

आयकर अपीलीय अधिकरण “सी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, CHENNAI

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

1. आयकर अपील सं. ITA No.473/Chny/2010
(निर्धारण वर्ष / Assessment Year: 2000-01)

M/s. Tarachanthini Services Pvt. Ltd. #25, Taurus No.1, First Main Road, United India Colony, Kodambakkam, Chennai-600 024.	बनाम / Vs.	DCIT Corporate Circle-3(1) Chennai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAACP-9272-H		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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2. आयकर अपील सं./ ITA No.549/Chny/2010
(निर्धारण वर्ष / Assessment Year: 2000-01)

DCIT Corporate Circle-3(1) Chennai.	बनाम Vs.	M/s. Tarachanthini Services Pvt. Ltd. #25, Taurus No.1, First Main Road, United India Colony, Kodambakkam, Chennai-600 024.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAACP-9272-H		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Assessee by	:	Shri G. Baskar (Advocate) - Ld. AR
प्रत्यर्थी की ओरसे / Revenue by	:	Shri R. Clement Ramesh Kumar (CIT) -Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	11-09-2024
घोषणा की तारीख / Date of Pronouncement	:	09-10-2024

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid cross-appeals were disposed-off by Tribunal vide order dated 18-04-2012 wherein the matter was remitted back to the Ld. AO to

investigate whether the assessee company was in existence or not at the relevant point of time since the plea was raised in that regard. The revenue preferred an appeal against this order before Hon'ble High Court of Madras in T.C.A Nos.839 & 840 of 2019 and an order was passed therein on 20-07-2020 read with further order dated 21-07-2020 negating aforesaid approach of Tribunal. The matter was remitted back to Tribunal with the following directions: -

3. *As it could be seen from the impugned order of the Tribunal that the merits of the matter having not been gone into, necessarily the matter has to be remanded to the Tribunal to take a decision on merit, as we have held that assessment cannot be stated to be invalid in the eye of law. Accordingly, the matter is remanded to the Tribunal to take a decision on merits.*

The Hon'ble Court has thus directed the Tribunal to take a decision on merits since the order could not be held to be invalid. Pursuant to these directions, we proceed for adjudication of cross-appeals on merits as directed by Hon'ble Court.

1.2 The grounds raised by the assessee read as under.

1. The learned Commissioner of Income tax (Appeals)-III, Chennai, has erred in confirming the disallowance of Rs.4,00,000 made by the Assessing Officer in respect of the expenditure incurred by the appellant on stamp charges.
2. The learned Commissioner of Income tax (Appeals)-III has erred in sustaining the disallowance of expenditure on brokerage to the tune of Rs.71,48,050/- out of Rs.72,93,929/- made by the Assessing Officer.
3. The learned Commissioner of Income tax (Appeals) erred in confirming the disallowance of service charges of Rs.4,64,560/- made by the Assessing Officer.
4. The learned Commissioner of Income tax (Appeals) has erred in sustaining the disallowance of expenditure on professional fees incurred for arranging loans to the tune of Rs.20,00,000 out of Rs.30,00,000 disallowed by the Assessing Officer.
5. The learned Commissioner of Income tax (Appeals) has erred in sustaining the disallowance of expenditure on office maintenance to the tune of Rs.1,52,995 out of Rs.23,79,697/- disallowed by the Assessing Officer.
6. The learned Commissioner of Income tax (Appeals) has erred in directing the Assessing Officer to disallow expenditure relatable to exempt income from dividends in accordance with Income Tax Rule 8D.

1.3 The grounds raised by the Revenue read as under: -

1. The Order of the learned Commissioner of Income Tax (Appeals) is contrary to the Law and facts of the case.
2. The learned Commissioner of Income Tax (Appeals) has erred in deleting the disallowance on account of increase of share capital and unsecured loans of Rs.99,99,000 and Rs.3,60,74,309/- respectively.
 - 2.1. The learned Commissioner of Income Tax (Appeals) ought to have seen that responsibility of proving the source of investment lies with the assessee as the investor denies the investment made in the assessee company and also not reflected in the return of income of the investors.
 - 2.2 The Learned Commissioner of Income-tax (Appeals) failed to note that even though the assessee furnished written submissions before the CIT(A)-III, but the assessee has not furnished any evidences in support of his claim or in support of the written submissions.
3. The Learned Commissioner of Income-tax (Appeals) has erred in deleting the disallowance of interest payment on loan.
 - 3.1. The Learned Commissioner of Income-tax (Appeals) failed to note that the interest has not been paid within the due date of filing the return of income. The Assessee furnished written submissions before the CIT(A)-III without furnishing any evidences in support of his claim. The assessee was asked to furnish the evidences in support of the written submissions. No response from the assessee with regard to the evidences.
4. The learned Commissioner of Income Tax (Appeals) has erred in deleting the disallowance of stamp expenses and brokerage charges.
 - 4.1. The Learned Commissioner of Income-tax (Appeals) failed to note the assessee's contention of application of law which is from 1.4.2005, but the assessee has not produced the vouchers relating to these payments. The assessee furnished written submissions before the CIT(A)-III without furnishing any evidences in support of his claim. The assessee was asked to furnish the evidences in support of the written submissions. No response from the assessee with regard to the evidences.
5. The Learned Commissioner of Income-tax (Appeals) erred in deleting the disallowance of professional charges and service charges made by the Assessing Officer.
 - 5.1. The Learned Commissioner of Income-tax (Appeals) failed to note that the assessee could not furnish details of payments of Professional charges of Rs.30,00,000/- since the said transactions neither reflected in the bank statements nor produced evidences in support of the transactions.
6. The Learned Commissioner of Income-tax (Appeals) has erred in deleting the disallowance of investments made u/s.69B of Rs.21,75,00,493/-.
 - 6.1. The Learned Commissioner of Income-tax (Appeals) failed to note that the assessee could not furnish any evidences and also there is no response from the parties concerned in spite of this office letters u/s.133(6).
7. The Learned Commissioner of Income-tax (Appeals) has erred in deleting the disallowance made by the Assessing Officer in respect of office maintenance expenses.
 - 7.1. The Learned Commissioner of Income-tax (Appeals) failed to note that the assessee could not furnish bills and vouchers or receipts or any other evidences in support of his claim and he was not in a condition to prove the expenditure claimed in the accounts.

1.4 The Ld. CIT-DR submitted that Ld. CIT(A) has only considered second remand report dated 27-04-2009 whereas it had called for further remand report vide its letter dated 13-01-2010. In response thereof, Ld. AO had submitted third remand report on 21-01-2010 which has not been considered by Ld. CIT(A) and no opportunity has been provided to Ld. AO to verify new details as submitted during first appeal. For this, the revenue has raised specific grounds of appeal on 30-05-2024 which read as under: -

1. The Id. CIT(A) erred in considering the remand report & adjudicating the issues, where the corroborative evidences remain unproduced before the Assessing Officer. Thus, there is violation of provisions of Rule 46A(4) of the IT Rules.
2. The Id. CIT(A) erred in accepting the additional evidences during the appellate proceedings, without assigning reason for the same. Whereas as per the assessment order there is no circumstances which warrants acceptance of additional evidences. Thus, there is violation of provisions of Rule 46A(1) of the IT Rules.
3. The Id. CIT(A) erred in adjudication the appeal, by placing reliance on the second remand report, especially, when the CIT(A) itself raised doubts about correctness of the second remand report and opportunity for further examination was also afforded to the AO upon request of Range Head.
4. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld. CIT(A) be set aside and appeal may be restored to the file of CIT(A) with a direction to CIT(A) to consider the third remand report.

1.5 The Ld. AR, Shri G. Baskar raised objections against admission of additional grounds and submitted that no reasons have been adduced as to why these were not filed before Tribunal when the appeal was presented originally. Further, the additional grounds are not question of law but involve investigation of facts and therefore, the additional grounds cannot be permitted to be raised at this point of time. The Ld. AR stated that as per directions of Hon'ble High Court, the appeals are now fixed only for merits of the additions. The Ld. AR further submitted that there was no violation of Rule 46A as stated by the revenue.

1.6 Having heard rival submissions and upon perusal of case records and remand reports of Ld. AO as placed on record, our adjudication would be as under.

Assessment Proceedings

2.1 The assessee declared loss of Rs.78.42 Lacs. Initially, the return was processed u/s 143(1). However, the case was reopened and an assessment was framed u/s 143(3) r.w.s. 147 of the Act on 31-12-2007 making certain addition in the hands of the assessee. Upon further appeal, Ld. CIT(A) granted partial relief which has led to present cross-appeals before us.

2.2 The issues / additions which form subject matter of cross-appeals are as under: -

No.	Particulars	Amount (Rs.)
1.	Addition of Increase in share capital	9999000
2	Addition of Unsecured loan	36074309
3	Disallowance of Interest expenditure	4284140
4	Disallowance of Service charges	3299560
5	Addition of Investments	217500493
6	Disallowance of Electronic Transfer charges	7693929
7	Disallowance of Office Maintenance expenses	2279697
8	Disallowance u/s 14A @ 5% of Rs.8,00,256/-	40013

2.3 Addition of increase in Share Capital

The addition of increase in share capital and unsecured loans as well as undisclosed investments stem from the fact that during assessment proceedings, notices u/s 133(6) were issued to various parties as enumerated in the assessment order. Subsequently, summons u/s 131 was also issued to Miss. Anita Chandrasekaran and Smt. Nirmala Chandrasekaran for the confirmation of unsecured loans as well as investment made by them in the assessee-company. Both appeared and their sworn statements were recorded.

It was noted by Ld. AO that the assessee issued fresh share capital of Rs.99.99 Lacs during this year. The Share Capital of Rs.99.97 Lacs was subscribed by Smt. Nirmala Chandrasekhar whereas Share Capital for Rs.0.02 Lacs was issued to Shri M. Ugandar. No reply was received from Shri M. Ugandar. Upon perusal of statement of Smt. Nirmala Chandrasekhar, Ld. AO formed an opinion that she was not capable of investing huge amount in shares of the company. She was medical practitioner in the Government earlier but stopped her profession and was doing social service during the relevant period. She was not aware about the said financial transactions. However, the assessee stated that the money was transferred by her husband Shri Chandrasekaran as a book entry through transfer of shares from some other company. As evidence thereof, the assessee produced a copy of Form. No.2 from ROC and the ledger extract of Smt. Nirmala Chandrasekaran in the books of the assessee. However, Ld. AO observed that in her return of income, she did not reflect any such investments. The assessee could not substantiate the same and accordingly, the amount of Rs.99.90 Lacs was added as unexplained cash credit u/s 68.

2.4 Unsecured Loans

The assessee was stated to have taken unsecured loan of Rs.100 Lacs from Ms. Anita Chandrasekaran. However, in the statement given by her during the proceeding u/s 131, she was not aware of the same. She was a student pursuing her studies in USA. The assessee submitted that the amount was given by her father to her which was taken as loan. However, Ld. AO rejected the same and added the same to the income of the assessee.

Similarly, the assessee had obtained loan of Rs.260.74 Lacs from Smt. Nirmala Chandrashekarani which was similarly stated to be given by her husband. Going by the statement of Smt. Nirmala Chandrasekaran, the said amount was also added to the income of the assessee.

2.5 Disallowance of interest expenditure

The assessee claimed interest payment of Rs.42.94 Lacs which was disallowed on the ground that the assessee could not establish that the same was paid within the due date of filing of return of income.

2.6 Service charges

The assessee paid service charges of Rs.30 Lacs out of which the assessee furnished evidences for Rs.1.65 Lacs. The cheque entry of Rs.28.35 Lacs was claimed to be paid was not traceable in the bank statement. Therefore, the same was disallowed. Another service charge of Rs.4.64 Lacs as claimed by the assessee was also disallowed for want of evidences.

2.7 Addition of Investments

The assessee made investments of Rs.2490 Lacs. The assessee could not furnish requisite details for investment of Rs.2175 Lacs. Therefore, these investments were held to be not explained satisfactorily and not fully disclosed as per section 69B and added to the income of the assessee.

2.8 Disallowance of Electronic Transfer Charges

The assessee paid brokerage of Rs.72.93 Lacs and also paid stamp expenses of Rs.4 Lacs. Both these items were added for want of evidences.

2.9 Office maintenance Expenses

The assessee claimed office maintenance expenses for Rs.22.79 Lacs. The same include interior decoration expenses of Rs.21.26 Lacs on a rented building situated at No.15, Mahalingapuram High Road, Nungambakkam, Chennai. The same was disallowed for want of evidences.

2.10 Disallowance u/s 14A

The assessee earned exempt dividend income of Rs.8 Lacs but did not offer any disallowance u/s 14A. The Ld. AO estimated disallowance of 5% and added the same to the income of the assessee.

Appellate Proceedings and our adjudication

3.1 During the course of appellate proceedings, the assessee furnished additional evidences / explanations in support of its claim which were subjected to remand proceedings on 26-12-2008. The Ld. AO furnished remand report on 27-04-2009 which was confronted to the assessee. Considering the same, the Ld. CIT(A) allowed partial relief to the assessee.

3.2 The copy of remand report dated 27-04-2009 is on record. Upon perusal of the same, it could be seen that the assessee furnished various explanations and evidenced during remand proceedings. Considering the same, Ld. AO has submitted his remand report. This report is a detailed one and considers the explanations as well as documentary evidences as furnished by the assessee.

3.3 At the same time, we find that there is first remand report which is dated 11-02-2009. However, this remand report has merely reiterated the findings of Ld. AO in the assessment order. We also find that there is third remand report dated 21-01-2010 which is also on record. However, this remand report has also reiterated the findings of Ld. AO in the

assessment order since as per this remand report, no response was received from the assessee with regard to the evidences. In nutshell, the first and third remand reports are nothing but reiteration of findings in original assessment order. On the other hand, remand report dated 27-04-2009 is a detailed report which considers the assessee's explanations and documentary evidences in details. Therefore, the revenue's grievance that the third remand report has not been considered is bereft of any substance. The Ld. AO has rendered detailed findings in remand report dated 27-04-2009 and the same, therefore, has rightly been considered by Ld. CIT(A). The additional grounds of appeal as filed by the revenue, even if admitted, are liable to be dismissed. We order so.

3.4 Having said so, it could be seen that the impugned order is based on detailed findings given by Ld. AO in remand report dated 27-04-2009. The Ld. CIT(A), in paras 4.3 to 4.5 of impugned order, noted that the assessee furnished details of increase in share capital and unsecured loans. The same were journal entries and the explanation furnished by the assessee was held to be satisfactorily by Ld.AO. Considering the same, the Ld. CIT(A) deleted the addition of increase in share capital and unsecured loans. The same form part of subject matter of revenue's appeal.

Since the above transactions are mere journal entries and the assessee has furnished satisfactory explanation thereof during remand proceedings to the satisfaction of Ld. AO, the adjudication of Ld. CIT(A) could not be faulted with. The corresponding grounds raised by the revenue stands dismissed.

3.5 Similarly, the assessee demonstrated that the interest of Rs.42.94 Lacs was duly paid and requisite particulars in this regard were duly furnished. The same were accepted by Ld. AO. Considering the same, Ld. CIT(A) deleted the same against which the revenue is in further appeal before us. Since the adjudication of Ld. CIT(A) is based on findings of Ld. AO, no interference is required in the same.

3.6 The claim of disallowance of electronic transfer charges include Rs.4 Lacs which represent stamp charges paid by the assessee. The same was not accepted by Ld. AO for want of evidences. Therefore, Ld. CIT(A) confirmed the same against which the assessee is in further appeal before us.

It could be seen that the expenditure is on account of purchase of share transfer stamps in cash from stamp vendors. The stamps are affixed on the reverse side of share transfer deed @.25% of transaction value. The assessee has purchased stamp of Rs.2 Lacs each on 30-01-2000 and 01-02-2000. The assessee deals in sale and purchase of shares. Therefore, in our considered opinion, this claim is to be accepted. Hence, the impugned disallowance of Rs.4 Lacs stand deleted. The assessee succeeds on this ground.

3.7 The assessee paid brokerage for Rs.72.93 Lacs. The Ld. AO accepted the payment in the remand report. It transpired that the assessee paid brokerage of 15.60% on sale of certain shares. The rate was held by Ld. CIT(A) to be very high having regard to prevailing market rate. Therefore, the brokerage claim was restricted to the extent of 2%. Aggrieved, the assessee is in further appeal before us.

We find that this amount has been paid by the assessee to a corporate entity through banking channels after deduction of tax at source. The Ld.

AO has accepted the claim in the remand report. This is a contractual payment and in the absence of any adverse finding, the same could not be disallowed partly. Therefore, we direct Ld. AO to allow full brokerage claim of Rs.72.93 Lacs. The grounds raised by the assessee stand allowed whereas the grounds raised by the revenue stand dismissed.

3.8 Based on remand report, service charges for Rs.4.65 were disallowed. The same represent service charges, valuation charges, installation charges and computer service charges. The details thereof have been extracted in the impugned order. It could be seen that the payment has been made to procure services from vendors and the payments are to organized sector and through banking channels. Apparently, the expenditure fulfills the requirements of Sec. 37(1). Therefore, we direct Ld. AO to delete the same. The grounds raised by the assessee stand allowed.

3.9 The assessee paid professional fees of Rs.30 Lacs to Chartered Accountant in connection with a loan. The assessee paid fees @3% of loan amount. Due tax was deducted at source. The Ld. AO accepted such claim. The Ld. CIT(A) accepted the claim to the extent of 1% only and confirmed the remaining addition.

We find that this is contractual payment and accepted by Ld. AO in the remand report. The assessee has deducted due TDS and the claim is duly substantiated. In the absence of any adverse finding, this claim is to be accepted. We order so. The grounds raised by the assessee stand allowed whereas the grounds raised by the revenue stand dismissed.

3.10 On the issue of investments, Ld. AO accepted the explanation of the assessee after examining the necessary evidences including share transfer application, bank account, confirmation letters etc. Considering

the same, the impugned addition was deleted. Since the adjudication of Ld. CIT(A) is based on remand report, no interference is required in the same.

3.11 The claim of office maintenances expenses has also been accepted except for an amount of Rs.1.52 Las for want of explanation from the assessee. The Ld. AR has not pressed this ground and therefore, the corresponding ground of assessee's appeal stands dismissed. The other expenditure has been allowed as per remand report and therefore, the grounds of revenue's appeal stand dismissed.

3.12 The issue of disallowance u/s 14A has not been pressed by Ld. AR.

Conclusion

4. ITA No.473/Chny/2010 stand partly allowed whereas ITA No.549/Chny/2010 stand dismissed.

Order pronounced on 9th October, 2024

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated :09-10-2024
DS

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Assessee
2. प्रत्यर्थी/Revenue
3. आयकरआयुक्त/CIT Chennai.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF