

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

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S.SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.3029 & 3030/Mds/2016
निर्धारण वर्ष /Assessment Year: 2012-13 & 2013-14

M/s.Tirunelveli A.C.A. Chits (P) Ltd., 135, S.N.High Road,
Tirunelveli-627 001. **Vs.** The Income Tax Officer,
Ward-5, Tirunelveli.

[PAN: AA ACT 5943 J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Mr A.S.Sriraman, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Mrs. C.Yamuna, JCIT
सुनवाई की तारीख/Date of Hearing	:	31.01.2017
घोषणा की तारीख /Date of Pronouncement	:	23.03.2017

आदेश / ORDER

PER D.S.SUNDER SINGH, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the Order dated 17.08.2016 of Commissioner of Income Tax (Appeals)-3, Madurai, in ITA No.0039/2015-16 for the AY 2012-13 and Order dated 15.09.2016 of Commissioner of Income Tax (Appeals)-3, Madurai, in ITA No.0172/2015-16 for the AY 2013-14.

2.0 The issues involved for both the appeals are common. Therefore, the appeals are heard together and disposed of by a common order for the sake of convenience.

2.1 The first issue is related to the charity collections made by the assessee along with the chit subscriptions. For the AY 2012-13, the assessee collected a sum of Rs.76,850/- and for the AY 2013-14 the assessee collected a sum of Rs.1,67,506/- as charity which was added back to the returned income in the respective assessment years.

2.2 The assessee is engaged in the business of Chits with Head Office at Tirunelveli and having branches in other locations. The assessee collected the charity amount along with the chit subscriptions from chit subscribers which were later transferred to M/s.S.A.R. Trust set to have been incorporated by the founder of the company. The Trust is not having exemption u/s.80-G of Income tax act. Since, donations were collected along with the chit subscriptions, the Assessing Officer (in short 'AO') treated the amount collected under the head 'Charity A/c' as business receipts and added back to the return of income. The assessee went on appeal before the Ld.CIT(A) and the Learned Commissioner of Income Tax(Appeals) (in short 'Ld.CIT(A)') and the Ld.CIT(A) confirmed the addition made by the AO observing that the customers of the assessee had to deposit the charity amount along with chit subscriptions as they

do not have any other choice but to remit the charity amount along with the subscription as the assessee would not accept the chit subscription without the charity amount. It is not the case of assessee that the charity amount was voluntarily deposited to M/s.S.A.R. Trust by the subscribers of the Chit. It cannot be said that there was a diversion by overriding title, since the assessee collected the amount and remitted the same to the Trust. The Ld.CIT(A) observed that the assessee can only make a claim u/s.80-G but the renewal of exemption was not done, hence the Ld.CIT(A) confirmed the addition.

2.3 Aggrieved by the order of the Ld.CIT(A), the assessee filed appeal before this Tribunal and argued that the assessee makes charity collections along with chit subscriptions which was later transferred to M/s.S.A.R. Trust. The AO made the addition without understanding the issue properly. In the assessee's case, the rule of consistency and the theory of overriding title was completely ignored by the Ld.CIT(A) as well as the AO. According to the Ld.AR, the amount was transferred to M/s.S.A.R. Trust is diversion of income by overriding title and the case is squarely covered by the Hon'ble Supreme Court judgment in the case of CIT v Bijli Cotton Mills (P) Ltd. (1979) 116 ITR 60 and also the decision of this Bench in the case of M/s.Standard Fireworks Pvt. Ltd. v. ACIT in ITA Nos.2286 & 2287/Mds/2015 dated 27.12.2016. On the other hand, the Ld.DR supported the lower authorities orders.

2.4 We heard the rival submissions and perused the material placed before us.

The assessee collected charity amount from the chit subscribers and the same is transferred to M/s.S.A.R. Trust. The Trust is promoted by the founder of the assessee. The Trust is not having exemption u/s.80G since it was not renewed after 31.03.2006. The assessee relied on the decision of this Tribunal in the case of M/s.Standard Fireworks Pvt. Ltd. cited supra and argued that the charity amount should not be included in the income of the assessee. In the case law relied upon by the assessee in the case of M/s.Standard Fireworks Pvt. Ltd. the issue was remitted back to the file of AO. We extract the relevant paragraphs of the ITAT Orders cited supra:

6. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee is engaged in the business of manufacturing and sale of fireworks. In the course of business activity, the assessee has collected 1.5% of sale value towards charity. From the material available on record, it appears without payment of so-called mahamai / charity, the customers were not able to purchase fireworks from the assessee company. The question arises for consideration is whether the charity / mahamai collected by the assessee forms part of total turnover of the assessee? When the payment was made to the charitable institution, whether it is an application of income or the income diverted by overriding title also needs to be considered?

7. We have carefully gone through the judgment of Apex Court in Bijli Cotton Mills (P.) Ltd. (supra). In the case before the Apex Court, "Dharmada" was collected on sale of yarn and cotton, at the rate of 1 anna per bundle of 10 lbs. of yarn and 2 annas per bale of cotton. In the bills issued to the customers, these amounts were shown in a separate column headed "Dharmada". The amount so collected was not in the trading account but a separate books of account was maintained known as 'Dharmada account' in which the amount collected was credited and payments made to charity were debited. The High Court found that the amount collected by the assessee towards "Dharmada" is not an income of the assessee, therefore, not liable to tax. On further appeal before the Apex Court, it was found that when the customers paid amounts to assessee's earmarking them for "Dharmada", those payments were validly earmarked for charity and the assessee holds the amount under an obligation to spend the same for charitable purpose, it cannot be considered to be a trading receipt. In the case before us, it is not clear from the orders of both the authorities below whether the charity / mahamai collected by the assessee is credited in the trading account or the assessee is maintaining separate books of account. If the assessee was maintaining separate books and credited the amounts collected towards charity / mahamai and debited the amounts paid to charitable purpose, then this Tribunal is of the considered opinion that in view of the judgment of Apex Court in Bijli Cotton Mills (P.) Ltd. (supra), it cannot be considered to be income of the assessee, therefore, there is no liability to pay the tax.

8. This judgment of Apex Court was distinguished by the CIT(Appeals) on the ground that the directors of the assessee company were controlling the trust. This Tribunal is of the considered opinion that merely because the directors of the assessee-company were controlling the trust, when the amounts were specifically collected towards charity and the assessee was maintaining separate books of account with regard to collection of charity and the payments made to trust, it cannot be said that the judgment of Apex Court is not applicable to the facts of the case. This Tribunal is of the considered opinion that when the assessee is maintaining books of account in respect of the amounts collected towards mahamai / charity and credited the amounts collected towards charity and debited the amounts paid to the trust in the separate books of account, the assessee is not liable for taxation. Since these aspects were not examined by the Assessing Officer as well as the CIT(Appeals), this Tribunal is of the considered opinion that the matter needs to be re-examined. Accordingly, the orders of the lower authorities are set aside and the claim of the assessee is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh and bring on record whether the bills issued by the assessee disclose the mahamai / charity in a separate column and also find out whether the assessee is maintaining separate books of account in respect of charity / mahamai collected and payments made to the trust and, thereafter decide the issue afresh in the light of the judgment of Apex Court in *Bijli Cotton Mills (P.) Ltd. (supra)*, after giving a reasonable opportunity to the assessee.

2.5 The facts of the assessee are identical to the decision of this Tribunal in the case of M/s.Standard Fireworks Pvt. Ltd., cited supra. Therefore, we remit the matter back to the file of the AO with a direction to examine whether the assessee was maintaining separate books of accounts or not and decide the issue afresh on merits. The assessee's appeal on the issue of charity collections is allowed for statistical purposes.

3.0 The next issue is related to the disallowance of entertainment expenses amounting to Rs.15,000/- for the AY 2012-13 and Rs.25,000/- for the AY 2013-14. During the assessment proceedings, the AO found that the assessee has debited the following expenses under the head entertainment and staff welfare:

AY	Entertainment	Staff welfare
2012-13	40,410.00	15,300.00
2013-14	94,920.00	Separately expenditure incurred for staff welfare

3.1 The AO disallowed a sum of Rs.40,410/- for the AY 2012-13 and Rs.94,920/- for the AY 2013-14.

3.2 Aggrieved by the order of the AO, the assessee went on appeal before the Ld.CIT(A). The Ld.CIT(A) restricted the disallowance to Rs.15,000/- for the AY 2012-13 & Rs.25,000/- for the AY 2013-14.

3.3 Aggrieved by the order of the Ld.CIT(A), the assessee filed appeal before us. The Ld.DR argued that the disallowance of expenditure is excessive and no proper opportunity was given by the Ld.CIT(A). On the other hand, the Ld.DR relied on the orders of the lower authorities.

3.4 We heard the rival submissions and perused the material placed before us.

The expenditure incurred was entertainment of staff under the head Entertainment Expenses & Staff Welfare, both the expenses are incurred for the welfare of the staff and for the purpose of business. The AO has not pointed out that the claim of the assessee is bogus. The disallowance made by the AO was only with a reason that the expenditure debited was excessive without verifying the genuineness of the expenditure. Since, the AO has not made out any case for bogus expenditure, we do not find any valid reason to sustain the addition. Accordingly, we set-aside the

order of the lower authorities and allow the appeal of the assessee for both the AYs.

4.0 For the AY 2013-14, the assessee raised Ground No.7 agitating the restrictions of disallowance of Repairs and maintenance expenses Rs.15,000/-, Printing & Stationery Rs.20,000/-, Advertisement Rs.15,000/- and Miscellaneous expenses Rs.20,000/- sustained by the Ld.CIT(A). The AO made addition of Rs.26,522/- under the head repairs and maintenance, Rs.46,577/- under the head stationery and advertisement, Rs.41,704/- under the head miscellaneous expenses for want of vouchers and invoices. The Ld.CIT(A) restricted the disallowance as under:

- Repairs and maintenance expenses Rs.15,000/-
- Printing & Stationery Rs.20,000/-
- Advertisement Rs.15,000/- and
- Miscellaneous expenses Rs.20,000/-

4.1 During the appeal, the Ld.AR of the assessee replied to query from the bench that it is not possible to obtain Vouchers/Invoices in respect of entire expenditure under the above heads and further submitted that it is a routine business expenditure incurred for day-to-day running of the business and argued that the AO is not justified in making the addition and the Ld.CIT(A) ought to have deleted the addition. On the other hand, the Ld.DR supported the orders of the lower authorities.

4.2 We heard the rival submissions and perused the material placed before us.

It is noticed from the Assessment Order that the assessee debited a sum of Rs.53,043/-, Rs.1,55,256/-, Rs.1,29,013 & Rs.55,000/- under the heads repair and maintenance, printing and stationery, miscellaneous expenses and conveyance expenses. The assessee could not produce the evidences in the form of bills and vouchers for major part of the expenditure before the AO and the expenditure was incurred in self-made vouchers. Therefore, the AO disallowed Rs.79,379/- under the head travelling, Rs.26,522/- under the head repairs and maintenance, Rs.46,577/- under the head printing and stationery and advertisement, Rs.41,704/- under the head miscellaneous expenses and Rs.55,000/- under the head conveyance expenses. Before the Ld.CIT(A) also the assessee did not produce any evidence and submitted that it is not possible to obtain proper vouchers in respect of the entire expenditure claimed under the above heads. The Ld.CIT(A) considered the submission and scaled down the disallowance reasonably. Therefore, we do not find any infirmity in the order of the Ld.CIT(A) and uphold the order of the Ld.CIT(A) and the assessee's appeal on this ground is dismissed.

5.0 In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 23rd March, 2017, at Chennai.

Sd/-
(एन.आर.एस. गणेशन)
(N.R.S. GANESAN)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-
(डि.एस. सुन्दर सिंह)
(D.S.SUNDER SINGH)
लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 23rd March, 2017.

TLN

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

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