

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

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. Nos. 641/Mds/ 2011 & 1259/Mds/2012
निर्धारण वर्ष /Assessment year : 2006-2007

The Assistant Commissioner of Income Tax,
Circle I,
Thanjavur

Vs. M/s. P.S.R. Thangamaligai,
No.126,Bharathiyar Road,
Karaikal.

(अपीलार्थी/Appellant)

[PAN AAEFO 5763F]
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. Durai Pandian, IRS, JCIT.
प्रत्यर्थी की ओर से /Respondent by : Shri. S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing : 15-09-2016
घोषणा की तारीख /Date of Pronouncement : 21-09-2016

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

These appeals filed by Revenue are directed against the orders dated 10.01.2011 and 21.03.2012 of the Id. Commissioner of Income Tax (Appeals), Tiruchirapalli for the impugned assessment year.

2. ITA No.641/Mds/2011 is first taken :- The sole ground taken by the Revenue is on the direction of the Id. Commissioner of Income Tax (Appeals) to treat ₹65,00,000/- as unaccounted sales against addition of ₹50,00,000/- made by the Id. Assessing Officer. The Id. Commissioner of Income Tax (Appeals) directed adoption of 24% of ₹65,00,000/- as profits for addition.

3. Facts apropos are that the assessee, is a dealer in Gold and Silver jewellery at Karaikal. There was a survey u/s.133A of the Income Tax Act, 1961 (herein after referred to as 'the Act') on 9.11.2006. During the survey proceedings, it was noticed that chit account of the assessee has outstanding balance of ₹1,34,28,750/- against balance of ₹2,06,00,549/- shown by the assessee in its Balance Sheet as on 31.03.2006. When this was pointed out by the survey officials, it seems assessee accepted excess chit outstanding of ₹50,00,000/- and offered to show it as income and pay taxes thereon. In other words against ₹65,00,000/- difference in chit account the assessee agreed with the survey officials to offer ₹50,00,000/- as income. However, during the course of assessment proceedings for the impugned assessment year assessee explained to the Id. Assessing Officer that the difference could be reconciled. Nevertheless, the Id.

Assessing Officer was not satisfied with the explanation given by the assessee, the assessment was completed making an addition of ₹50,00,000/- as agreed by the partner of the assessee at the time of survey.

4. Aggrieved, the assessee moved an appeal before the CIT(A). As per the assessee, it had explained before the Id. Assessing Officer how the difference came into the Books and had reconciled such difference. As per assessee difference between chit balance as per books and what was noted by the survey officials were on account of the following persons:-

- A. *Balances outstanding the earlier six groups of the closed chits were not accounted by the survey party.*
- B. *In the groups Subamangala B & New Kanagathara A the survey party had taken wrongly the gross amount as the sum to be collected instead of the actual amount of collection.*
- C. *Though, New Kanagathara B commenced in May 2006 & the advance collections made during the year was not accounted by the survey party.*
- D. *The collections made in groups of various denomination of Rs.150/-, Rs.250/- & Rs.500/- were not accounted by the survey party".*

However, the assessee also stated before the Id. Commissioner of Income Tax (Appeals) that yearwise and groupwise reconciliation of

earlier year chits, which were closed, was not immediately possible. The Id. Commissioner of Income Tax (Appeals) after considering the submissions of the assessee came to an opinion that excess in chit fund account had accumulated over years and entries in few groups of the chit fund remained open due to omission in posting of sales. He held that the amount shown as outstanding, in the closed groups of chit funds were nothing but unaccounted sales of the assessee. Since gross profit returned by the assessee came to 24%, the Id. Commissioner of Income Tax (Appeals) directed the Id. Assessing Officer to consider 24% of ₹65,00,000/- as income of the assessee from such unaccounted sales. 24% of ₹65,00,000/- came to ₹15,60,000/-. Thus the addition of ₹50,00,000/- was scaled down to ₹15,60,000/- by the Id. Commissioner of Income Tax (Appeals).

5. Now before us, the Id. Departmental Representative strongly assailing the order of the Id. Commissioner of Income Tax (Appeals) submitted that difference in chit account could never be linked to the sales of the assessee. As per the Id. Departmental Representative the Id. Commissioner of Income Tax (Appeals) made an error in considering the difference to be undisclosed turnover of the assessee. The contention of the Id. Departmental Representative was that difference represented undisclosed income of the assessee. Thus,

according to him the Id. Commissioner of Income Tax (Appeals) fell in error in scaling down the addition from ₹50,00,000/- to ₹15,60,000/-.

6. Per contra, the Id. Authorised Representative supported the order of the lower authorities.

7. We have considered the rival contentions and the orders of the authorities below. It is not disputed that chit difference arose on account of closed chits being not properly accounted over a number of years. The Id. Commissioner of Income Tax (Appeals) has given a clear finding that closed chits remaining open in the Books could only be due to omission of posting of sales. The assessee was a trader of gold jewellery. The assessee was not in chit business. Hence preponderance of probability was that difference arose only due to unaccounted sales, being not entered in the Books. Obviously chit balance stood at a higher amount than the actual balance. In such a situation, we are of the opinion that the Id. Commissioner of Income Tax (Appeals) had rightly considered the sum of ₹65,00,000/- as undisclosed turnover of the assessee. The Id. Commissioner of Income Tax (Appeals) had applied 24% of GP rate which was the admitted GP rate as per the Books of the assessee. We are of the opinion that the Id. Commissioner of Income Tax (Appeals) was justified in taking this view. We do not find any reason to interfere with the order of the

Commissioner of Income Tax (Appeals). The appeal of the Revenue stands dismissed.

8. Revenue in appeal No.1259/Mds/2012:- The Revenue is aggrieved on deletion of addition ₹15,00,000/- made by the Id. Assessing Officer in a re-assessment done for the very same assessment year, pursuant to a reopening u/s.147 of the Act.

9. The Id. Assessing Officer attempted reopening for a reason that he had added only ₹50,00,000/- in the original assessment against the difference of ₹65,00,000/- in the chit fund account. In such re-assessment an additional sum of ₹15,00,000/- was also brought to tax. Assessee's appeal before Id. Commissioner of Income Tax (Appeals) was successful. He took a view that he had already directed adoption of 24% of profit on ₹65,00,000/- being the difference considering it as undisclosed turnover. According to him, there was no further scope for an addition of ₹15,00,000/-.

10. We have already held in Revenue's appeal in ITA No.641/Mds/2011, which emanated from the original assessment done on the assessee, that the Id. Commissioner of Income Tax (Appeals) was justified in considering the difference of chit fund balance of ₹65,00,000/- as undisclosed sale of the assessee and applying 24% GP

rate thereon. Considering this, we are of the opinion that there was no scope for any further addition of ₹15,00,000/-. The Id. Commissioner of Income Tax (Appeals) was therefore justified in deleting such addition made in the re-assessment proceedings. We do not find any reason to interfere with the order of the Id. Commissioner of Income Tax (Appeals). The appeal of the Revenue stands dismissed.

11. In the result, the appeals filed by the Revenue in ITA No.641/Mds/2011 and ITA No.1259/Mds/2012 stand dismissed.

Order pronounced on Wednesday, the 21st day of September, 2016, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)
(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)
(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:21st September, 2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |