the Act, the order of assessment is illegal, without jurisdiction and the CIT(A) erred in upholding the same.*

3. Absence of incriminating material:

3.1. *The addition of sundry creditors made by the AO is unsustainable in law as the same has been made in the absence of incriminating material. Therefore, the CIT(A) erred in upholding the addition to the extent of Rs.4,88,195/-.*

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4. Change of opinion:

4.1. The addition of sundry creditors made by the AO is illegal as the same has been made on a change of opinion.

4.2. The genuineness of sundry creditors having been examined by the AO during the scrutiny assessment and the AO having accepted the same, has made the addition by reviewing his own earlier order which is impermissible in law.

4.3. The addition being made on review of the earlier order of the AO, the CIT(A) ought to have deleted the same in full.

5. Approval U/S.153D of the Act:

5.1. The order of assessment u/s.153C r.w.s.143(3) of the Act is illegal and the CIT(A) ought to have annulled the same as no proper approval was obtained by the AO as mandated u/s.153D of the Act.

5.2. The CIT(A) erred in failing to properly adjudicate the ground raised by the appellant regarding the approval.

6. Incorrect addition of sundry creditors:

6.1. The CIT(A) erred in upholding the addition of sundry creditors to the extent of Rs.4,88,195/-.

6.2. The addition having been made contrary to the facts of the case and law and without provision of proper opportunity, the CIT(A) ought to have deleted the same in full.

6.3. The AO having neither assigned any reason nor section for the impugned addition, the CIT(A) erred in failing to delete the same.

4. The brief facts of the case are that the assessee is a partnership firm engaged in the business of executing civil contract works for Public Works Department and Railways. The firm is having three partners viz., Shri K.Periyasamy, Shri P. Narashimhan and Smt.J. Shanti. Out of three partners, Shri K.Periyasamy had expired in November, 2015 and Shri P. Narashimhan had also expired by August, 2018. Smt.Shanti is the only surviving partner of the firm. A search action u/s.132 of the Act, was conducted in the premise of M/s.K.P.Construction. Consequent to search and based on incriminating material, proceedings u/s.153A /153C of the Act, was initiated. In response to the notice u/s.153C of the Act, on

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10.09.2018, the assessee has filed return of income on 02.10.2018 declaring total income which was same as declared in the return of income filed u/s.139 of the Act. The case was taken up for scrutiny and during the course of assessment proceedings, the AO called upon the assessee to file necessary books of accounts, bank statements and confirmation from sundry creditors. Since, the assessee was not furnished confirmation from sundry creditors, the AO has made addition of Rs.5,29,52,166/- towards disallowance of sundry creditors and brought to tax u/s.115BBE of the Act. The assessee carried the matter before the Ld.CIT(A) and filed certain additional grounds including confirmations from sundry creditors. The Ld.CIT(A) after considering details filed by the assessee, allowed partial relief and out of additions made by the AO towards disallowance of sundry creditors of Rs.5,29,52,166/-, directed the AO to delete additions to the extent of Rs.5,24,63,941/- and sustained balance addition to the extent of Rs.4,88,225/-. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

5. The assessee has filed a petition for admission of additional grounds by taking certain legal grounds challenging legality of order of the AO u/s.143(3) r.w.s.153C of the Act. The Ld.Counsel for the assessee referring to the additional grounds filed by the assessee, submitted that the AO has made additions towards sundry creditors without any inference to incriminating material as a result of search contrary to settled decision by the decision of the Hon'ble Supreme Court in the case of PCIT

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v. Abhisar Buildwell (P) Ltd., reported in [2023] 149 taxmann.com 399 (SC), wherein, it has been clearly held that in the absence of incriminating material found as a result of search, no addition can be made in the assessment framed u/s.153C of the Act.

6. The Ld.DR, Shri P.Sajit Kumar, JCIT, on the other hand, strongly opposed petition filed by the assessee for admission of additional grounds and submitted that the assessee could not explain 'as to why' it is not raised legal ground challenging validity of assessment proceedings before the First Appellate Authority. Further, the assessee could not establish whether facts related to said additional grounds was already on record before the AO. Therefore, additional grounds filed by the assessee should not be admitted. The Ld.DR further submitted that as regards merit on additional grounds filed by the assessee, the provisions of Sec.153C of the Act, is very clear that the moment search taken place, the AO shall have the power to assess/re-assess total income including undisclosed income, if any, found as a result of search. Therefore, the AO has rightly assessed, unproved sundry creditors when the assessee is not able to establish identity of the sundry creditors by filing necessary confirmation letters. Therefore, additional grounds filed by the assessee should be rejected.

7. We have heard both the parties and perused the materials available on record and gone through the orders of the authorities below. The assessee has filed additional grounds challenging validity of assessment

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proceedings initiated u/s.153C of the Act and claimed that said grounds are purely a legal ground which can be taken at any stage of proceedings including pending proceedings before the Tribunal. As held by the Hon'ble Supreme Court in the case of CIT v. National Thermal Power Co. Ltd., reported in [1998] 229 ITR 383 (SC), wherein, it has been clearly held that the powers of appellate authorities are not limited only to adjudicate the grounds raised by the assessee before the AO and also it can be adjudicated along with any other legal issues that may be raised by a party during pending proceedings. Therefore, by following the decision of the Hon'ble Supreme Court in the case of CIT v. National Thermal Power Co. Ltd., (supra), we admit additional grounds filed by the assessee for adjudication.

8. As regards issue of any addition made in the assessment framed u/s.153A / 153C of the Act, in absence of incriminating material found as a result of search, is no longer **res integra**. The Hon'ble Supreme Court in the case of PCIT v. Abhisar Buildwell (P) Ltd., (supra) has clearly held that in absence of incriminating material found as a result of search, no additions can be made in the assessment framed u/s.143(3) r.w.s.153A / 153C of the Act. In case, the assessment for the impugned assessment year is unabated/concluded as a result of search. In the present case, the proceedings were initiated u/s.153C of the Act, and for the purpose of reference to the date of search as per explanation-1 to Section 153C of the Act, the date should be reckoned as date of satisfaction note recorded

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by the AO of the searched person. In the present case, since, there is no satisfaction note recorded by the AO before us, we have to consider the date of issue of notice u/s.153C of the Act for the purpose of reckoning the date referred to sec.153C of the Act. If you consider the date of notice issued u/s.153C of the Act i.e. on 11.09.2018, the assessment for the impugned assessment year is unabated/concluded, because, the original assessment for the impugned assessment year has been completed u/s.143(3) of the Act on 28.12.2017 which is much before the date of search i.e. 11.09.2018. Since, assessment for the impugned assessment year has been unabated/concluded as a result of search, in our considered view, the AO is erred in making addition towards unproved sundry creditors in the assessment framed u/s.143(3) r.w.s.153C of the Act, because, such addition is not backed by any incriminating material found as a result of search. Thus, we quashed the order passed by the AO u/s.143(3) r.w.s.153C of the Act.

9. In the result, appeal filed by the assessee in ITA No.436/Chny/2021 is allowed.

Order pronounced on the 05th day of April, 2024, in Chennai.

Sd/-
(मंजूनाथा.जी)
(MANJUNATHA.G)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(वी. दुर्गा राव)
(V. DURGA RAO)
न्यायिक सदस्य/**JUDICIAL MEMBER**

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चेन्नई/Chennai,
दिनांक/Dated: 05th April, 2024.
TLN

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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