

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.No.696 & 697/Chny/2018

(निर्धारणवर्ष / Assessment Year: 2007-08 & 2013-14)

M/s. Saravana Realty Pvt.Ltd KGS Corporate House, 63, Kamaraj Avenue Road 1 st Street, Adyar, Chennai-600 020. PAN: AAKCS0474R (अपीलार्थी/Appellant)	Vs	The Deputy Commissioner of Income Tax, Central Circle-3(4) Chennai-600 034. (प्रत्यर्थी/Respondent)
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अपीलार्थीकीओरसे/ Appellant by	:	Mr. R.Meenakshi Sundaram, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr Abani Kanta Nayak, CIT & Mr G.Johnson, Addl.CIT

मुनवाईकीतारीख/Date of hearing	:	17.12.2020
घोषणाकीतारीख /Date of Pronouncement	:	31.12.2020

आदेश / ORDER

PER BENCH:

These two appeals are filed by the assessee are directed against separate, but identical orders of learned CIT(A) -19, Chennai both dated 07.12.2017 and pertain to assessment years 2007-08 and 2013-14. Since, the facts are identical and issues are common, for the sake of convenience, they were heard together and are disposed of by way of this consolidated order.

2. The assessee has more or less raised common grounds of appeal for the above mentioned assessment years, therefore, for

the sake of brevity, grounds of appeal filed for the assessment year 2007-08 in ITA No.696/Chny/2018 are reproduced as under:-

“1. *The Order of the Commissioner of Income Tax (Appeals)-1, Chennai dated 12-12-2017 in ITA No.260/2015-16 enhancing the assessment to the extent of Rs.15,000/- and Rs47,053/- in a proceeding u/s.153A/153C of the Act consequent to the search conducted on a party other than the appellant-assessee and in which no material relevant to the enhancement made by the Commissioner was seized, is without jurisdiction, barred by limitation, against the provisions of law and contrary to the facts and circumstances of the case.*

2. *The Commissioner of Income Tax (Appeals) should have found that when an assessment is sought to be made u/s.153C of the Act, no addition can be made except on the basis of material seized during the search on some other assessee.*

3. *The Commissioner of Income Tax (Appeals) should have found that the jurisdiction to make an assessment u/s.153C r.w.s.153A can be assumed by the Assessing Officer only on the basis of any books of account or documents seized as stipulated by sub-clause (b) of section 153C(1) as also sub-clause (a) of the said section and in the absence of any material seized during the search, no satisfaction could have been recorded by the Assessing Officer conferring Jurisdiction u/s.153C of the Act and consequently, the impugned assessment made is illegal and without jurisdiction.*

4. *The Commissioner of Income Tax (Appeals) should have found that the issue as to the requirement of material seized during the search for making an assessment u/s.153C r.w.s.153A has been decided in favour of the assessee in a number of cases including the decision of the Kerala High Court in the case of Commissioner of Income Tax vs. Promy Kuriakose 386 ITR 597 and also the decision of the Delhi High Court in the case of Commissioner of Income Tax vs. Refam Management Services Private Limited 386 ITR 693 (Del.) as also the decision of Commissioner of Income Tax vs. Renu Constructions Private Limited 399 ITR 262 and Canyon Financial Services Limited vs. Income Tax Officer 399 ITR 202 (Del.). Reliance is also placed upon decision of the Supreme Court in the case of Commissioner of Income Tax vs. Singad Technical Education Society (SC) 397 ITR 344 affirming the decision of the Bombay High Court in 378 ITR 84 (Bom.) as also the decision of the Gujarat High Court in Kamaleshbhai*

Dharamshibhai Patel which has been approved by the Supreme Court.

5. *The Commissioner of Income Tax (Appeals) should have found that in the present case the enhancement made by him to the extent of Rs.15,000/- and Rs.47,053/- is not on the basis of any material seized during the search nor on the basis of any satisfaction recorded by the Assessing Officer having jurisdiction over the party subjected to the search and consequently the assumption u/s.153C for enhancing the assessment by the Commissioner in exercise of his powers u/s.251(1)(b) of the Act', is misconceived, without authority of law and beyond the powers of the Commissioner of Income Tax (Appeals) u/s.251 of the Act'.*

6. *The Commissioner of Income Tax (Appeals) erred in enhancing the assessment without providing an opportunity to the appellant for filing its objections to the proposal. The Commissioner's statement as to giving an opportunity to the appellant in the course of appeal hearing is factually incorrect and no such opportunity was given. The Commissioner should have further found that In the present case the so-called enhancement has been made in respect of a source which was not under consideration of the Assessing Officer in the course of assessment under appeal and the material has been gathered by the Revenue from the account statement of the bank produced at the time of Remand hearing before the Assessing Officer.*

7. *The Commissioner of Income Tax (Appeals) erred in making the enhancement by taking recourse to a new source, He should have found that under the provisions of section 251(1)(b) of the 'Act', the Commissioner of Income Tax (Appeals) can enhance an assessment made by the Assessing Officer but not assess a new source of income as held in Commissioner of Income Tax vs. Sherafudin 399 ITR 524 and Full Bench of Delhi High Court in Commissioner of Income Tax vs. Sardari Lal and Co 251 ITR 864 (Delhi)(FB). In the present case, the Commissioner has: for the purpose of enhancement, relied not on any material which was before the Assessing Officer while making the assessment under appeal before him nor on any material seized during the search attracting the provisions of section 153C, but on the basis of an entry in the bank statement produced before the Assessing Officer for the purpose of verification and in respect of which some observation was made by the Assessing Officer passing the assessment in the course of submitting his Remand Report to the Commissioner and hence, the action of the*

Commissioner of Income Tax (Appeals) enhancing the assessment u/s.251(1)(b) of the Act is without jurisdiction and not sustainable either in law or on facts.

8. The Commissioner of Income Tax (Appeals) erred in enhancing the assessment to the extent of Rs.15,000/- and Rs.47,053/- without any material whatsoever and on the basis of assumptions and presumptions and that too, in a proceeding u/s. 153C of the 'Act'.

For these reasons and for any other reason that may be adduced at the time of hearing, the appellant prays that the Hon'ble Tribunal may be pleased to set aside the Order of the Commissioner of Income Tax (Appeals)-19 dated 12-12-2017 and direct the Assessing Officer to delete the additions made and render justice."

3. At the outset, learned AR for the assessee submitted that the appeals filed by the assessee is time barred by 14 days for which necessary petition for condonation of delay along with affidavit explaining the reasons for the delay has been filed. The AR further submitted that the assessee could not file appeals within the time allowed under the Act, due to the fact that appeal papers received from tax consultant were mixed up with other papers which caused delay of 14 days. The delay in filing appeals is neither intentional nor willful but for the unavoidable reasons, therefore, delay may be condoned in the interest of advancement of substantial justice.

4. The learned DR, on the other hand, strongly opposing condonation of delay petition filed by the assessee submitted that

the reasons given by the assessee do not come within the ambit of reasonable and bonafide reasons, which can be considered for condonation of delay and hence, appeal filed by the assessee may be dismissed as not maintainable.

5. Having heard both sides and considered the petition filed by the assessee for condonation of delay, we are of the considered view that reasons given by the assessee for not filing the appeal within the time allowed under the Act comes under reasonable cause as provided under the Act for condonation of delay and hence, delay in filing of appeals is condoned and appeals filed by the assessee are admitted for adjudication.

6. Brief facts of the case extracted from ITA No.696/Chny/2018 for the assessment year 2007-08 are that the assessee belongs to Challani group of companies was subjected to search and seizure operation u/s.132 of the Act,1961 on 19.04.2012. Consequent to search, notice u/s.153C dated 07.11.2014 was issued to assessee to furnish return of income. In response to notice, the assessee vide letter dated 09.03.2015 informed Assessing Officer that original return filed for the assessment year on 30.10.2007 declaring Nil

income may be treated as return filed for in response to notice issued u/s.153C of the Act. The case was taken up for scrutiny and assessment has been completed u/s.153C read with section 144 of the Act on 30.03.2015 determining total income of Rs.8,90,00,000/-, after making addition towards unexplained credits found in bank account on peak credit basis. The relevant findings of the Assessing Officer are as under:-

“5. From the audited accounts. it is seen that there is no profit and loss account indicating that no activities have been undertaken by the company during the year. The share capital is ₹.1,00,00,000/- and there are no loan funds etc. However from part of the Statement of bank account filed along with audit report it is seen that there are many credits and debit in the bank account, which indicates that business activities have been undertaken by the assessee company. Peak credit in the bank account during period is ₹8,90,00,000/-. In the absence of any explanation the peak credit is taken to be its income from undisclosed sources and is added to the total income, more so because the transactions in the bank account indicate much more funds available than the funds available according to balance sheet. Penalty proceedings u/s.271(1)(c) of I.T.Act,1961 for non-compliance to notice u/s.142(1) of the Act are also initiated.”

7. Being aggrieved by the assessment order, the assessee preferred an appeal before learned CIT(A). Before the learned CIT(A), assessee has challenged additions made by the Assessing Officer towards credits found in bank account as unexplained cash credit on peak credit basis. The assessee has also filed petition for

admission of additional grounds along with certain documents including financial statement for the relevant assessment year. The additional grounds filed by the assessee have been forwarded to the Assessing Officer for remand report. The Assessing Officer vide remand report commented on additional evidences filed by the assessee and has accepted the source for credits found in bank account to the extent of ₹ 8,90,00,000/-. However, the Assessing Officer has further noted that there are three credits of ₹ 5,000/- each on 28.08.2006, 28.09.2006 and 09.10.2006 respectively in the above said bank account for which no satisfactory explanation including source has been filed by the assessee. The Assessing Officer also noticed that assessee has received interest on fixed deposits of ₹ 47,053/- which was not offered to tax in the return of income filed for relevant year.

8. The learned CIT(A), after taking into consideration additional evidence filed by the assessee, remand report of Assessing Officer and rejoinder filed by the assessee to remand report issued by the Assessing Officer observed that Assessing Officer has accepted the explanation offered by the assessee towards source for credit found in bank account of ₹ 8,90,00,000/- and hence, additions made towards unexplained cash credit cannot survive, accordingly,

deleted the additions made by the Assessing Officer . As regards, three credits found on 28.08.2006, 28.09.2006 and 09.10.2006, the learned CIT(A) observed that assessee has not been able to explain source for deposit of ₹ 15,000/- before the Assessing Officer and hence, enhanced the assessment and made addition of ₹ 15,000/- as unexplained credits. Similarly, learned CIT(A) made addition of ₹ 47,053/- towards interest on fixed deposits with the banks on the ground that no explanation has been given by assessee on interest income and hence, enhanced the income and made additions. Aggrieved by the learned CIT(A)'s order, assessee is appeal before us.

9. The learned AR for assessee submitted that the learned CIT(A) has erred in enhancing assessment to the extent of ₹ 15,000/- and ₹ 47,053/- without any reference to the incriminating materials found as a result of search in the assessments framed u/s.153A / 153C of the Act. The learned AR further submitted that the learned CIT(A) failed to appreciate that enhancements made by him to ₹ 15,000/- and ₹ 47,053/- is not on the basis of any material seized during the course of search and without any satisfaction recorded by the Assessing Officer having jurisdiction over the party subjected to

search and consequently, assumption of jurisdiction u/s.153C for enhancing the assessment is misconceived, without any authority of law and beyond the powers of learned CIT(A) . In this regard, he has relied upon the decision of Hon'ble Kerala High Court in the case of CIT vs. Promy Kuriakose reported in 386 ITR 597 and the decision of Hon'ble Delhi High Court in the case of CIT Vs. M/s. Renu Constructions Pvt.Ltd. reported in 399 ITR 262. The assessee has also relied upon judgement of Hon'ble Supreme Court in the case of CIT Vs. Singad Technical Education Society reported in 397 ITR 344.

10. The learned DR, on the other hand, strongly supporting the order of learned CIT(A) submitted that assessee has taken legal ground challenging additions made towards cash deposits and interest income without any reference to seized materials found at the time of search in the assessments for the first time before the Tribunal and further additions made by the Assessing Officer towards cash deposits was on the basis of same bank account which was subject matter of consideration before learned CIT(A) . Since the assessee has not taken any ground challenging additions before the learned CIT(A) on the basis of same bank account, then

it cannot take a new ground challenging enhancement made by the learned CIT(A) on the basis of same bank account.

11. We have heard rival contentions of both sides, perused materials available on record and gone through the orders of authorities below along with case laws cited by counsel for the assessee. As regards legal ground taken by assessee challenging enhancement of assessment towards cash credit of ₹ 15,000/- and interest income of ₹ 47,093/- without any reference to the incriminating materials found during the course of search under section 153A/153C(1) of the Act, we are of the considered view that assessee has not taken any specific ground challenging issue before the Assessing Officer or before the CIT(A), when the Assessing Officer has made additions towards cash credit of ₹ 8,90,00,000/- which was on the basis of same bank account where the Assessing Officer has found credit of ₹ 15,000/- and interest income of ₹ 47,053/- and hence, at this stage, assessee cannot take ground challenging validity of additions made in absence of seized material in the assessment framed u/s.153A/153C(1) of the Act. No doubt, it is well settled principle of law by the decision of various High Courts and Hon'ble Supreme Court that in absence of

any incriminating material, no addition can be made in the assessment framed u/s.153C /153A, if such assessments are unabated as on the date of search. But, fact remains that in the present case facts with regard to abatement and unabatement of assessments was not forthcoming from the records as well as additions made towards enhancement of assessment and cash credit and interest income was on the basis of bank account which was the basis for making additions for ₹ 8,90,00,000/- on peak credit and hence, arguments of the assessee that enhancement made by the learned CIT(A) is not on the basis of any incriminating material found during the course of search is unfounded. Therefore, we reject the ground taken by the assessee.

12. As regards three credits found on 28.08.2006, 28.09.2006 and 09.10.2006 amounting to ₹ 15,000/-, we find that addition to cash deposits was on the basis of same bank account, where the Assessing Officer during the remand proceedings has recorded categorical finding that although assessee claimed that source for cash deposits is out of cash received from M/s.Saravana Global Holdings Ltd., but account statement of assessee does not vouch the same, whereas the assessee claims that source for three cash

deposits was from M/s. Saravana Global Holdings Ltd., for which account statement of the party has been furnished before the Assessing Officer . Facts are not clear insofar as source of income for cash deposits. Therefore, we are of the considered view that the issue needs to be re-examined by the Assessing Officer in light of account statement furnished by the assessee to explain source for three cash credits found on three dates . Insofar as interest on fixed deposits of ₹ 47,053/-, Assessing Officer during the remand proceedings observed that the assessee has received interest income on fixed deposits and credited in the same bank account . However, on perusal of return of income filed for the year, the same was not offered for taxation. Therefore, we are of the considered view that this issue also needs verification by the Assessing Officer in light of return of income filed by the assessee for relevant assessment year. In case, interest earned on fixed deposits was not offered to tax, then enhancement made by the learned CIT(A) towards interest income survives.

13. In the result, appeal filed by the assessee is allowed for statistical purposes.

ITA No.697/Chny/2018 (A.Y.2013-14):

14. The facts and issues involved in this appeal are identical to the facts and issues considered by us in ITA No.696/Chny/2018 for the assessment year 2007-08. The reasons given by us in preceding paragraph shall *mutatis mutandis* applies to this appeal as well except to additions made towards difference shown in the accounts of the assessee to M/s. Saravana Global Holdings Ltd. The learned CIT(A) has recorded categorical finding that assessee has failed to explain difference of ₹ 7,61,447/-. As regards enhancement of ₹ 22,000/-, the learned CIT(A) has recorded categorical finding that assessee has explained difference in amount of ₹ 2,06,444/- out of ₹ 2,28,445/- and hence, balance amount of ₹ 22,000/- has been remained unexplained or reconciled. The assessee claims that it has satisfactorily explained difference amount shown in the books of account of the assessee and reconciliation to the credit of M/s.Saravana Global Holdings Ltd., and difference in amount received from M/s. KGS Developers Ltd. The facts are contradictory. Therefore, we are of the considered view that the issue needs to be re-examined by the Assessing Officer in light of claim of the assessee that it has filed reconciliation explaining the difference. Hence, we set aside the

appeal filed by the assessee to the file of Assessing Officer and direct him to examine the issue and decide in accordance with law.

15. In the result, the appeals filed by the assessee are treated as allowed for statistical purposes.

Order pronounced in the open court on 31st December, 2020

Sd/-
(वी. दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 31st December, 2020

DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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