

**आयकर अपीलीय अधिकरण “ए” न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“A” 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**

**आयकर अपील सं. ITA No.2183/Chny/2018**  
**(निर्धारण वर्ष / Assessment Year: 2008-09)**

<b>ACIT</b> Central Circle-2(1), Chennai.	<b>बनम/</b> Vs.	<b>Shri K.C.P. Shivaraman</b> #330, Chinna Andan Koil Road, Karur-639 001.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. <b>AAXPS-4844-F</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकी ओरसे/ <b>Appellant by</b>	:	Shri Nilay Baran Som (CIT)-Ld. DR
प्रत्यर्थीकी ओरसे/ <b>Respondent by</b>	:	Shri S. Sridhar (Advocate)-Ld. AR

सुनवाईकी तारीख/ <b>Date of Hearing</b>	:	10-09-2024
घोषणाकी तारीख / <b>Date of Pronouncement</b>	:	05-11-2024

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2008-09 arises out of the order of learned Commissioner of Income Tax (Appeals)-1, Tiruchirappalli [CIT(A)] dated 10-05-2018 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s 147 of the Act on 31-03-2016. The grounds raised by the revenue read as under:

1. The order of the Ld. CIT(A) is contrary to the provisions of the Income Tax Act, Rules and facts of the case.
2. The CIT(A) has held that the latest proceedings u/s 147 is void ab-initio as there is fair and a correct disclosure of the material facts on the part of the assessee

which does not warrant re-opening of assessment proceedings. Hence, the CIT(A) conclusion to decide the assessment proceedings void-ab-initio is contradictory to the decision held at para 5.2 (a) & 5.2(b), page 12 of the said order of the CIT(A).

3.(a) The assessee had failed to disclose the nature of transactions with M/s. D.B.Hospitality P Ltd, M/s. SRSR Builders P Ltd M/s. Karur KCP packaging ltd. The amount received was kick back money and not the loan or credit. Therefore, the assessee claim that the said transactions had already been disclosed earlier proceedings is not correct as the nature of transactions and its implication in the assessee's hand was neither disclosed nor examined. Under such circumstance, the receipt of kick back and its disclosure as creditor, cannot be claimed as true & full disclosure.

(b) The assessment order at last para of page 2 & 3 that the AO, has held that money originated for DB Hospitality which is a sister concern of Swan Telecom & DB Reality and all the entities were controlled by Shahid Balwa who is promoter and was one of the main accused in 2G scam. Hence, the funds received from SRSR Builders P Ltd were not loan credits, but the kick back. money received and taxable in the hands of the assessee. Therefore, the CIT(A)'s decision that the assessee had, disclosed all the material facts is not correct. Thus, the entire issue should have been decided by the CIT(A) on merit taking into account the facts of the case instead of deciding the issue on technical ground.

4. The Ld. CIT(A) failed to analyze whether it was a full & true disclosure. Both these conditions, true & full are to be cumulatively met by the assessee. If one ingredient is lacking then the conditions laid down in the provision is not satisfied. In the present case there is no doubt at there is a full disclosure but the same was not true. Therefore, the order of the Ld. CIT(A) is not acceptable.

5. In view of the facts and circumstances, since monetary limit i.e., Rs.16,42,19,938/- exceeds the prescribed limit as per the Board's Circular No.3/2018. In F.No.279 /Misc.142/2007-ITJ (Pt.), second appeal is suggested on this issue

As is evident, the revenue is aggrieved by quashing of reassessment proceedings. The revenue also assails relief given by Ld. CIT(A) on merits.

2. The Ld. CIT-DR advanced arguments supporting the case of Ld. AO whereas Ld. AR pleaded that there was no tangible material before Ld. AO for arriving at a belief of escapement of income. It was on mere change of opinion. The Ld. AR also submitted that there is no material with revenue to make impugned additions and the additions have been made on mere suspicion, conjectures and surmises. The case was put up for clarification which was duly responded to by both the sides.

Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

### **Assessment Proceedings**

3.1 The assessee filed return of income on 31-03-2011 admitting income of Rs.87.05 Lacs. The same was subjected to reassessment proceedings and an assessment was framed u/s 143(3) r.w.s. 147 on 26-03-2013 determining income of Rs.181.40 Lacs. In those proceedings, Ld. AO issued notice on 22-02-2013 calling for certain details from the assessee. The same include query on a loan taken from one entity M/s SRSR Builder Pvt. Ltd. (SRSR). The assessee was asked to produce documentary evidences to substantiate the same. The assessee, vide reply dated 02-03-2013, supplied the requisite information details as called for by Ld. AO. Further details were called vide letter dated 12-03-2013 which were also supplied by the assessee in its reply dated 18-03-2013. Finally, Ld. AO, vide order dated 26-03-2013, made addition on account of land purchase, cash payment for land purchase, disallowance of expenses etc. The loan taken from aforesaid entity was accepted and no addition was made in respect thereof.

3.2 The order was subjected to revision u/s 263 vide order dated 08-08-2014 wherein the issue of addition u/s 68 with respect to an entity M/s Pacific Chennai Infrastructure Pvt. Ltd. was flagged. The same was given effect to vide an assessment order u/s 143(3) r.w.s. 263 on 28-11-2014 wherein Ld. AO made certain other additions of cash deposit and cash payment. The first appellate order was passed against this order on 06-02-2015 partly allowing the appeal of the assessee. The order giving effect to first appellate order was passed on 29-04-2015. The same was rectified u/s 154 on 25-02-2016. The cross-appeals against these

proceedings got disposed-off by Tribunal vide ITA Nos.1155 & 1156/Mds/2015 order dated 20-04-2017.

3.3 In the meanwhile, Ld. AO sought second reopening and issued notice u/s 148 on 27-03-2015. In the recorded reasons, it was alleged that the advance of Rs.25.11 Crores was received by the assessee from M/s DB Hospitality Pvt. Ltd. through SRSR. Further, SRSR acted as legal representative for assessee and his father for sale of certain land and received advance of Rs.30 Crores from M/s DB Hospitality Pvt. Ltd. However, instead of purchasing the land, the money was transferred to group concerns of the assessee and his father. Out of total inward money of Rs.30 Crores, a sum of Rs.25.11 Crores was paid to the assessee as an advance. The issue regarding above money transaction was not covered while completing the original assessment since the information was received subsequently. The same require examination and therefore, a belief of escapement of income was formed and notice u/s 148 was issued to the assessee.

3.4 The assessee filed reply on 06-04-2015 demanding reasons for reopening. Again, vide letter dated 10-07-2015, the assessee offered original return of income as filed earlier. The assessee also drew attention to the fact that despite request, reasons for reopening were not supplied to the assessee. However, Ld. AO, vide notice dated 20-08-2015 demanded certain details from the assessee. The assessee, vide letter dated 04-09-2015, submitted that complete details of all the transactions with details of money flow from his account to various persons / companies during FY 2007-08 was already furnished in earlier proceedings. The assessee vide another letter of same date, assailed assumption of jurisdiction of Ld. AO. The assessee pleaded for dropping

of proceedings in the absence of any reasons on the escapement of income as well as in the absence of any allegation that the assessee failed to disclose fully and truly all the material facts at the original stage.

3.5 However, the Ld. AO proceeded with the assessment and noted that a sum of Rs.30 Crores moved into the bank account of the assessee as well as in the bank account of his father from 15-10-2007 to 31-03-2008 through SRSR and other group companies in which the assessee and his father was either director or partner. An amount of Rs.25.11 Crores was paid to the assessee which was shown as advances in the books of SRSR. The money moved into the assessee's account from M/s DB Hospitality Pvt. Ltd. through SRSR. In the assessee's books, SRSR was shown as sundry creditor.

3.6 From relevant agreement, it was seen that SRSR received money from DB Hospitality Pvt. Ltd for purchase of land on their behalf. However, instead of purchasing the land, the money was transferred to various group companies of the assessee as well as in the account of his father.

3.7 The Ld. AO further noted that there was reverse flow of money from the account of the assessee to the account of M/s DB Hospitality Pvt. Ltd. on various dates. Pertinently, the money got transferred to the assessee from 15-10-2007 which was very close to 2G scam date of 25-09-2007. Considering the facts that M/s Swan Telecom made profit of Rs.3500 Crores in the deal, it was natural that some kickback would go to the persons who had done them this favor. Therefore, the money as originated from M/s DB Hospitality Pvt. Ltd., who was a sister concern of Swan Telecom, to the assessee was kickback money of 2G scam. Accordingly, the advance of Rs.25.11 Crores was added to the income

of the assessee as 'income from other sources' and assessment was finalized.

### **Appellate Proceedings**

4.1 The Ld. CIT(A) concurred with assessee's legal submissions that Ld. AO was bound to disclose the reasons for reopening to the assessee. The assessee could raise objection against the same and AO was duty bound to dispose-off the objection by way of speaking order before proceeding with reassessment of income. The assessee had demanded reasons for reopening. On receipt of reasons, the assessee filed detailed objections. However, none of the objections were dealt with by Ld. AO and no formal speaking order was passed accepting or rejecting the objections raised by the assessee. The Hon'ble High Court of Madras in the case of **Jayanthi Natarajan (401 ITR 215)** categorically held that in case the objections were not disposed-off by way of speaking order then it amounts to violation of natural justice and the assessment proceedings are vitiated as null and void. The present case was on identical facts.

4.2 On merits also, Ld. CIT(A) held that the assessee satisfactorily explained primary ingredients of Sec.68 by establishing the identity of the creditor, the capacity of the creditor to advance the money and genuineness of the transactions. The assessee, in first reassessment proceeding, clearly established all the above ingredients. The Ld. AO on 26-02-2013 and 12-03-2013 specifically required the assessee to clarify and confirm the credit so received from SRSR. The assessee placed all the details so called for in this matter. The fact that transaction flowed from DB Hospitality Pvt. Ltd. to SRSR was already known to Ld. AO even at initial proceedings and it was not a new matter. The assessee

received amounts though cheques and Ld. AO had examined the bank statements in earlier proceedings. When the basic and primary onus was established by the assessee, there was no further requirement on his part. Further, the fact that the money was paid subsequently was also not disputed by Ld. AO. Therefore, the receipts could not be alleged to be kick back. The same was mere allegation and on suspicion. Such an inference, unless supported by clinching material evidences of flow of benefit to the assessee, directly or indirectly, could not be sustained and the advance could not be alleged to be income received as kick back. Therefore, it was to be held that the credit from SRSR was properly explained and the assessee did not receive any benefit by way of kick back.

4.3 The Ld. CIT(A) further held that reassessment was only a review attempt on a mere change of opinion. All the facts were known to Ld. AO in earlier proceedings. The said debt was subsequently discharged by the assessee and therefore, to allege the advance as kick back was unjustified. The reassessment was only a case of review and a mere change of opinion on the part of Ld. AO.

4.4 The Ld. CIT(A) also referred to the decision of Hon'ble Supreme Court in the case of **Techspan India Pvt. Ltd. (92 Taxmann.com 361)** to support the decision on legal grounds. The facts were stated to be identical. Accordingly, the assessment was held to be void ab initio. Aggrieved, the revenue is in further appeal before us.

### **Our findings and Adjudication**

5. From the facts as narrated in preceding paragraphs, it could be seen that the original return of income as filed by the assessee was subjected to reassessment proceedings and an assessment was framed

u/s 143(3) r.w.s. 147 on 26-03-2013 determining income of Rs.181.40 Lacs. In those proceedings, Ld. AO issued notice on 22-02-2013 calling for certain details from the assessee. The same include query on loans taken from SRSR. The assessee was asked to produce documentary evidences to substantiate the same. The assessee, vide reply dated 02-03-2013, supplied the requisite information / details as called for by Ld. AO. Further details were called in letter dated 12-03-2013 which were also supplied by the assessee in its reply dated 18-03-2013. Finally, Ld. AO, in assessment order dated 26-03-2013, made addition on account of land purchase, cash payment for land purchase and disallowed expenses. The loan taken from aforesaid entity was accepted and no addition was made in respect thereof. Clearly, an opinion was formed on the issue of advance received from SRSR. Having satisfied with assessee's submissions, in this regard, Ld. AO chose not to make any addition in that respect. The same is further evidenced by the fact that the aforesaid order was subjected to revision u/s 263. The revisionary authority, upon perusal of case records, flagged issue only with respect to another entity M/s Pacific Chennai Infrastructure Pvt. Ltd. However, no discrepancy was noted with respect to transaction carried out with SRSR. In such a case, the second reopening was nothing but triggered on mere change of opinion which is impermissible in law. Another fact is that assessee's objections to reopening has not been disposed-off by Ld. AO either in assessment order or by way of separate speaking order which run contrary to settled legal proposition as laid down by Hon'ble Supreme Court in the case of **GKN Driveshafts (India) Ltd. (125 Taxman 963)** which has been followed by Hon'ble High Court of Madras in the case of **Jayanthi Natarajan (401 ITR 215)** to quash reassessment

proceedings on identical facts. The case law of Hon'ble Supreme Court in the case of **Techspan India Pvt. Ltd. (92 Taxmann.com 361)** also supports the case of the assessee. In that case, it was held by Hon'ble Court as under: -

...The language of Section 147 makes it clear that the assessing officer certainly has the power to re-assess any income which escaped assessment for any assessment year subject to the provisions of Sections 148 to 153. However, the use of this power is conditional upon the fact that the assessing officer has some reason to believe that the income has escaped assessment. The use of the words 'reason to believe' in Section 147 has to be interpreted schematically as the liberal interpretation of the word would have the consequence of conferring arbitrary powers on the assessing officer who may even initiate such re-assessment proceedings merely on his change of opinion on the basis of same facts and circumstances which has already been considered by him during the original assessment proceedings. Such could not be the intention of the legislature. The said provision was incorporated in the scheme of the IT Act so as to empower the Assessing Authorities to re-assess any income on the ground which was not brought on record during the original proceedings and escaped his knowledge; and the said fact would have material bearing on the outcome of the relevant assessment order.

**9.** Section 147 of the IT Act does not allow the re-assessment of an income merely because of the fact that the assessing officer has a change of opinion with regard to the interpretation of law differently on the facts that were well within his knowledge even at the time of assessment. Doing so would have the effect of giving the assessing officer the power of review and Section 147 confers the power to re-assess and not the power to review.

**10.** To check whether it is a case of change of opinion or not one has to see its meaning in literal as well as legal terms. The word change of opinion implies formulation of opinion and then a change thereof. In terms of assessment proceedings, it means formulation of belief by an assessing officer resulting from what he thinks on a particular question. It is a result of understanding, experience and reflection.

**11.** It is well settled and held by this court in a catena of judgments and it would be sufficient to refer **CITv. Kelvinator of India Ltd.** [2010] 320 ITR 561/187 Taxman 312 (SC) wherein this Court has held as under:—

'5....where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to re- open the assessment. Therefore, post-1st April, 1989, power to re-open is much wider. However, one needs to give a schematic interpretation to the words "reason to believe".....

Section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open.

6. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess. But re-assessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place.

7. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, Assessing Officer has power to re-open, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief.'

**12.** Before interfering with the proposed re-opening of the assessment on the ground that the same is based only on a change in opinion, the court ought to verify whether the assessment earlier made has either expressly or by necessary implication expressed an opinion on a matter which is the basis of the alleged escapement of income that was taxable. If the assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the assessing officer any opinion on the questions that are raised in the proposed re-assessment proceedings. Every attempt to bring to tax, income that has escaped assessment, cannot be absorbed by judicial intervention on an assumed change of opinion even in cases where the order of assessment does not address itself to a given aspect sought to be examined in the re-assessment proceedings.

The aforesaid case laws clearly supports the adjudication of Ld. CIT(A) on legal grounds. Therefore, adjudication of Ld. CIT(A), on legal grounds find our concurrence.

6. On merits also, we concur with the adjudication of Ld. CIT(A) that the assessee had duly discharged the onus u/s 68 to establish the identity of the lender, its creditworthiness as well as genuineness of the transactions. The debt was settled subsequently and no case of addition u/s 68 could be made out against the assessee. It is trite law that no addition could be made merely on the basis of suspicion, conjectures and surmises. Therefore, we see no reason to interfere in the impugned order on merits also.

7. In the result, the appeal stands dismissed.

*Order pronounced on 5<sup>th</sup> November, 2024*

**Sd/-**  
**(MAHAVIR SINGH)**  
उपाध्यक्ष / **VICE PRESIDENT**

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

चेन्नई Chennai; दिनांक Dated : 05-11-2024  
DS

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

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