

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA-1762 / Chny/2024, Assessment Years-2011-12

आयकर अपील सं./CO-53 / Chny/2024, Assessment Years-2011-12

Assistant Commissioner of Income
Tax, Corp-Circle-1(1)
Chennai.

Reji Abraham,
No.113, Janapriya Crest,
Pantheon Road,
Egmore,
Chennai – 600 008.
[PAN: ADQPR6864A]

आयकर अपील सं./CO-53 / Chny/2024, Assessment Years-2011-12

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(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by

: Mr. N.Arjun Raj, Advocate.

प्रत्यर्थी की ओर से /Revenue by

: Mr.Nathala Ravi Babu, CIT

सुनवाई की तारीख/Date of Hearing

: 28.02.2025

घोषणा की तारीख /Date of Pronouncement

: 23.04.2025

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

The below mentioned appeals have been filed by the
Revenue for AY-2011-12 and AY-2011-12 contesting the order of Ld.
First Appellate Authority indicated Column-E, herein below:-

S. No.	Appeal Nos.	AYs	Appellant	CIT(A) Order Details	Respondent
A	B	C	D	E	F
1	ITA No. 1762 / Chny / 2024	2011-12	Assistant Commissioner of Income Tax, Chennai.	DIN & Order No. ITBA / NFAC / S / 250 / 2023-24 / 1060774681(1) dated 12.02.2024	Reji Abraham, No.113, Janapriya Crest, Pantheon Road, Egmore, Chennai – 600 008. [PAN: ADQPR6864A]
2	CO No. 53 / Chny / 2024	2011-12		DIN & Order No. ITBA / NFAC / S / 250 / 2023-24 / 1060774681(1) dated 12.02.2024	

All the above appeals are centering around a common issue and hence for the purposes of convenience were heard and are adjudicated together.

2.0 Ground of appeal no.1 & 7 are general in nature and hence dismissed.

3.0 The first issue raised by the Revenue through grounds of appeal No.2 is regarding the Ld. First Appellate Authority not providing opportunity to the Ld.AO before deciding the case. Brief factual matrix as evident in para 5.1 of the order of Ld. CIT(A) is that the appellant had filed additional evidences under Rule 46A of the Income Tax Rules. The Ld. CIT(A) had through his letter dated 08.01.2016 addressed to the Ld.AO ask for submission of remand report while forwarding the details filed by the assessee. Several reminders were issued but the Ld. AO chose to not comply. Consequently, the Ld. CIT(A), after waiting for more than seven long years, proceeded to conclude the pending appeal through his order dated 12.02.2024. It is in the above backdrop that it is

totally incomprehensible as to how and why has the Revenue raised this ground of appeal. It is not clear as to what injuries have been caused to the Revenue so as to contest the impugned appellate order through this ground of appeal. In fact, the Ld. First Appellate Authority is the real victim who waited for more than 7 long years, regularly pleading the Ld. AO to furnish the remand report and all of which fell on deaf ears.

4.0 Rule 46A entitle a taxpayer to furnish additional evidences before the Ld. First Appellate Authority if it was prevented by sufficient cause to file the same before the Ld. Assessing Officer. Law bounds the Ld. First Appellate Authority to consider the same only after providing an opportunity to the Ld. Assessing Officer, examine the same and offer his comments. The statutory prescription under Rule 46A is an essential condition qua conduct of the Ld. First Appellate Authority. Whereas it gives a right to the Ld.AO of being heard, it also imposes a duty upon him to avail that right, timely, in accordance with law. The right available to the Ld. AO cannot be construed as a permanent right or benefit available which can be utilized at any point of time. Every statutory right comes with a shelf life or limitation and can never be available perpetually. Consequently, the Revenue has lost all its moral as well as and statutory grounds to challenge the order of Ld. First Appellate Authority on the premise of violation of any Rule 46A or that the Ld. AO ought to have

been afforded more time. **The ground of appeal no.2 raised by the Revenue is therefore dismissed.**

5.0 The next issue raised by the Revenue through the grounds of appeal Nos. 3 to 6 are regarding the deletion of addition made by the Ld.AO by invoking provisions of section 2(22)(e) of the act. It is the case of the Revenue that the order passed is not a speaking order and therefore it is perverse. The Revenue has also assailed the order on the premises of same being based upon misunderstanding of facts by the Ld. First Appellate Authority. The DR argued that it's a clear case where provisions of section 2(22)(e) of the act are attracted. In support of its contentions the Ld. DR has invited our attention to the circuitous transactions happening between the assessee, Cholamandalam Finance, Aban Infrastructure and Aban Investments. It was contended that the routing of funds from one entity to another was primarily with a view to circumvent the provisions of section 2(22)(e). The Ld. DR drew our attention to the order of the Ld.AO on page-2 that the case was reopened u/s 147 primarily to tax the undisclosed transactions. Citing reference to para 5 on page 4 of the order, it was submitted that the assessee held 5000 shares in M/s. Aban Infrastructure Pvt Ltd, a group company, amounting to 50% of the shareholding and that therefore the amounts disguised as loans given to the assessee fell under the mischief of

section 2(22)(e) of the Act. It was vehemently argued that another group company M/s. Aban Investments Pvt Ltd was used as a conduit for transfer of funds from assessee to M/s. Aban Infrastructure Pvt Ltd. The hypothesis of loan from cholamandalam was debunked as a mere afterthought. The Ld. DR submitted that the relief accorded by the Ld.CIT(A) is excessive and based upon inappropriate understanding of the act.

6.0 The Ld. Counsel for the assessee placed full reliance upon the order of the Ld.First Appellate Authority. In support of his arguments, the Ld. Counsel filed a detailed paper book. It is the case of the assessee that the Ld.AO has misconstrued the basic facts of the case and the corresponding law stipulated in the section 2(22)(e). The Ld. Counsel submitted that invocation of provisions of section 2(22)(e) per se is wrong as the assessee does not holds the prescribed shareholding in M/s.Aban Investments Pvt Ltd. It was stated that assessee's shareholding as on 31.03.2011 was a mere 0.23%. The Ld. Counsel argued that the transactions between the assessee, M/s.Aban Investments Pvt Ltd. and M/s. Aban Infrastructure Pvt Ltd. were independent transactions having no interconnection. In support of its contentions, the Ld. Counsel drew our attention to the following transactions:-

S. No.	Date	Event
1	18.05.2009	The assessee had obtained loan approval from M/s Cholamandalam Investment and Finance Company P Ltd for a sum of Rs.50 crores. The copy of the sanction letter placed at Page No. 26 of the paper book.
2	01.06.2009	A sum of Rs.7 crores were transferred to the bank account of Reji Abraham from M/s Cholamandalam Investment and Finance Company P Ltd. The copy of ledger extract placed at Page No. 30 of the paper book.
3	14.09.2009	A sum of Rs.25 crores were transferred to the bank account of M/s Aban Investments P Ltd at the instruction of Mr.Reji Abraham by M/s Cholamandalam Investment and Finance Company P Ltd. The copy of ledger extract placed at Page No. 31 of the Paper book. (The loan was shown as payable to Cholamandalam in the books of M/s Aban Investments)
4	30.09.2009	The total loan outstanding as on date is to the tune of Rs.32 crores (7 crores plus 25 crores). The confirmation obtained from M/s Cholamandalam Investment and Finance Company P Ltd placed at Page No. 32 of the paper book.
5	04.02.2010 22.02.2010	Separate loan obtained from M/s Cholamandalam Investment and Finance Company P Ltd for Rs.25 crores by M/s Aban Investments P Ltd (second loan). The copy of ledger extract placed at Page No. 33 of the paper book.
6	17.05.2010 08.06.2010	Repayment of first loan to the tune of Rs.3.5 crores and Rs.2 crores by M/s Aban Investments P Ltd to M/s Cholamandalam Investment and Finance Company P Ltd
7	01.10.2010	The balance outstanding component of Rs. 19.5 crores emanating from the first loan was transferred to the ledger of Mr. Reji Abraham since the said loan was approved in his name and credited at his instruction to M/s Aban Investments P Ltd.

The Ld. Counsel thus argued that since from the above transactions, it was evident to note that there was an amount payable to the assessee in the books of M/s Aban Investments P Ltd before the making the disputed payments and hence the repayment of such existing payable would not fall within the ambit of loan/advance on the presumption that the accumulated surplus was given to the beneficiary. The Ld. Counsel also submitted that corresponding addition made in the case of M/s Aban Investments P Ltd also stands nullified by an earlier order of this tribunal. The Ld. Counsel submitted that by an inadvertent error for FY-2009-10 in the books of M/s Aban Investments P Ltd., the entry of loan was shown as received from Cholamandalam as against “loans received from Shri Reji Abraham”. It was submitted that the auditors of M/s Aban Investments P Ltd. namely M/s Ford Rhodes Parks and Company LLP had through their certificate have also admitted the above mistake and filed a corrigendum qua its amendment. A copy of the same was filed and has been placed on records.

7.0 We have heard the rival submissions in the light of material available on records. It is an undisputed fact of the case that the addition of Rs.16.5 Crores has been made by the Ld.AO invoking provision of section 2(22)(e) qua assessee’s shareholding with M/s Aban Investments

P Ltd. We have noted that section 2(22)(e) of the Act prescribes as under :

“...any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) 1[made after the 31st day of May, 1987, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent. of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern)] or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits;..”

We have also noted that the shareholding pattern of M/s Aban Investments P Ltd as on 31.03.2011 is as under:

S. No.	Name of the Person	No. of shares held	Percentage of holding
1	Reji Abraham	176	0.23%
2	Saley Abraham	38,725	51.63%
3	Deepa Reji Abraham	21,900	29.20%
4	Shema Renny Abraham	14,200	18.93%
5	P. Venkateswaran	1	0.0013%
6	Total	75,002	100%

Thus seen the assessee's shareholding was indisputably less than 10 % and hence invocation of provisions of section 2(22)(e) by the Ld. AO to make the impugned addition does not survive. The decisions relied upon by the Ld. AO, upon examination, have not been found to be supported by facts on records. We have noted that the transactions between the assessee and Cholamandalam have been totally omitted to be considered or rather misconstrued by the Ld.AO in the light of facts available on records. We are therefore of the considered view that the evidences placed by the assessee in the form of paper book before us which were also available with the Ld.First Appellate Authority clearly allude that there is no case for invocation of provisions of section 2(22)(e) in this case. We are therefore of the considered view that the order of Ld.First Appellate Authority is based upon correct understanding of the facts of the case and does not require any intervention at this stage. **Accordingly, we confirm the same and dismiss all the grounds of appeal raised by the assessee on this aspect.**

8.0 In the result, the appeal of the Revenue vide ITA No.1762/Chny/2024 is dismissed.

CO-53 / Chny/2024, Assessment Years-2011-12

8.0 The assessee has moved the above CO assailing the order of Ld.First Appellate Authority dated 12.02.2024. It is the case of the assessee that the assumption of jurisdiction u/s 147 of the Act and the consequential reassessment order dated 31.03.2015 suffers from incurable legal infirmities. The Ld. Counsel for the assessee through its 10 grounds of appeal tried to allude legal infirmities in the action of the Revenue qua proceedings u/s 147 of the Act. The principal issue seminal to the controversy is that the assessee cannot be held accountable for non-disclosure of full facts in this case and that in the absence of any new material, assumption of jurisdiction u/s 147 was wrong. The Ld. DR placed reliance upon the order of authorities below. Inviting reference to the reasons recorded in the case, it was argued that the reopening was done in view of adverse information gathered during the assessment proceedings of a group concern M/s. Aban Investments Limited for AY-2011-12.

9.0 We have heard rival submissions in the light of material available on records. At the outset we deem it necessary to examine the reasons recorded dated 18.07.2014 in this case for reopening reproduced hereunder.

“.....From the submissions made during the course of the assessment proceedings in the case of M/s.Aban Investments Ltd., for the AY-2011-12, the bank statements of State Bank of Travancore for the FY-2010-11 and bank book of State Bank of Travancore, following facts have emerged:

M/s.Aban Investments Ltd., in which the assessee holds 5000 shares which amounts to 50% of share holding. M/s.Aban Investments Ltd., has paid the following amounts in the guise of loans on the dates mentioned therein to M/s.Aban Investments Ltd., and upon receipt of the money, the same was sent immediately to Shri Reji Abraham on the same dates. The details of the transactions as extracted from the above mentioned bank statements and bank book are as under:

Date	Amount of loan	Utilization of amount received		Utilization date
02.08.2010	3000000	To common pool		
30.08.2010	3500000	To Cholamandalam Interest		01.09.2010
20.01.2011	500000	To common pool	7000000	
31.01.2011	10000000	To Reji Abraham	2331370	31.01.2011
02.02.2011	3000000	To Reji Abraham		02.02.2011
04.02.2011	10000000	To Reji Abraham		04.02.2011
09.02.2011	40000000	To Reji Abraham		09.02.2011
23.02.2011	63500000	To Reji Abraham		23.02.2011
28.02.2011	6000000	To Reji Abraham		28.02.2011
31.03.2011	35500000	To Reji Abraham		31.03.2011
Total	175000000	To Reji Abraham	165000000	
		To others	10000000	

From the able, it is clear that Rs.16.5 Crores was received by the assessee from M/s.Aban Infrastructure Pvt Ltd., through M/s. Aban Investments Ltd. in the balance sheet of M/s. Aban Investments Ltd., nothing was found with regard to any pre-existing credit or debit towards the assessee. Neither the Form 3CD of M/s.Aban investments Ltd., for the AY 2011-12 nor the disclosures in the Annual Report, disclosed the transaction between M/s. Aban Investments Ltd., and Shri Reji Abraham. There can be no other reason preventing M/s. Aban Investments Ltd., to directly lend the money to the assessee other than avoiding the mischief of Sec.2(22)(e) of the Income Tax Act. 1961.

From the facts above, it can very well be concluded that M/s.Aban Investments Ltd., was used as a conduit company to transfer the funds from M/s.Aban Investments Ltd to Shri Reji Abraham. It is well settled law that the transfer of funds through a conduit company to a shareholder having more than 10% of shareholding will also attract the provisions of Sec.2(22)(3). The same is also supported by the Hon'ble Apex court decision in the case of CIT V/s Mukundaray K.Sha 2007 290 ITR 433(SC) and Hon'ble jurisdictional High Court in the case of CIT V/s L.Alagusundaram Chettiyar [1977] 109 ITR 508(Mds.).

The assessee should have offered Rs.16.5 Crs as deemed dividend as te accumulated profits in the company, M/s.Aban Investments Ltd. was Rs.478623697/-, but the assessee has not offered the same for taxation.

Based on the strength of the new material facts unearthed during the course assessment proceedings in the case of M/s.Aban Investments Ltd., for the AY-2011-12 and the above recorded facts, there was a reason to believe that an income chargeable u/s 2(22)€ amounting to Rs.16.5 Crs have escaped assessment as per the provisions of Sec.147.

Notice u/s 148 was issued on 21.03.2014. In response, the assessee filed his reply dt. 12.04.2014 received on 15.04.2014 stating the original return filed may be treated as the return filed in response to notice u/s 148 and sought for the reason recorded. The recorded reasons was communicated to the assessee vide letter dt. 18.7.2014 which was received by the assessee on 21.7.2014. The assessee has submitted objections for reopening on 13.08.2014 and the same was overruled by a speaking order dt. 5.1.2015. Notice u/s 143(2) dt. 5.1.2015 was served on the assessee.....”

10.0 A bare perusal of the above clearly alludes that the reopening was done in view of information gathered during assessment proceedings in the case of Aban Investments for AY-2011-12. Thus seen the basic charge levelled by assessee fails. It is not a case of change of opinion qua material which was available to the Ld.AO during original proceedings. It's a case of discovery of fresh material leading to initiation of 147 proceedings. Accordingly, we are of the considered view that there is no merit whatsoever in the legal ground raised through this cross objection by the assessee. All the grounds of appeal raised by the assessee are therefore dismissed.

11.0. In the result, CO of the assessee vide CO-53/Chny/2024 is dismissed.

12.0. In the result, the appeal of the assessee and Revenue are decided as detailed hereunder:-

ITA Nos	Assessment Year	Result
ITA No. 1762 / Chny / 2024	2011-12	Dismissed
CO No. 53 / Chny / 2024	2011-12	Dismissed

Order pronounced on 23rd , April-2025 at Chennai.

Sd/-

(एबी टी. वर्की)

(ABY T VARKEY)

न्यायिक सदस्य / Judicial Member

चेन्नई/Chennai, दिनांक/Dated: 23rd
KB/-

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य /Accountant Member

, April-2025.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Assessee:
2. प्रत्यर्थी/Revenue
3. आयकर आयुक्त/CIT - Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF