

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL . 'C' BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT
AND SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.1128/Chny/2024

(निर्धारणवर्ष / Assessment Year: 2018-19)

The Deputy Commissioner of Income Tax, Central Circle-2(1), Chennai.	Vs	Anbu Infratech Pvt. Ltd., 3/74, Pappampalayam, Nallipalayam, Karichipalayam – 637 201.
		PAN:AAJCA-6772-H
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. R.Clement Ramesh Kumar, CIT
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. M.V.Prasad, FCA & Mr.Rajendra Kumar, IRS (Retd)

सुनवाईकीतारीख/Date of hearing	:	28.08.2024
घोषणाकीतारीख /Date of Pronouncement	:	06. 11.2024

आदेश / ORDER

PER MAHAVIR SINGH, VP:

This appeal by the Revenue is arising out of the order of the Commissioner of Income Tax (Appeals), Chennai in Order No.ITBA/APL/S/250/2023-24/1061245710(1) dated 21.02.2024. The assessment was framed by the Deputy Commissioner of Income Tax, Central Circle 2(1), Chennai for the assessment year 2018-19 u/s.153C of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 28.09.2021.

2. The only issue in this appeal of the Revenue is against the order of CIT(A) deleting addition made by the AO towards unexplained expenditure u/s.69C of the Act in respect of trade payable settled outside books of accounts. For this the Revenue has raised following grounds 2,2.1 & 2.2 which read as under:-

“2. The Ld.CIT(A) erred in deleting addition of Rs.4,00,00,000/- made towards unexplained expenditure u/s.69C in respect of trade payable settled outside the books of account as evidenced by seized material coupled with sworn statement of Shri A.N.Boopathy, Director of the assessee company.

2.1 The Ld.CIT(A) erred in deleting addition with observation that the names of Shri Paranthaman and his concerns are not appearing in the loose sheets seized. The Director of the assessee company confirmed in his statement that the closing balance of sundry creditors Rs.87,04,632/- vide page No. 14 is the actual sundry creditors as on 31.03.2018 since the settlement made with Shri Paranthaman was outside the books of account, it was proposed to introduce fictitious sundry creditors under various names listed in page numbers bearing 11, 12 & 13. It is natural that since the payments are made outside the books of account name of Shri Paranthaman and his concerns did not appear in page 14 (actual creditors) and page 11,12, & 13 (fictitious creditors) . The difference in creditor balance between loose sheet No.14 and other pages was duly explained by Director of the assessee company as payment made outside the books of account.

2.2 The Ld.CIT(A) erred in holding that the statement of Shri A.N.Boopathy, Director of the assessee company is not corroborated by the seized material. The CIT(A) failed to appreciate that statement is corroborated by seized loose sheets which indicated the difference in balance of “trade payables-others” as on 31.03.2018 and the said difference is only explained by Shri A.N.Boopathy in his statement as payment made to Shri Paranthaman outside the books”.

3. Brief facts are that the assessee company is engaged in the business of drilling bore wells and water wells. A search was conducted in the case of one Shri S.Vishnu at Villa No.16 &17, Natchatra Classic , Kalapatti, Coimbatore-641 035, from where loose sheet was seized vide annexure ANN/NK/SV/LS/S/dated 05.07.2018. The AO during the course of assessment proceedings noticed from loose sheets, particularly, page no.14 that reflects sundry creditors of the assessee company, Anbu Infratech Private Limited, which shows that sundry creditors were settled by way of cash. According to the AO, the page contained group summary of sundry creditors with names and corresponding closing balances of Anbu Infratech Private Limited for the period from 01.04.2017 to 31.03.2018. The AO noted that handwriting notings of various parties mentioned in the summary were 'settled', 'settled-50% cash - 50% Neft-Axis bank', 'settled cash', 'settled by cash', 'send cash-settled' etc. The AO accordingly, issued show-cause notice to the assessee as to why this amount of Rs.4.00 crores pertains to one Shri Paranthaman towards supply of machinery, out of total trade payables of Rs.4,66,78,340/- be not added to the returned income of the

assessee as the same has been settled outside books of account and this trade creditor is fictitious introduced under various names. The assessee has furnished various details and the assessee informed that outstanding balance of Shri Paranthaman was still standing in their books of account as credit balance. The statement given by one Shri A.N.Boopathy, who is Director of the assessee company was not well versed with the accounts of the assessee company and was not aware about trade outstanding. But, the assessee filed complete details where in the books of account amount was shown as outstanding. But, the AO has not accepted explanation of the assessee and added the same as undisclosed expenditure from undisclosed sources u/s.69C of the Act amounting to Rs.4.00 crores by observing in para 7 as under:-

“7. In view of the above, the seized materials and the logical explanation of the entries found therein by Shri.A.N.Boopathy clearly demonstrate the sum of Rs.# CF was settled to Shri.Paranthaman, outside books. As the assessee had not explained the sources for the payments made to Shri.Paranthaman to the tune of Rs.4 Cr, it is inferred that it has been done from out of the undisclosed income of the assessee and accordingly added to the total income of the assessee for AY:2018-19 as unexplained payments u/s 69C of the Income Tax Act, 1961.

Aggrieved, the assessee preferred an appeal before the CIT(A).

4. The CIT(A), after considering submissions of the assessee and entire details referred the matter back to the Assessing Officer for remand report. The Assessing Officer vide his remand report dated 14.12.2023 reiterated the assessment order and the remand report as accepted by the CIT(A) is being reproduced as under:-

"2. The assessment proceedings u/s 153C r.w.s. 143(3) of the Act, was completed on 28.09.2021 by making an addition of Rs.4,00,00,000/- u/s 69C of the Act as unexplained expenditure from undisclosed sources. A search was conducted on the premise of Shri. S. Vishnu at Villa No. 16 8.17, Natchatra Classic, Kalapatti, Coimbatore - 641035, in connection with the search in the case of M/s Christy Friedgram Industry group. During the search proceedings, some loose sheets were seized vide annexure.ANN/NK/SV/LS/S dated 05.07.2018. It was noticed in page 14, that sundry creditors of M/s Anbu Infratech for the period 01.07.2017 to 31.03.2018 was settled by the way of cash outside the books. The page contained group summary of sundry creditors, with names and corresponding closing balances, of M/s. Anbu Infratech for the period 01.04.2017 to 31.03.2018. There were handwritten notings against various parties mentioned in the summary as "settled", settled 50% cash. 50 Neft-Axis Bank", Settled Cash", etc.

Shri. A.N. Bhoopathy, Director of M/s Anbu Infratech, vide his reply to question no. 8 of his sworn statement u/s

131(1A) of the Act dated 05.07.2018 stated that "trade Payable-others" as per balance sheet as on 31.03.2017 was Rs.4,66,78,340/-. Out of which nearly 4 er pertains to Shri. Paranthaman towards supply of machinery. This sum was settled outside books of accounts. The closing balance of sundry creditors of Rs.87,04,632/- was the actual balance as on 31.03.2018. Since, the settlement with Shri. Paranthaman was outside books of accounts, fictitious sundry creditors under various names were introduced. Thus, the sum of Rs.4,00,00,000/- was added as unexplained expenditure u/s 69C in the hands of M/s Anbu Infratech Pvt Ltd for the AY 2018-19."

5. The assessee filed rejoinder to the remand report of the AO and stated that amount is outstanding in the books of account and it has filed evidences for the same. But, the AO has not considered the evidences as satisfactory, because statement was recorded under oath of the Director , who was not aware about outstanding trade debtors. But, the CIT(A), after considering evidences and books of account of the assessee, remand report of the AO and rejoinder filed by the assessee, detailed out the facts in para 9.4.17 of his order, which reads as under:-

"9.4.17 Further, as explained by the Appellant, it is noticed that the amounts payable to Shri. Paranthaman were not at all included in the 'Sundry Creditors' in the balance sheet as on

31.03.2017. The amounts payable to M/s Paranthaman Exporters and M/s Paranthaman Hydraulics and Equipments (Paranthaman concerns) were actually reflected under 'Sundry Debtors' in the balance sheet. The 'Sundry Debtors' are shown at Rs.13,29,796/- in the balance sheet as on 31.03.2017. The said amount is the net debit amount arrived at after considering the debit balances aggregating to Rs.4, 10,93, 129/- in the accounts of various debtor parties and the credit balances totalling to Rs.3,97,63,333/- in the accounts of M/s Paranthaman Exporters and M/s Paranthaman Hydraulics and Equipments. Similarly, in the balance sheet as on 31.03.2018 also, the amounts due to Paranthaman concerns is reflected under 'Sundry Debtors'. The 'Sundry Debtors' are shown at Rs.6, 11,798/- in the balance sheet as on 31.03.2018. The said amount is the net debit amount arrived at after considering the debit balances aggregating to Rs.3,98,00,092/- in the accounts of various debtor parties and the credit balances totalling to Rs.3,91,88,294/- in the accounts of various creditor parties, out of which the amounts payable to Paranthaman concerns amounted to Rs.3,91,63,333/-. Thus, it is evident that the statement of Shri.A.N.Boopathy that the trade payables of nearly Rs.4 Crores to Shri.Paranthaman (M/s Paranthaman Exporters and M/s Paranthaman Hydraulics and Equipments) are forming part of the sundry creditors of Rs. 4,66,78,340/- in the books of account as on 31.03.2017 is contrary to the facts as evidenced in the books of account and the financial statements."

Further, the CIT(A) analyzed the seized materials vis-à-vis evidences filed before him i.e., books of account and finally noted that evidences clearly proves that statement of Shri

A.N.Boopathy, Director of the assessee was wrong and based on the evidences, the CIT(A) deleted the addition by observing in para 9.4.21 of his order, which read as under:-

“9.4.21 In this regard, it is noticed that the Appellant furnished the ledger account copies of the creditors against whose names the handwritten noting were found in the seized loose sheets to the AO during the assessment proceedings vide letter dated 09.09.2021 and explained that the credit balances in the said cases were settled/paid in cash and that such payments are duly recorded in the books of account for the F.Y 2017-18. On perusal of the said ledger account copies which was produced before the A.O. and made available before the undersigned during the course of Appellate Proceedings, it is noticed that the payments made in cash to the concerned creditors, as reflected in the hand-written noting, are duly routed through the books of account. The said evidence submitted to the AO during the assessment proceedings clearly proves that the hand-written noting such as "settled" or "settled cash" or "settled-50% cash. 50% Neft-Axis Bank" found in the seized loose sheet are not incriminating in nature, since the said payments in cash to the creditors are duly reflected in the books of account. The said evidences have proved that the Appellant did not settle the dues of the creditors outside the books of account. The said evidences have also proved that the statement of Sri. A.N. Boopathy is factually wrong and cannot be relied upon.”

Finally, the CIT(A) deleted the addition by observing in para 9.4.37 as under:-

9.4.37 *In view of the aforesaid discussion, the undersigned is of the considered view that the addition made by the AO as unexplained expenditure as per the provisions of section 69C of the Act is not legally **sustainable and lacks merit**. Accordingly, the all the grounds raised by the Appellant Company upon this issue are hereby treated as **allowed** and the AO is hereby directed to **delete** the addition of Rs.4,00,00,000/- made u/s 69C of the Act.*

Aggrieved, the Revenue is in appeal before us.

6. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that main contention of the Revenue is that addition made by the AO u/s.69C of the Act being unexplained expenditure is evidenced by the seized material corroborated by the statement of Shri A.N.Boopathy, Director of the assessee. We have gone through the seized materials and note that seized materials at page 14 does not contain any evidences, whatsoever that trade payables of Rs.4.00 crores to Shri Paranthaman concern as on 31.03.2017 were settled / paid in cash to the said concern during the financial year 2017-18 relevant to the assessment year 2018-19 outside the books of accounts. We noted that the CIT(A) has discussed this issue at length and

gave clear finding of fact that seized material is devoid of any evidence regarding alleged payment of trade payables due of Shri Paranthaman concerns outside books of accounts. We noted that although there is statement of Shri A.N.Boopathy, but this is a rebuttable statement and the assessee has led evidence in the shape of books of account which clearly reflects the trade payables as outstanding and moreover, seized materials confirms that. The contention of the Revenue that it is natural that name of Shri Paranthaman concerns did not figure in loose sheets in page no.14, since it is the list of actual sundry creditors as on 31.03.2018 and they did not figure in loose sheet no.11, 12 and 13, since they contain names of fictitious creditors as stated by Shri A.N.Boopathy is not at all relevant. We noted that there are contradictions and logical flaws in his statement as brought out by the CIT(A) and as noted by the CIT(A) in para 9.4.13 of his order. The fact that Shri A.N.Boopathy considered loose sheet No.12 as the list of actual creditors as on 31.03.2017 which is supposed to include in trade payables of Paranthaman concerns also, is discussed and analyzed by the CIT(A) in para 19.4.13 of his order. It is fact that once quantum of actual sundry creditors

as on 31.03.2017 was disposed off by the CIT(A) based on loose sheet, particularly loose sheet no.12, the claim of the AO in the same breath that loose sheet no.11,12 & 13 contained the name of fictitious creditors introduced in place of Paranthaman concerns fails. We noted that seized loose sheet contained print out of group summary of sundry creditors which do not contain the complete list of sundry creditors as per the books of account and they contained partial list taken for the purpose of reconciliation in the process of finalization of accounts. In view of the facts and findings recorded by the CIT(A), which remain undisputed, we are of the view that difference in the amount of sundry creditors as on 31.03.2018 was explained by Shri A.N.Bhoopathy as mentioned in the seized loose sheets in his statement as payment made to Shri Paranthaman concerns outside the books of accounts. Hence, as per books of account, the assessee has clearly established by evidences that trade creditors payable of Rs.4.00 crores to Shri Paranthaman concerns was outstanding and clearly allowable and not outside the books of accounts or cash. Hence, we confirm the order of the CIT(A) deleting the addition.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 6th November, 2024

Sd/-

(मनोज कुमार अग्रवाल)

(Manoj Kumar Aggarwal)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Date:06.11.2024

DS

Sd/-

(महावीर सिंह)

(Mahavir Singh)

उपाध्यक्ष/ Vice-President

आदेश की प्रतिलिपि अग्रहित/Copy to:

- 1.Appellant
2. Respondent
3. आयकर आयुक्त/CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.