

आयकर अपीलीय अधिकरण “सी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” 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

1. आयकर अपील सं. ITA No.1132/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2015-16)

&

2. आयकर अपील सं. ITA No.1133/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2016-17)

M/s. Sakthi Finance Holdings Ltd. #62, Dr.Nanjappa Road, Coimbatore-641 018.	बनान / Vs.	DCIT Central Circle-2, Coimbatore.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAGCS-8531-H		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri R. Venkata Raman (CA) - Ld.AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri R. Clement Ramesh Kumar (CIT) -Ld. DR

सुनवाईकी तारीख/ Date of Hearing	:	20-09-2024
घोषणाकी तारीख / Date of Pronouncement	:	10-12-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AY) 2015-16 and 2016-17 were heard along with other appeals of assessee’s group. It was admitted position that the facts are *pari-materia* the same and our adjudication therein would equally apply to these appeals also. In the above background, first, we take up appeal for AY 2015-16 wherein the grievance of the assessee is two-fold i.e., (i) Addition of

alleged on-money payment for Rs.39.05 Lacs; & (ii) Addition of undisclosed income based on loose sheets.

2. On the basis of certain noting as found recorded in classmate notebook which was seized vide ANN/SFL/SM/B&D/S-1, Ld. AO alleged that the assessee paid on-money of Rs.39.05 Lacs. Accordingly, the same was added as undisclosed income of the assessee. The Ld. CIT(A) confirmed the same against which the assessee is in further appeal before us.

3. This issue has been decided by us in assessee's favor in group cases ITA Nos.1161/Chny/2024 & ors. for AYs 2014-15 & 2015-16 as under: -

Our findings and Adjudication

5. Upon perusal of factual matrix, it could be seen that the impugned addition is based on notings made by Smt. R. Geetha in classmate notebook. During the course of search, her statement was recorded from her wherein her reply was as under: -

Ans. Shri S. Velusamy, Senior President (Operations) of M/s Sakthi Finance Ltd. directs me to mobilize cash for purchase of lands. In turn I direct the branch managers in Coimbatore and Pollachi to mobilize the cash from customers. The cash mobilized by all the branches are handed over to Shri S. Senthil Kumar AGM (Finance & Accounts) M/s Sakthi Finance Ltd. Only for the period from January, 2014 to May, 2014, Shri B. Easwaran, Sr. Manager (Finance & Accounts) of M/s Sakthi Finance Ltd. has collected the cash. The customers are issued acknowledgement slips for receipt of cash. The cash are taken from customers as deposits and are paid interest @11% to 12% p.a. The tenure of the deposits being for 12, 24, 26 and 60 months. The acknowledgement slips contain three copies of which one copy is given to the customers, the second copy to the accounts along with the cash and the third copy is maintained at the respective branches. The cash received from the customers are returned to them in cash with interest. All these cash received and paid are not accounted in the books of accounts of any of the group companies of Sakthi Finance group of companies. These cash deposits received from the customers of various branches are kept at the head office with Mr. S. Senthil Kumar, AGM (Finance & Accounts) who keeps the record of cash collections. As per my knowledge these cash deposits have been utilized for paying on money for the purchase of lands at Nanjundapuram consisting of 2.5 acres, a land property at CODISSIA measuring 10 acres and land at Race Course Road, Coimbatore near Sahardaambal Temple measuring 3.5 acres (for which only advance has been paid) in the name of M/s Sakthi Realty Holdings Ltd.

Similar is the statement of Smt. N. Rajeshwari (Branch Manager) who confirmed that cash deposits were being mobilized from customers. The deposition made by Smt. R. Geetha

has been confirmed by Shri Veluswamy as well as Shri Easwaran (Sr. Manager, Accounts) and Shri S. Senthil Kumar (AGM, Finance & Accounts). Finally, the director Shri T, Rajkumar also stated that the aforesaid amounts were cash deposits received from various customers. The Ld. AO also observed that roughly half of the cash deposits and refunds were not recorded in the regular books. The cash deposits were received from various branches of SFFSL and NCDs would be issued by the assessee as well as another group entity. At the time of refund, NCDs would be taken back and acknowledgement slips certificates would be destroyed periodically. The assessee as well as group entity is stated to have received aggregate deposits of Rs.210.10 Lacs during captioned AYs. In the background of seized material and depositions / admissions made by various persons, Ld. AO added the aforesaid deposits as income of the assessee. However, from the facts, it clearly emerges that these are deposits from customers which represent liability for the assessee. The assessee has mobilized deposits from customers against interest ranging from 11% to 12% p.a. and subsequently, the same are refunded back to the customers and deposit slips are destroyed periodically. Clearly, the deposits are in the nature of liabilities for the assessee and do not represent the income of the assessee. The deposits have duly been refunded as per the tenure considering the *modus-operandi* adopted by the assessee. This being the case, these deposits would not partake the character of income for the assessee rather the same represent a liability for the assessee which could not be added as its income.

6. Another pertinent fact is that such deposits are not recorded in the regular books of accounts and therefore, the provisions of Sec.68 could also not be invoked to make impugned addition since the credit has to be in the books of accounts. Secondly, the identity of the depositors and the source of deposits is clearly established in the data maintained by Shri S. Senthil Kumar in the laptop computer. Therefore, this addition could not be made in the hands of the assessee u/s 68 also.

7. Considering the facts and circumstances of the case, the impugned addition made in all the three appeals stand deleted. No other grounds have been urged in the appeals.

8. All the three appeals stand allowed in terms of our above order.

Facts being *pari-materia* the same, taking the same view, we delete the impugned addition of Rs.39.05 Lacs and allow the corresponding grounds as raised by the assessee.

4. Based on certain excel sheet as found from the laptop of Shri Senthilkumar and after perusing statements made therein, Ld. AO considered the deposits of Rs.53.04 Crores as the income of the assessee. The same was upheld by Ld. CIT(A) against which the assessee is in further appeal before us.

5. This issue has been decided by us in assessee's favor in ITA Nos.1163/Chny/2024 for AY 2016-17 as under: -

Our findings and Adjudication

5. From the facts, it emerges that the only primary evidence which has led to impugned addition is excel sheet titled as "Corpus" as found from the laptop of Shri Senthil Kumar. The copy of the same has been placed on record at Page Nos. 1 to 36 of the paper-book. Upon careful consideration of the same, it could be seen that there is inflow of cash from various parties and there is also outflow of cash under some abbreviations. The parties from whom deposits have been received are identified by clear names / description. The outflow of cash entries also bear incentives / interest paid by assessee to various parties. The assessee has refunded various amounts to lenders from time to time. A careful perusal of these entries would show that inflow of cash is primarily deposits / advances received from various persons by different branches of the assessee. The Ld. AO has considered these deposits as the income of the assessee and taxed the receipts considering the same to be the unaccounted income of the assessee. The same is in contrast to the fact that the seized material also contain the details of refund as well as payment of incentive / interest. It could be seen that the assessee is engaged in real estate business and it would have received land advances from prospective buyers so as to carry out its business activities. In our considered opinion, the conclusion of Ld. AO that these receipts constitute the income of the assessee is clearly opposed to nature of entries as recorded in the seized material. It is trite law that the purpose of assessment is to determine the correct income of the assessee and only real income could be taxed. No addition could be made on mere suspicion, conjectures or surmises.

6. Our aforesaid conclusion is supported by the fact that the excel sheet was found from the Asus Laptop belonging to Shri Senthilkumar. The sheet contains date-wise deposits of cash along with the names of the depositors and summary of cash deposits made with the assessee- company as well as with SFHL. The excel sheet also contains the details of application made out of the funds so received from the depositors. The outflow entries, inter-alia, include the entries of incentive / interest as well as refund made to the depositors. Shri Senthilkumar admitted that the laptop belonged to him and the excel sheet was maintained by him for storing the details of cash deposits received from customers on various dates for the purpose of reporting to Shri Veluswamy (Senior President-Operations) at regular intervals. The same was confronted to Shri Velusamy who made similar admission. Thus, both the statements are in agreement with each other and the perusal of the same would suggest that the impugned inflow of cash is nothing but deposits as received from various customers at different branches. The deposits represent liabilities which are to be repaid by the assessee. By no stretch, a conclusion could be drawn that the same would represent unaccounted income of the assessee and the assessee has written some random names to record these deposits. Unless a finding has been rendered that such deposit represent unaccounted income of the assessee, no such addition could have been made in the hands of the assessee.

7. Proceeding further, the secondary evidence that is available with Ld. AO is the affidavit filed by Shri T. Rajkumar. However, during search, no incriminating material is found which would suggest that the assessee was in possession of any unaccounted asset which is represented by such unaccounted receipts. In fact, the assessee furnished reconciliation statements during assessment proceedings wherein it was established that the refunds were processed to the tune of Rs.36.89 Crores. As per seized sheet, the cash receipts up-to 31-05-2015 were Rs.58.43 Crores being advances received towards real estate activity of the company. Out of this, sum of Rs.20.96 Crores had already been refunded to the concerned parties. The detail of such refunds was duly furnished to Ld. AO. The confirmation of land advances with respect to remaining sum of Rs.37.47 Crores was also furnished. Having furnished such statements, the assessee in our considered opinion,

had duly discharge the primary onus of proving that the deposits, in fact, represent liabilities for the assessee. The onus was on Ld. AO to rebut the same. However, Ld. AO has simply gone by the statements made by Shri Senthil Kumar, Shri Velusamy and affidavit of Shri T. Rajkumar without carrying out any independent investigation to bring on record any concrete material to rebut the contentions as made by the assessee. It is another fact that Ld. AO has not even otherwise acted on the averments made in the affidavit and already disregarded the same while framing the assessment.

8. We also find that during the course of assessment proceedings, the assessee had also produced the list of parties from whom the deposits of Rs.37.47 Crores was stated to be received. Out of the same, fifty persons were selected randomly by Ld. AO and the assessee was asked to produce the confirmations from them. The assessee furnished confirmation from all of them. From the list of person who was refunded the deposits, seven persons were summoned. Three persons appeared and confirmed the transactions. The fact the summons were returned back or the fact that the lenders lacked creditworthiness could not be held against the assessee since all these were undisclosed deposits and the depositors may not be forthcoming to confirm the transactions. Nevertheless, the aforesaid fact would not change the character of the receipts in the hands of the assessee. In such a case, having furnished the details of depositors, it would not be the onus of the assessee to prove the creditworthiness of each of the lenders. Further, the provisions of Sec.68 could be invoked only in a case when there is cash credit in the regular books of accounts as maintained by the assessee and the same remain unexplained to the satisfaction of lower authorities. The same is not the case here.

9. Finally, considering the entirety of facts and circumstances of the case, the impugned addition is liable to be deleted. We order so. The corresponding grounds stand allowed accordingly.

Facts being *pari-materia* the same, taking the same view, we delete the impugned addition and allow the corresponding grounds as raised by the assessee. The appeal stand allowed.

6. The sole issue in AY 2016-17 is addition made by Ld. AO based on certain excel sheet as found from the laptop of Shri Senthilkumar. The addition has been confirmed by Ld. CIT(A) against which the assessee is in further appeal before us. Facts *qua* the issue being *pari-materia* the same as in AY 2015-16, taking the same view, we delete the impugned addition and allow the appeal of the assessee.

7. Both the appeals stand allowed.

Order pronounced on 10th December, 2024

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

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

चेन्नई Chennai; दिनांक Dated :10-12-2024
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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