

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष

BEFORE SHRI GEORGE GEORGE K, HON'BLE VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपीलसं./ITA No.: 568/Chny/2024

निर्धारणवर्ष / Assessment Year: 2005-06

Shriram Chits (India) Private
Limited,
(Formerly known as Shriram Chits
Karnataka Private Limited),
145, Santhome High Road,
Mylapore, Chennai – 600 004.

[PAN: AACCS-2078-R]

(अपीलार्थी/Appellant)

Deputy Commissioner of
Income Tax,
Central Circle -1(4),
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: Shri. R. Sivaraman, Advocate

प्रत्यर्थीकीओरसे/Respondent by

: Ms. Gouthami Manivasagam, JCIT

सुनवाई की तारीख/Date of Hearing

: 12.11.2024

घोषणा की तारीख/Date of Pronouncement

: 27.11.2024

आदेश / O R D E R

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals), Chennai-18, dated 09.01.2024 and pertains to assessment year 2005-06.

2. The assessee has raised the following grounds of appeal:

"1. The order of the CIT(A) in I.T.A No. NFAC/2004-05/10151397 dated 09.01.2024 is against law and facts of the case.

2. The CIT(A) erred in not adjudicating the ground that the Assessing Officer erred in proceeding from the total income of Rs.8,36,313/- as per the revision order dated 30.09.2011 instead of proceeding from the total Loss of Rs.1,10,49,731/-(Total income as per revision order dated 30.09.2011 Rs.8,36,313/-(minus)Addition remitted back by ITAT Rs.1,18,86,044/-, as the Assessing Officer did not decide the issue of disallowance u/s.40(a)(ia) within the time limit which was remitted back by the Hon'ble ITAT in their orders in ITA No.1386/Bang/2010 dated 31.10.2011) holding that the appeal filed before the undersigned is w.r.t. the order u/s.143(3) r.w.s.260 dated 31.03.2022 and the assessee can only agitate on the additions made in this order only i.e. bid loss and it cannot agitate on the issue that the total income has not been determined as per the Hon'ble ITAT's order and income has been taken as per the giving effect to the CIT(A)s order via this appeal and hence this issue per se does not emanate from the additions made in the impugned order u/s.143(3) r.w.s.260 dated 31.03.2022 which has been appealed against.

3. The CIT(A) erred in not appreciating the fact that the Hon'ble ITAT Bangalore Bench 'A' Bangalore in I.T.A. No.1386 / BANG / 2010 dated 31.10.2011 had remitted back the issue of disallowance u/s.40(a)(ia) to the file of the Assessing Officer with the direction to verify the details and decide the issue in accordance with law after observing that having heard both the parties and having gone through the material on record, we find that the assessee has raised all the above contention and also filed all the details before the assessing authority and also before the CIT(A) and that the Assessing Officer failed to give effect to this direction within the time limit and hence the disallowance u/s.40(a)(ia) will not survive.

4. The CIT(A) erred in not appreciating the fact that the issue of proceeding from a higher total income in computing the total income of the assessee is very much an issue emanating from the order u/s.143(3) r.w.s.260.

5. The CIT(A) erred in disposing off the appellant's ground regarding charging of interest u/s.234B holding that the issue relating to interest u/s.234B being consequential in nature the Assessing Officer shall take into account the same as per law while giving effect to this order.

6. The CIT(A) erred in not adjudicating the ground that the Assessing Officer erred in charging of interest u/s.234B for the period from 01.04.2005 to 31.03.2022(204 months) i.e. from

01.04.2005 to the date of completion of remitted back assessment i.e. 31.03.2022 (remitted back by the High Court) instead of charging interest u/s.234B upto 24.07.2007, being the date on which the original assessment was completed and the ground that the Assessing Officer having charged interest u/s.234B upto 31.03.2022 ought to have taken into account the taxes paid on 30.01.2008 of Rs.1,01,78,034/- on 25.03.2008 of Rs.35,00,000/- on 31.03.2008 of Rs.46,50,883/- and on 17.02.2009 Rs.18,54,298 as they represented tax paid otherwise mentioned in sub section of (2) of section 234B by charging interest u/s.234B.

7. For these and other grounds that may be adduced before or at the time of hearing, the Hon'ble ITAT may be pleased to allow our appeal."

3. The brief facts of the case are that the assessee is carrying on the business of chit with branches in Karnataka. The private limited company was amalgamated to Shriram Chits India Pvt Ltd w.e.f. 01.04.2017. For the assessment year 2005-06, the assessee filed its return of income on 31.10.2005, admitting a total loss of Rs.2,36,06,500/-. The assessment was completed u/s. 143(3) of the Act on 24.12.2007 with a total income of Rs.13,58,54,646/- by making certain additions

a. Foreman dividend	Rs. 90,78,885/-
b. Bid loss	Rs.7,41,35,744/-
c. Bad debts	Rs.4,94,87,520/-
d. Royalty	Rs. 54,25,265/-
e. Disallowance u/s. 40(a)(ia)	Rs.1,21,52,751/-
f. Dividend relating to removed subscribers	Rs. 76,88,630/-
g. Other expenses	Rs. 15,02,351/-

The Id.CIT(A)-3, Bangalore, in its order dated 06.09.2010 deleted certain additions as detailed below:

a. Bid loss	Rs.7,41,35,744/-
b. Bad debts	Rs.4,94,87,520/-
c. Royalty	Rs. 54,25,265/-
d. Disallowance u/s. 40(a)(ia)	Rs.1,21,52,751/-
e. Dividend relating to removed subscribers	Rs. 76,88,630/-

4. Later, the Assessing Officer passed an order giving effect to Id.CIT(A) order on 30.11.2019 and arrived at a total income of the assessee as Rs.8,36,313/-. The assessee and the revenue filed cross appeals before the ITAT, Bangalore and the ITAT in ITA No.1386/Bang/2010 dated 31.10.2011 dismissed the Department's appeal and on assessee's appeal, the ITAT Bangalore remitted back the issues relating to disallowance u/s.40(a)(ia) of the Act at Rs.1,03,83,693/- and other expenses at Rs.15,02,351/- totaling to Rs.1,18,86,044/- to the Assessing Officer with a following direction:

"Having heard both the parties and having gone through the material on record, we find that the assessee has raised all the above contention and also filed all the details before the assessing authority and also before the CIT(A). We find that though this evidence goes to the root of the matter and the said evidence has not been considered or appreciated or verified by any of the authorities below. In view of the same, we remand the issue to the file of the AO with a direction to verify the details and decide the issue in accordance with the law. Needless to mention that the assessee shall be given a fair opportunity of hearing. Accordingly, we remand the issue to the file of the AO and this ground of the assessee is allowed."

5. The Department filed an appeal before the Hon'ble Karnataka High Court on the issue of 'bid loss' against the order of the ITAT and the Hon'ble Karnataka High Court remitted back the issue to the Assessing Officer to decide the issue afresh.

6. The Assessing Officer completed the remitted back assessment u/s.143(3) r.w.s. 260 of the Act on 31.03.2022 by sustaining the addition to the extent of Rs.3,31,92,107/- towards 'bid loss'. While computing the total income, the Assessing Officer has proceeded from the total income at Rs.8,36,313/- as per revision order dated 30.09.2011 giving effect to the order u/s.250 of the Act of the Id.CIT(A), which is inclusive of the addition of Rs.1,18,86,044/- which has been remitted back the issue to the Assessing Officer by the ITAT, Bangalore dated 31.10.2011. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Id.CIT(A), Chennai-18.

7. However, the Id.CIT(A) after perusal of submissions of the assessee did not adjudicate the issue and disposed off the appeal of the assessee by directing the assessee to take up the

matter with the Assessing Officer separately with regard to order giving effect of the ITAT order and with regard to issue in respect of interest u/s. 234B of the Act, directing the Assessing Officer to levy the interest as per law as interest u/s. 234B of the Act is consequential in nature by holding as under:

"6.3 It is seen that the present appeal filed before the undersigned is with respect to the order u/s 143(3) r.w.s 260 dated 31.03.2022 and the assessee can only agitate on the additions made in this order only ie. bid loss. It cannot agitate on the issue that the total income has not been determined as per the Hon'ble TAT order and income has been taken as per the giving effect to the CIT(A) order via this appeal. Hence this issue per se does not emanate from the additions made in the impugned order u/s 143(3) r.w.s 260 dated 31.03.2022, which was appealed against flowever, it is a fact that in the order u/s 143(3) r.w.s 260 dated 31.03.2022, the AO proceeded from the income as per revision order giving effect to CIT(A) order dated 30.9.3011 of Rs.8,36,313, and not from the income arrived in the order giving effect to the Hon'ble ITAT order dated 31.11.2011. The assessee is directed to take up the matter of giving effect to the order of the ITAT dt:31.11.2011 with the AO separately and furnish all the details required before the AO within one month from the receipt of this order and the AO shall arrive at the correct income as per law to proceed with for modifying his order u/s 143(3) r.w.s 260 dated 31.03.2022 accordingly. The grounds in this regard are disposed of accordingly.

6.4 With reference to the ground relating to giving set off of loss pertaining to the AY 2004-05 of Rs.4,29,30,878/- against the income of the appellant for the AY 2005-06, the AO is directed to verify the back records and take action accordingly as per law while giving effect to this order.

6.5 Other issue relating to interest u/s.234B being consequential in nature, the Assessing Officer shall take into account the same as per law while giving effect to this order."

8. Aggrieved by the order of the Id.CIT(A), the Id.AR of the assessee stated that the Assessing Officer has erred in proceeding with the order giving effect of the Hon'ble High Court of Karnataka from the income as per revision order giving effect of the Id.CIT(A) order dated 30.09.2011 of Rs.8,36,313/- instead of total loss of Rs.1,10,49,731/- i.e., the computed income of the assessee as per the directions of the ITAT order in the case of assessee, which the department has failed to furnish the copy of order giving effect of the ITAT order dated 31.10.2011. Further, the Id.AR of the assessee stated that the Id.CIT(A) has erred by not adjudicating the issue by directing the assessee to take up the matter of order giving effect to the order of the ITAT dated 31.10.2011 separately by passing an impugned order. Further, the Id.AR stated that the order of the ITAT dated 31.10.2011 of the assessee's appeal should have been given effect as per the directions in the said order within 12 months from the end of the financial year in which the order u/s.254 of the Act is received by the Assessing Officer as per section 153(v) of the Act. Further, he stated that since the department has not furnished any such order for having given effect to the order of the ITAT and the time has lapsed on 31.03.2013 (12 months from the end of the financial year in

which the ITAT order was passed) to pass such order and hence, prayed for considering the total income as per ITAT directions as total loss of Rs.1,10,49,731/- to proceed with the order giving effect of the Hon'ble Karnataka High Court.

9. We have heard the rival contentions, gone through the records, orders of lower authorities and order of the Hon'ble High court of Karnataka. We note that the assessee filed its return of income by declaring a loss of Rs.2,36,06,500/- and the AO has completed the scrutiny assessment and passed an assessment order passed u/s.143(3) of the Act on 24.07.2007 by making certain additions and computed the total income of Rs.13,93,42,530/-.

- The assessee challenged the order of AO before the Id.CIT(A)
- The Id.CIT(A) deleted certain additions to the tune of Rs.13,85,08,217/- and sustained addition to the extent of Rs.90,87,885/- foreman's dividend and Rs.1,18,86,044/- no deduction of TDS and other expenses in the order dated 06.09.2010.
- The assessee challenged the CIT(A) order to the extent of Rs.1,18,86,044/- for no deduction of TDS and other expenses

and the revenue challenged the deleted additions to the tune of Rs.13,85,08,217/-before the Tribunal

- The AO (The DCIT, Circle – 12(3), Bangalore) passed order giving effect to the order of the CIT(A), Bangalore on 30.09.2011 and arrived a total income of Rs.8,36,313/-.
- The Tribunal in its order dated 31.10.2011 vide ITA No.1368/Bang/2010 and ITA No.1547/Bang/2010 dismissed the appeal of the revenue and remanded the issue to the file of the AO with a direction to verify the details and decide the issue in accordance with the law.
- Aggrieved by the order of the Tribunal on the issue of bid loss, the revenue filed an appeal in the Hon'ble High court of Karnataka, Bangalore vide ITA No.66 of 2012 on 07.12.2020 and the same has been remitted back to the AO to decide the issue afresh after granting opportunity of being heard to the assessee.
- The AO completed the remitted back assessment u/s.143(3) r.w.s.260 of the Act on 31.03.2022 by restricting the disallowance of bid loss to Rs.3,23,55,794/- and computed the income commencing from the order giving effect dated 30.09.2011 (based on the order of Ld.CIT(A)) of Rs.8,36,313/-.

10. Therefore, the AO has erred in computing the total income by considering the income arrived from the order giving effect to the Id.CIT(A) dated 30.09.2011 instead of considering the order giving effect ought to have made in accordance with the ITAT, Bangalore order, which was supposed to have passed by the AO on or before 31.03.2013 (i.e.12 months from the end of the financial year in which the ITAT order dated 31.10.2011 was passed). Since, the revenue has failed to furnish any order giving effect passed by the AO as per the ITAT order dated 31.10.2011, in our considered view the Total income as per ITAT order to be considered by the AO shall be as follows:

Total income as per the OGE dated 30.09.2011 Rs.8,36,313/-

Less: Disallowances remitted back to AO by
the order of the ITAT, Bangalore Rs.1,18,86,044/-

Assessed Income as per OGE of ITAT order (Rs.1,10,49,731/-)

11. In light of the above, we direct the AO to recompute the total income by considering the loss of Rs.1,10,49,731/- computed in accordance with the ITAT order, instead of Rs.8,36,313/- as considered by the AO in his computation of income. Hence, we allow the ground nos.2,3 & 4 of the assessee.

12. The next issue raised by the assessee in ground no.5 & 6 is with regard to levying interest u/s.234B of the Act upto the date of order giving effect i.e. March 2022 i.e. from 01.04.2005 to the date of completion of remitted back assessment i.e. 31.03.2022 (remitted back by the High Court) instead of charging interest u/s.234B upto 24.07.2007, being the date on which the original assessment was completed.

13. The Id.AR stated that the AO has erred in computing the interest u/s.234B of the Act upto March 2022 and also has not reduced the taxes paid otherwise as per section 234B(2) of the Act and the Id.CIT(A) has not adjudicated the same by stating it as consequential in nature and therefore prayed before us to direct the AO to compute the interest upto the date of regular assessment i.e. 24.07.2007.

14. The Id.DR fairly agreed that there is a error in levying interest u/s.234B of the Act.

15. We have heard the rival contentions, gone through the records and orders of the authorities. We note that the AO has given order giving effect u/s.143(3) r.w.s.260 of the Act dated

31.03.2022 for the A.Y. 2005-06, as per the decision of hon'ble High court of Karnataka by levying interest u/s.234B of the Act, on the assessed tax from April 2005 to March 2022 (204 months).

16. As per the provisions of section 234B of the Act, where advance tax paid by the assessee is less than 90% of the assessed tax, he shall be liable to pay simple interest @ 1% every month or part of the month from 1st day of April next following such financial year to the date of determination of total income u/s.143(1) and where a regular assessment is made to the date of such regular assessment, on an amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid as afore said falls short of the assessed tax.

17. Therefore, we find that the AO has erred in computing the interest u/s.234B of the Act upto March 2022 instead of calculating the same upto the date of regular assessment i.e. 24.12.2007. Hence, we direct the AO to recompute the interest u/s.234B of the Act, after reducing the taxes paid otherwise

mentioned in subsection (2) of section 234B of the Act and allow the ground no.5 & 6 of the assessee.

18. In the result the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the court on 27th November, 2024 at Chennai.

Sd/-
(जॉर्ज जॉर्ज के)
(GEORGE GEORGE K)
उपाध्यक्ष /**VICE PRESIDENT**

Sd/-
(एस. आर.रघुनाथा)
(S. R. RAGHUNATHA)
लेखासदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated, the 27th November, 2024

JPV

आदेशकीप्रतिलिपिअप्रेषित/Copy to:

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