

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

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डी.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष
**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 3014/Mds/2016
निर्धारण वर्ष / **Assessment Year : 2007-08**

M/s. Kosmic Studios (Firm),
Rutland Towers, 4th Floor,
No.33, Shafee Mohammed
Road, Chennai – 600 006.

The Income Tax Officer,
v. Non-Corporate Ward-3 (4),
Chennai.

[PAN: AAEFK 9852 C]

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/Appellant by : Shri T. Vasudevan, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri B. Sahadevan, JCIT

सुनवाई की तारीख/Date of Hearing : 03.01.2017

घोषणा की तारीख/Date of Pronouncement : 13.01.2017

आदेश /O R D E R

PER D.S. SUNDER SINGH, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the Order dated 24.08.2016 of Commissioner of Income Tax (Appeals)-4, Chennai, in ITA No.94/2013-14/2007-08/CIT(A)-4 for the AY 2007-08.

2.0 All the grounds of appeal are related to the addition made by the Assessing Officer (hereinafter referred to as 'AO') on account of unexplained investment u/s 69 of income tax act, amounting to ₹11,68,420/-. The assessee is engaged in the business of Media services and filed the return of income declaring total income of ₹8,20,984/- on 31/07/2007. The assessee has admitted the gross receipts of Rs.18,63,430/- for the A.Y. under consideration. A survey under Section 133A of the Income Tax Act, 1961 (in short 'the Act') was conducted in the business premises of the assessee on 07.02.2007 and during the course of survey, it was found by the survey team that the assessee is not maintaining the books of accounts. Only bills and vouchers are maintained by the assessee. The Assessing officer treated the entire receipts as income under Section 69 of the Act, without allowing any expenditure. The assessee went on appeal before the CIT (Appeals) and the CIT (Appeals) confirmed the addition made by the Assessing Officer. For ready reference we extract Para No.9 of the CIT (Appeals) order as under:

"I have gone through the facts of the case and the observations of the AO on the basis of which he has treated the job work receipts as unexplained receipts. I have also considered the submissions of the appellant which were devoid of any concrete material evidence. The primary and the initial onus was on the assessee to prove the genuineness of the job work receipts and also the genuineness of expenses incurred towards earning job work receipts. However, it has been noticed that neither the books of accounts nor were the relevant bills and vouchers of job work receipts or the relevant expenses ever produced by the assessee before the AO.

Moreover, it is interesting to note that not even a single penny was received by way of account payee cheque or DD under the head of Job Work receipts. Similarly, the entire expenses pertaining to the job work were paid in cash only. The assessee had failed to discharge the primary onus cast upon it to substantiate the genuineness and authenticity of the job work receipts and the relevant expenses incurred towards earning the job work receipts. Even during the course of the appellate proceedings also, the assessee has failed to produce even a single piece of evidence which could have substantiated the assessee's contentions.

Therefore, in the absence of the books of accounts, the relevant bills and vouchers and other cogent material evidences to substantiate its claims, the assessee fails to succeed in its appeal. Hence, the action of the AO is confirmed."

3.0 Shri T. Vasudevan, Ld.Counsel appeared for the assessee. The Ld. counsel of the assessee argued that the Assessing Officer has brought the entire receipts as income without allowing any expenditure debited to the Profit & Loss account which is unjustified. The assessee is rendering media services using the plant and machinery and received the job work charges for which assessee incurs expenditure and the Assessing Officer without considering the nature of job and the expenses involved, disallowed the entire expenditure in the P&L account amounting to ₹11,68,420/-. The AR contented that the entire addition made by the Assessing Officer is based on surmises and must be deleted.

4.0 On the other hand, the Ld. Departmental Representative argued that the assessee is introducing the loans by the partners and creating

investments in plant and machinery and advancing loans without returning any business income. The assessee has not incurred any expenditure and no evidence has been produced by the assessee with regard to the expenditures. The assessee firm is introducing investments and claiming expenses on the same which was not supported by evidence. Therefore, the Ld, DR argued that the Assessing Officer has rightly assessed the entire job work receipts as income.

5.0 We heard the rival submissions, perused the material available on record. The gross receipts of the assessee was ₹19,89,404/- and the assessee claimed the expenditure of ₹11,68,420/- inclusive of depreciation of ₹5,68,697/- and admitted the income of Rs.820984/. The Assessing Officer disallowed the entire expenditure for non-production of bills, vouchers etc. in support of the expenses claimed by the assessee. Though the Assessing Officer stated in the assessment order that the assessee is introducing the unsecured loans in the names of the partners and creating assets, no instances brought on the assessment record regarding the unsecured loans of the partners. Similarly, the Assessing Officer has stated that the assessee firm is introducing investments and claiming expenses. No such instances are also brought on the assessment proceedings. In case, the Assessing Officer found introduction of unsecured loans for which no explanation is offered by the assessee, such unsecured loans should be brought to tax

as per the provisions of Section 68 of the Act on the specific amount of the unsecured loans in the year in which it was introduced. Similarly, if any investment is made, the Assessing Officer is free to tax such unexplained investment under Section 69 of the Act with a specific amount with a particular reference to the specific investment and the year in which such investment is made. The Assessing Officer is not allowed to tax the entire receipts by general bogie on presumption and assumption. Therefore, we are unable to appreciate the action of the assessing officer taxing the entire receipts as income under Section 69 of the Act without disproving the claim made by the assessee in the P&L account. The assessee is doing a business of media services and receiving the job work charges. The Assessing Officer has not denied the facts. Therefore it is an undisputed fact that the assessee is incurring expenditure for the purpose of earning the income. In case, the Assessing Officer do not believe the books of accounts, the Assessing Officer should have rejected the books of accounts and estimated the income on reasonable basis. The assessee has admitted income of ₹8,20,984/- on gross receipts of ₹19,89,404/- which worked out to 41.29% of the gross receipts. In the absence of any evidence to show that the assessee has understated the income we are of the considered opinion that the income declared by the assessee is reasonable and the addition made by the AO is deleted.

6.0 In the result, the appeal of the assessee is **allowed**.

Order pronounced in the open Court on 13th January, 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: 13th January, 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