

**आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'A' BENCH, CHENNAI**

**माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं**  
**माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**AND HON'BLE SHRI MANU KUMAR GIRI, JM**

**आयकर अपील सं. ITA No.561/Chny/2020**  
**(निर्धारणवर्ष / Assessment Year: 2009-10)**

<b>Shri P.V. Subramani</b> C-54, CMDA Truck Complex, GNT Road, Madhavaram, Chennai-600 110.	<b>बनम/</b> Vs.	<b>ACIT</b> Corporate Circle-1(3) Chennai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>ABBPS-8164-R</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओरसे/ <b>Appellant by</b>	:	Shri N. Arjun Raj (Advocate) - Ld. AR
प्रत्यर्थी की ओरसे/ <b>Respondent by</b>	:	Shri Ashwin D Gowda (Addl.CIT) - Ld. Sr. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	24-10-2024
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	06-11-2024

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2009-10 arises out of an order passed by Learned Commissioner of Income Tax (Appeals)-1, Chennai [CIT(A)] on 27-01-2020 in the matter of an assessment framed by the Ld. AO u/s.143(3) r.w.s 147 of the Act on 21-03-2013. The grounds raised by the assessee read as under: -

1. The order of the Commissioner of Income Tax (Appeals) - 1, Chennai dated 27.01.2020 in I.T.A.No.75/CIT(A)-1/2013-14 for the above-mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in sustaining the validity of the assumption of jurisdiction u/s 147 of the Act for passing the re-assessment order without assigning proper reasons and justification and ought to appreciate that the order of re-assessment under consideration was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

3. The CIT (Appeals) erred in sustaining the addition of Rs.5,00,00,000/- as unexplained credit u/s 68 of the Act while computing the taxable total income without assigning proper reasons is wrong, erroneous and bad in law.

4. The CIT (Appeals) failed to appreciate that having placed on record the relevant documents/details / information to establish the genuineness of the disputed credit, the presumption of the applicability of section 68 of the Act to justify the addition made by the Assessing Officer in such circumstances should be reckoned as bad in law.

5. The CIT (Appeals) failed to appreciate that the provisions of Section 68 of the Act had no application to the facts of the case especially in light of the admitted position of establishing the three facets of the conditions for discharging initial burden/onus on the Appellant as tabulated at Page 8 of the impugned order, thereby vitiating the related findings.

6. The CIT(Appeals) failed to appreciate that the findings recorded by the Assessing Officer in the remand report dated 3.5.2017 duly countered / explained in the reply filed before him on 21.03.2018 on the disputed issue should be accordingly considered as wholly unjustified in view of the mechanical adoption of such findings in para 6.3 of the impugned order.

7. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.

As is evident, the sole issue that fall for our consideration is addition made by Ld. AO u/s 68.

2. The Ld. AR, drawing attention to the various documents, advanced arguments and submitted that the assessee had duly discharged the requisite onus of Sec.68. Reliance has been placed on the decision of Hon'ble Supreme Court in the case of **Lovely Exports Ltd. (216 CTR 195 (SC))**. The Ld. Sr. DR, on the other hand, supported the orders of lower authorities and submitted that creditworthiness of the lender could not be proved by the assessee. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

### **Proceedings before lower Authorities**

3.1 The assessee is stated to be engaged in business of letting of cabs on hire. The assessee was Managing Director of an entity namely M/s

Cargrowings (Madras) Private Ltd. (CMPL). During assessment proceedings of CMPL, it was noted by Ld. AO that CMPL received share application money of Rs.5 Crores from the assessee and accordingly, to verify the same, the case of the assessee was reopened.

3.2 It transpired that the assessee let out his property located at Chembarambakkam covering an extent of 1 Acre and 53 Cents to another entity by the name M/s Safe Carwings Pvt. Ltd. (SCPL) vide lease agreement executed on 01-10-2009. Pursuant to the same, SCPL agreed for lease deposit of Rs.5 Crores and issued cheque in favor of the assessee during March, 2009. The said funds as deployed by the assessee were captured as Share Application money on asset side in Balance Sheet as on 31-03-2009 whereas rental deposit from SCPL was reflected on liabilities side. However, the said funds were stated to be mobilized and settled only during the month of September, 2009.

3.3 The Ld. AO noted that the land against which rental deposit was received was valued at Rs.165.66 Lacs and therefore, the lease deposit of Rs.5 Crores was unreasonable. The rental deposit was falsified claim of the assessee and the assessee could not prove the genuineness of the same. Since the nature and source of deposit was unexplained, the amount was added as unexplained cash credit u/s 68.

3.4 During appellate proceedings, the assessee filed bank statement, lease agreement and various other documents which were subjected to remand proceedings. The Ld. AO observed that the above amount was transacted between 01-09-2009 to 08-09-2009 and the same falls under AY 2010-11 and should be shown in the Balance Sheet As on 31-03-2010. Therefore, for this year, the assessee failed to explain the transaction in this year.

3.5 The assessee reiterated that the funds were mobilized and settled only in the month of September, 2009 and the assessee duly established the identity of the lender, genuineness of the transactions as well as creditworthiness of the lender. However, Ld. CIT(A) chose to confirm the action of Ld. AO against which the assessee is in further appeal before us.

### **Our findings and Adjudication**

4. From the facts, it emerges that the source of Share Application by the assessee in CMPL is stated to be rental deposit as received by the assessee from SCPL. The assessee let out his property located at Chembarambakkam covering an extent of 1 Acre and 53 Cents to (SCPL) vide Agreement to Lease which is executed on 01-10-2009. The copy of the same is on record. As per Clause-3 of the agreement, SCPL has agreed to pay one-time interest free refundable deposit of Rs.5 Crores in consideration of vacant and undisturbed possession of the property till the expiry of lease. SCPL further agree to pay monthly rental of Rs.5000/- besides lease deposit. Pursuant to the same, SCPL has advanced impugned amount during September, 2009 which is evidenced by bank statement as placed on record. The aforesaid deposit has further been advanced to CMPL. It could thus be seen that there is one-to-one correlation between rental deposit and share application money. However, this arrangement was proposed during January, 2009 and accordingly, the assessee has captured this transaction in its financial statements for the year ending 31-03-2009. The historical value of the property as per Balance Sheet is Rs.165.66 Lacs. However, the market value of this property is much more which was supported by the valuation report. Therefore, to allege that the assessee could not receive

deposit of such magnitude against less valued property, cannot be accepted. The claim of the assessee is duly substantiated by the documents on record.

5. As per the requirements of Sec.68, the assessee is required to prove the identity of the lender, genuineness of the transaction and creditworthiness of the lender. In the present case, all the three ingredients have duly been fulfilled by the assessee and therefore, the impugned addition could not be sustained. The Hon'ble Apex Court in the cited case law of **Lovely Exports Ltd. {(216 CTR 195 (SC)}** held that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. As per this decision, the onus of the assessee is discharged by furnishing PAN of the lender. It was further held that, if at all, the department would like to assess any income, the same could be done in the hands of the investor. In the present case, this onus to establish the source of share application money has duly been discharged by the assessee and it was the onus of revenue to establish that the deposit was nothing but unaccounted money of the assessee. In the absence of any such findings, the impugned addition is liable to be deleted. We order so. No other ground has been urged in the appeal.

6. The appeal stand allowed in terms of our order.

*Order pronounced on 6<sup>th</sup> November, 2024*

Sd/-  
(MANU KUMAR GIRI)  
न्यायिक सदस्य / JUDICIAL MEMBER

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

चेन्नई Chennai; दिनांक Dated : 06-11-2024  
DS

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

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