

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री जगदीश, लेखक सदस्य के समक्ष
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.2367, 2368 & 2395/Chny/2018
निर्धारण वर्ष /Assessment Years: 2012-13, 2013-14 & 2014-15

The Asst. Commissioner of
Income Tax,
Non Corporate Circle-20(1),
Chennai.

Vs. M/s. Kalaingar TV Pvt. Ltd.,
No.367/369, Anna Arivalayam,
Teynampet, Chennai-600018.
[PAN: AADCK 0898E]

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

Cross Objection Nos.124, 125 & 126/Chny/2018
(Arises in ITA Nos.2367, 2368 & 2395/Chny/2018)

निर्धारण वर्ष /Assessment Years: 2012-13, 2013-14 & 2014-15

M/s. Kalaingar TV Pvt. Ltd.,
No.367/369, Anna Arivalayam,
Teynampet, Chennai-600018.
[PAN: AADCK 0898E]

Vs. The Asst. Commissioner of
Income Tax,
Non Corporate Circle-20(1),
Chennai.

(अपीलार्थी/**Appellant/Cross Objector**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Assessee/Cross
objector by

: Shri P. Wilson, Senior Advocate &
Shri Sandeep Bagmar, Advocate

प्रत्यर्थी की ओर से /Department by

: Shri Premanand, CIT

सुनवाई की तारीख/Date of Hearing

: 22.08.2024

घोषणा की तारीख /Date of Pronouncement

: 13.11.2024

आदेश / ORDER

PER JAGADISH, A.M. :

Aforesaid three appeals filed by the Revenue and Cross
Objections (C.Os) filed by the assessee for Assessment Years (AYs)

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2012-13, 2013-14 & 2014-15 arises out of the identical orders of Learned Commissioner of Income Tax (Appeals)-14, Chennai [hereinafter "CIT(A)"] dated 30.05.2018.

2. The facts in all the three appeals of the Revenue are identical and issues are common hence, we proceed to pass a common order. For brevity, we shall take up the appeal in ITA No.2367/Chny/2018 for A.Y 2012-13 as lead case. The grounds of appeal raised by the assessee for A.Y 2012-13 are as under:

"1. The order of the learned CIT(A) is contrary to facts and circumstances of the case.

2.1 The learned CIT(A) erred in deleting the addition towards advertisement advance of Rs.8 Crs.

2.2 The learned CIT(A) erred in deleting the addition towards advertisement advance of Rs.8.5 Crs since the assessee failed to prove with any proof that the amount was utilized for regular business operation.

3.1 The learned CIT(A) erred in deleting the addition towards advertisement advance of Rs. 18 Crs and Double addition to the extent of Rs. 19.80 Crs.

3.2 The learned CIT(A) ought to have appreciated the fact that the assessee has not accepted the addition made by the assessing officer towards advertisement advance of Rs.18 Crs and Double addition to the extent of Rs.19.80 Crs for the assessment year 2011-12 and further appeal is pending before the Hon'ble ITAT.

3.3 The learned CIT(A) ought to have appreciated the fact that the addition was made on the basis of the charge sheet filed by the CBI based on the facts findings by the CBI

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3.4 The learned CIT(A) ought not to have decided the case before the disposal of appeal by the CBI Special Court as the issue has not attained finality and is still pending.

4. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.”

3. The brief facts of the case are that the assessee-company is engaged in broadcasting of television channel and incorporated on 04.06.2010. The assessee-company has received advertisement advance of Rs. 26.5 Cr. from M/s. Gemini Industries and Imaging Ltd. and other parties. The A.O has treated the advertisement advance of Rs. 26.5 Cr. as income for the current year and taxed in the year of receipt itself. The assessee in the return of income has shown revenue from advertisement of Rs. 19,80,50,919/- which has been appropriated from the advance of Rs. 150 Cr. received in the preceding year. The A.O while treating the advance received as income of the current year has not reduced income offered on the basis of services provided and appropriated from the advance received in the preceding year, as the assessee has not accepted the contention of Department in A.Y 2011-12 in which the advance was treated as income. On appeal, the Ld. CIT(A) has deleted the addition of advance of Rs.8.5 Cr. related to various parties as advance received were from parties which were not linked to the 2G spectrum scam and treated it as advance only. As

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regards to advertisement advance of Rs. 18 Cr. received from M/s. Gemini Industries and Imaging Ltd., the Ld. CIT(A) has held that the same was linked to 2G spectrum scam. However, he deleted the addition as the same has already been added in A.Y 2011-12 and confirmed by the Ld. CIT(A). As regard to advertisement income of Rs. 19.8 Cr. offered by the assessee in the return of income and also included by the A.O in assessing total income, the Ld. CIT(A) directed to delete the addition.

4. Ground No.1 is general in nature and requires no adjudication.

5. Ground No.2 is regarding deletion of the addition of advertisement advance of Rs 26.5 Cr on receipt basis.

6. The Ld. Departmental Representative (DR) before us has argued that the case was relating to 2G spectrum scam and the A.O has correctly taxed the advertisement advance on the receipt basis as there was no rational of receiving of huge advance when the market share of assessee's channel is only 7% and the leading channel SUN TV, whose market share is 70% and has not received any advertisement advance. He accordingly prayed for confirming the assessment order.

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7. The Ld. Authorized Representative (A.R) of the assessee has submitted that the assessee follows mercantile system of accounting and has offered income as per accounting principle on the basis of services rendered and bills received which is Rs. 19.5 Cr. out of advance received. In support of the above, the Ld. AR has submitted a copy of agreement for advance and invoice for advertisement and ledger account copy. The Ld. AR has submitted that the A.O in A.Y 2011-12 has added advertisement advance of Rs. 150 Cr. which included advertisement advance of Rs. 60 Cr. from India Cements Ltd., Rs. 65 Cr. from United Spirits Ltd. and Rs. 25 Cr. from Gemini Industries and Imaging Ltd. The Ld. AR has further submitted that the A.O cannot tax the advance receipt as well as the amount offered on the basis of invoices. The Ld. AR has relied on the decisions of Hon'ble Madras High Court in the cases of CIT vs. K.E. Gnanavelraja [2014] 43 taxmann.com 292 (Mad.) and CIT vs. Coral Electronics 143 Taxman 481 (Mad.) and other cases in support of his contention.

8. We have heard the rival submissions, and perused the materials available on record. The assessee-company was incorporated on 04.06.2010 and has received Rs. 200 Cr. during December, 2008 to August, 2009 from M/s. Cineyug Media and Entertainment Pvt. Ltd.

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which was alleged to be illegal payments made by M/s. Dynamics Realty relating to 2G spectrum scam through many pass through companies. The assessee-company subsequently in Financial Year 2010-11 has repaid the aforesaid amount of Rs. 200 Cr. along with interest. The repayment of loan was sourced from advertisement advance received from M/s. India Cements Ltd. of Rs. 60 Cr. M/s. United Spirits Ltd. Rs. 65 Cr. M/s. Gemini Industries and Imaging Ltd. Rs. 25Cr. and loan of Rs. 83 Cr. from M/s. Anjugam Films Pvt. Ltd. The A.O in A.Y 2011-12 had held the advertisement advance received as income for the year. The assessment order has been subsequently annulled by Hon'ble High Court vide order dated 18.07.2022 in Writ Petition Nos. 9801 of 2019 & 1451/2020 and WMP Nos.1438, 1717, 1719 of 2020 and 10403 of 2019. During the year, the assessee-company has received advertisement advance of Rs. 18 Cr. from M/s. Gemini Industries and Imaging Ltd. at Rs. 8.5 Cr. from various other parties and shown in the balance sheet as liabilities. The assessee-company in the profit and loss account has shown advertisement revenue of Rs. 19.6 Cr. which was appropriated from advance received in the preceding year. The A.O has treated the advertisement advance as revenue for the year on receipt basis. The assessee-company has submitted copy of agreement with M/s. Gemini

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Industries and Imaging Ltd. as per which assessee company was to be paid Rs 25,00,00,000 for advertisement five years commencing from April 1, 2011 . The A.O has added the entire amount of Rs. 25 Cr. in the assessment for A.Y 2011-12 relating to M/s. Gemini Industries and Imaging Ltd. During the year, the assessee has received advance of Rs.18 Cr. from M/s. Gemini Industries and Imaging Ltd. and the advance has been added as income. The Ld. CIT(A) has deleted the addition as the same has been added in A.Y 2011-12.

9. The assessee company has maintained account by following mercantile system of accounting and has credited income on accrual basis and submitted copy of bills in support of services rendered. However AO has taxed the advance received as well as income shown on accrual basis. The Hon'ble Madras High Court in the case of CIT vs Coral Electronics (supra) has held that assessee had right over amount deposited only when service was done and till then it could not be considered as income of the assessee and was not excisable to tax. On identical facts Honorable Madras High Court in the case of CIT Central Circle Chennai vs K E Gnanavelaraja 43 taxmann.com 292(Madras), where assessee was following mercantile system of accounting, advance received for distribution of film was treated as

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liabilities in the balance sheet in the year of receipt and offered as income in the year of distribution and AO has taxed the income in the year of receipt, has upheld the order of appellate authorities deleting the addition. We, therefore uphold order of Ld. CIT(A) in deleting the advance of Rs 26.5 Cr. treated as income.

10. Ground No.3 is against the order of Ld CIT(A) deleting the income of 19.8 Cr. offered by assessee on the ground that same income has been taxed by the AO in the preceding year as advertisement advance and confirmed by the Ld CIT(A) .

11. The Ld D.R has contended that assessee-company itself has offered the said income as advertisement income. As regard to same income has been taxed in preceding year, the Ld. D.R has argued that assessee has not accepted the addition of advertisement advance made in preceding year, therefore AO was justified not to reduce the income already offered. The Ld AR on the other hand supported the order of Ld. CIT(A) and argued that AO once has taxed the advance on receipt basis, taxing the same on accrual basis amounts to double addition.

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12. We have considered the rival submission and perused the material on record. The assessee company in the return of income has shown advertisement income of Rs.19.8 Cr. on the basis of advertisement service provided and bill issued. The contention of assessee that same income has been taxed in A.Y 2011-12 as advance is not tenable as the assessment order passed by AO for A.Y. 2011-12 has been annulled by Hon'ble High Court vide order dated 18.07.2022 in Writ Petition Nos. 9801 of 2019 & 1451/2020 and WMP Nos.1438, 1717, 1719 of 2020 and 10403 of 2019. Further , for A.Y 2012-13, after considering the copy of agreements, bills and ledger accounts, we have held that advertisement advance of Rs.26.5 Cr. is not to be treated as income and upheld the deletion made by Ld CIT(A). We, therefore do not agree with the finding of the Ld. CIT(A) that the income offered of Rs.19.80 Cr. is double addition. Accordingly, the direction of Ld CIT(A) to delete the addition of Rs.19.80 Cr. is reversed. The ground of revenue is accordingly allowed.

13. The Revenue has also raised ground that the Ld. CIT(A) should not have decided the case before the disposal of appeal by the CBI Special Court as the issue has not attained finality and is still pending.

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We do not find any merit in the ground as AO has not relied on any material relating the CBI case and therefore, has no bearing on the present case. Ground of revenue is accordingly dismissed.

ITA Nos. 2368 & 2395/Chny/2018 for A.Ys 2013-14 & 2014-15:

14. We find that the identical ground of double addition of the advertisement income as in ground No.3 for A.Y 2012-13, has been raised in Revenue's appeals for A.Ys 2013-14 & 2014-15 also and accordingly, our adjudication above in A.Y 2012-13 is *mutatis mutandis* applies therein also. Therefore, for the similar reasons, the appeals filed by the Revenue in ITA Nos.2368 & 2395/Chny/2018 are allowed .

C.O Nos.124, 125 & 126/Chny/2018 for A.Ys 2012-13, 2013-14 & 2014-15:

15. Since, we have already decided the appeals filed by the Revenue, and arguments in C.O considered, the cross objections filed by the assessee have become infructuous. Hence, the C.Os filed by the assessee are dismissed as infructuous.

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16. In the result, all the three appeals filed by the Revenue are partly allowed and all the three C.Os filed the assessee are dismissed as infructuous.

Order pronounced on 13th November, 2024.

Sd/-
(यस यस विश्वनेत्र रवि)
(SS Viswanethra Ravi)

न्यायिक सदस्य / Judicial Member

Sd/-
(जगदीश)
(Jagadish)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 13th November, 2024.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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