

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2020

CORAM :

THE HON'BLE DR. JUSTICE VINEET KOTHARI
AND

THE HON'BLE MR.JUSTICE M.S.RAMESH

TAX CASE (APPEAL) NO.630 OF 2017
AND CMP NO.15965 OF 2017

C.V.Ravi

PAN - AAAPR5253L

Flat No.7, Sivagami Apartments,
Raja Street, T.Nagar,
Chennai - 600 017.

..Appellant

-vs-

The Income Tax Officer
Business Ward - II (4)
Chennai - 600 034.

...Respondent

PRAYER: Tax Case Appeal filed under Section 260A of Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, "A" Bench, Chennai, dated 26.04.2017, passed in ITA No.3051/Mds/2016 against the order of the Commissioner of Income Tax (Appeals)-2, Chennai dated 29/07/2016 passed in ITA.No.331/CIT(A)-2/2013-14 against the order of the Income Tax Officer, Business Ward II(4), Chennai 34 dated 29/12/2011 vide PAN/GIR No.AAAPR5253L.

For Appellant : Mr.K.G.Raghunath

For Respondent : Mr.T.Ravi Kumar
Senior Standing Counsel

J U D G M E N T

(Judgment of the Court was made by Dr. VINEET KOTHARI, J.)

The present Tax Case Appeal has been filed by the Assessee Mr.C.V.Ravi, aggrieved by the order of the learned Income Tax Appellate Tribunal, "A" Bench, Chennai, dated 26.04.2017, for AY 2009-10, where the learned Tribunal dismissed the Appeal of the Assessee and hold the addition under Section 68 of the Income Tax Act, 1961, in the hands of the Assessee to the extent of Rs.3.05 Crores, alleged to have been taken as loan from one M/s.AR.Com. The findings of the learned Tribunal, discussing the entire matter, are quoted below for ready reference:

"3.We have heard both the parties and perused the material on record. The Id.A.R. Submitted that there was a repayment of Rs.3.05 Crores in the subsequent assessment year and sustaining the addition of Rs.3.05 Crores by the Ld. CIT (A) is not justified. The Id. A.R. Relied on the following judgments:-

a)In the case of CIT v. Orissa Corporation P. Ltd. In [1986] 159 ITR 78 (SC) wherein held that

"in this case the respondent had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesseees. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notices under section 131 at the instance of the respondent, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were credit worthy. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the respondent could not do anything further. In the premises, if the Tribunal came to the conclusion that the respondent had discharged the burden that lay on it, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which the conclusion could be arrived at, no question of law as such arose. The High Court was right in refusing to state a case."

b)in the case of DCIT v. Rohini Builders in [2002] 256 ITR 360 (Guj)

"The Tribunal found that the assessee had discharged the initial onus which lay on it in terms of section 68 by proving the identity of the creditors by giving their complete addresses, GIR numbers / permanent account numbers and the copies of assessment orders wherever readily available, that it had also proved the capacity of the creditors by showing that the amounts were received by the assessee by account payee cheques drawn from bank accounts of the creditors and the assessee was not expected to prove the genuineness of the

cash deposited in the bank accounts of those creditors because under law the assessee can be asked to prove the source of the credits in its books of account but not the source of the source."

3.1. On the contrary, the Id. D.R. Relied on the judgment of CIT Vs. P.Mohanakala in [2007] 291 ITR 278 (SC) wherein held that:

"Reversing the decision of the High Court, that the findings of the Assessing Officer, the Commissioner (Appeals) and the Tribunal were based on the material on record and not on any conjectures and surmises. That the money came by way of bank cheques and was paid through the process of banking transaction was not by itself of any consequences. The High Court misdirected itself and erred in disturbing the concurrent findings of fact."

The Id. D.R submitted that the assessee has not discharged the burden cast upon the assessee regarding identity of the parties, genuineness of the transactions and capacity of the lenders to advance the amount to the assessee. According to the Id. D.R the entire addition was made by the AO to be sustained.

3.2. The Id. A.R drew our attention to the loan confirmation letters from M/s.MSG Associates for Rs.50 Lakhs and Mr.Bharat Chandan for Rs.25 lakhs placed at page No.21 & 19 of paper books respectively. As seen from the orders of the lower authorities, assessee could not prove the source for the loan amount of Rs.3.05 crores received from M/s.AR.Com. Regarding the loan received from Mr.Bharat Chandan - for Rs.25 lakhs, M/s.MSG Associates for Rs.50 lakhs, the assessee had produced confirmation letters and credit worthiness was proved by providing bank accounts. The loan account was squared off in the same assessment year through payment by M/s.Forsee Financial & Consultancy Services and its associated concern through M/s.Aurobindo Finance & Hire Purchase Pvt. Limited, which was paid on behalf of assessee, namely Mr.C.V. Ravi. Similar contention of the Id. A.R. was that loan outstanding from M/s.AR.Com was repaid on behalf assessee by M/s.Aurobindo Finance &

Services Limited and M/s.Forsee Financial & Consultancy Services. The said repayments were made by these group concerns for the assessee on different dates during the financial years 2008-09, 2009-10 and 2010-11 by the firm which is not in existence. Out of the said amount of Rs.3.80 crores in total, a sum of Rs.2.55 crores was settled by these entities towards loan. But the fact remains that only a sum of Rs.23,93,000 is shown as outstanding as against a sum of Rs.2.55 Crores paid by M/s.Forsee Financial Services Ltd. The said figure of Rs.23.93 lakhs is not tallying with any of the entries in the books or in the bank statement. Since the said amount of Rs.2.55 crores is not figuring in the name of Shri C.V. Ravi and it was also observed that mere book transfers by means of journal entries were made between the ground concerns. From the ledger extract, it cannot be treated as a genuine repayment on behalf of Shri C.V. Ravi. The assessment year under consideration is Asst Year 2009-10. Hence the remaining payments made in the subsequent financial years might have an impact in the respective assessment years. As far as this assessment year is concerned, repayment of loan to the extent of Rs.2.55 crores stands unexplained since Ravi is not figuring as debtor in the books of Forsee Financial Services Ltd to the extent of Rs.2.55 Crores. Remaining amount of loan i.e., Rs.1.25 Crores which were repaid by way of sale of shares by the assessee which was only during the financial years relevant to Asst Years 2010-11 and 2011-12.

3.3.Thus, as far this year is concerned, the repayment of loan of Rs.2.55 crores stands unexplained since the said sum is stated to be repaid in the same year. On the remaining amount of Rs.1.25 crores, the said amount is not figuring as loan in the books of C.V. Ravi as he had stated that he did not maintain books of accounts. Further it was also clearly proved that the assessee was also not in a position to prove the source for the said loan viz., M/s.A.R. Com. It is also pertinent to mention that a separate OD account was opened with Oriental Bank of Commerce by M/s.Sri Aurobindo Finance & Hire Purchase Ltd., to settle the

loan amount of Rs.2.15 crores during the financial year 2008-09 and the entire amount of Rs.2.15 crores given by Oriental Bank of Commerce was squared off by Sanguine Media Ltd., and Term Deposit Closure Proceeds of Rs.2 crores in the same year. The OD account starts from 12.10.2008 and on 28.10.2008 there was closure proceeds of Rs.2 Crores. Other than this credit entry in the OD account all other credit entries were only from M/s.Sanguine Media Ltd., in which the assessee was a director. The payments in the OD accounts were, made only to M/s.AR.Com and M/s.Forsee Financial Service Ltd., and no other transactions are figuring in the OD account, the OBC (OD) account shows a closing balance of Rs.7920 for a period of three years. Based on this elaborate analysis, the Assessing Officer has come to the conclusion that the loan amount of Rs.3.8 crores unexplained, as on 31.03.2009.

3.4.It is also to be noted that Inspector vide his report dated 08.12.2011 and 09.12.2011 stated that M/s.AR.Com is bogus entity and the address of the two partners are also fake / bogus. The assessee had completely failed to prove the genuineness of the transaction either way i.e., at the stage of "loan advanced" by M/s.AR.Com to the assessee and at the stage of so-called "repayment" of the said loan, by the assessee to M/s.AR.Com. Further, the assessee has also completely failed to show / establish the nexus between the loans stated to be repaid by M/s.Forsee and M/s.Aurobindo on behalf of the assessee, and the flow of funds, if any, from the hands of the assessee himself to the said entities, as clearly highlighted in the Remand Report. सत्यमेव जयते

3.5.Being so, the loan standing the name of M/s.AR.Com cannot be considered, as a genuine loan. The assessee, even failed to prove the identity of the creditors and genuineness of the transactions. The burden cast on assessee would shift to assessee only when assessee proved the identity of the creditors. Then only the AO could probe the matter further and investigate the material available before him to come to an independent conclusion before rejecting the explanation offered by the assessee. In the present case,

the assessee has not proved all the above ingredients stated above and the assessee being failed to discharge primarily burden cast upon it, the assessee cannot say "catch me if you can". The only contention of the assessee is that the amount was borrowed by cheque and paid by cheque. However, it is to be noted that repayment was not by the assessee, but by the third party. By appreciating all the material on record, the AO came to the conclusion that the assessee's explanation, regarding this cash credit could not be accepted in the case of M/s.AR.Com. In such circumstances, we are not in a position to disturb the findings of the lower authorities in respect of credit in the name of M/s.AR.Com. Accordingly, the addition of Rs.3.05 crores in the name of M/s.AR.Com to be considered as unexplained credit in the hands of the assessee, the addition sustained by the Ld. CIT (A) is justified. Hence, this ground raised by the assessee stands rejected.

3.6.Coming to the credit in the name of M/s.MSG Associates for Rs.50 lakhs and of Mr.Bharat Chandan for Rs.25 lakhs, it was stated by the AO in his Remand Report that the identity of these two parties are proved by filing confirmation letters. The contention of the ld.D.R is that the assessee has not repaid the loan, but repayment by the third party. In our opinion, when the AO himself given in the remand report that assessee had produced the confirmation letters and credit worthiness of these parties, were also proved through bank accounts, it is not appropriate on the part of the Departmental Representative to argue contrary to the Remand Report submitted by the AO before the Ld. CIT (A), which is produced by the Ld. CIT (A) in para 8.2 of his order. Being so, we are not in a position to interfere with the above findings of the Ld. CIT (A) in deleting these two additions. Accordingly, deletion is justified and confirmed the order of Ld. CIT (A) on this issue."

2. The learned counsel for the Assessee Mr.K.G.Raghunath made emphatic submissions before us that the learned Tribunal erred in upholding the said additions, in the hands of the Assessee, where the Assessee had taken three genuine loans from three persons viz., M/s.AR.Com, M/s.MSG Associates and Mr.Bharat Chandan for subscribing to the Rights

Issue of the Company M/s.Sanguine Media Limited, in the said previous year, which was paid off substantially through banking channels and merely because the Assessee failed to produce the confirmation and the person, the owner of M/s.AR.Com, an adverse inference against the Assessee could not have been drawn by the Authorities below to make such additions. He further emphasized that the same financial company through whom the advance of the other two Creditors was repaid namely, M/s.Aurobindo Finance & Hire Purchase Private Limited and M/s.Forsee Financial & Consultancy Services and those credits and repayments were believed by the Assessing Authority, there was no reason not to believe a similar advance and repayment with regard to M/s.AR.Com. also. He therefore submitted that the learned Tribunal has erred in drawing such conclusion and the findings of facts, therefore, are perverse and the question of law does arise from the order of the learned Tribunal.

3. Per contra, learned Senior Standing Counsel for the Revenue supported the impugned order and even drew our attention to the statements of the Assessee recorded under Section 131 of the Income Tax Act, 1961, which has been quoted in the Assessment order dated 20.12.2011, by the learned Assessing Authority, while passing the orders under Section 143(3) of the Act and read with Section 147 of the Act. The said statement as accepted by the learned Assessing Authority from Question No.7 to Question No.14, as quoted in the statement under Section 131 of the Act, dated 01.02.2010, are quoted herein below for ready reference:

"Q.7. Please state whether you have advanced any loan to anybody or taken any loan from anybody?

Ans: No, I have not advanced any loan to anybody. I have taken loan from the following persons:

(1)M/s.A.R.Com Rs.3,05,00,000/- on 04-09-2008

(2)M/s.Bharath Rs. 25,00,000/- on 04-09-2008

(3)M/s.MSG Associates Rs. 50,00,000/- on 04-09-2008

Total Rs.3,80,00,000/-

Q.8. Please state the purpose for which the above loans have been taken?

Ans: M/s.Sanguine Media Limited, came with a Rights Issue in September 2008, SEBI fixed the price at Rs.23 for the 10 rupees share. To subscribe the promote share of 16.50 lakhs of shares the above loans have been taken and utilized.

Q.9.Please furnish the full details of the

above loan transactions, such as present address of the above persons, details of interest, repayment, mode of receipt etc?

Ans: The above loan amounts have been received through banking channels. At present, I do not remember the addresses of Mr.Bharat and M/s.MSG Associates. The same will be furnished tomorrow. The address is of M/s.AR.Com is not known to me.

Q.10.What is the balance amount payable to M/s.A.R.Com?

Ans: There is no balance amount to be paid to M/s.A.R.Com since the present whereabouts of M/s.A.R.Com and its proprietor is not known to me. I have not paid any interest for the loan taken.

Q.11.Did you execute any agreement / document for obtaining loan amount of Rs.3.05 crores from M/s.A.R.Com. If so, please furnish copy of the same.

Ans: I have not executed any agreement / document for obtaining loan amount of Rs.3.05 crores from M/s.A.R.Com.

Q.12.What is the business activity of M/s.A.R.Com and who is the proprietor?

Ans: I am neither aware of the business activity of M/s.A.R.Com nor the proprietor.

Q.13.In answer to question No.10, you have stated that you are not aware of the business activity carried out by M/s.AR.Com, nor the proprietor. Then, please state that how did you procure the loan amount of Rs.3.05 crores?

Ans: I am unable to furnish the information as the entire transaction an arranged one. At that time to subscribe the promoters issue of 16.25 lakhs number of shares of M/s.Sanguine Media Limited, I needed a source in bank for subscribing the same. Hence I approached my friends, and they suggested that if I would give the money in cash they would arrange cheques for the same. Hence I paid the cash of Rs.3.05 crores to one of my friend who arranged the cheques for the above amount. As the entire money is belonging to me I have not executed any loan agreement / document for the above transaction. Hence I have not repaid the money to M/s.AR.Com. As I stated earlier that I never met anybody from M/s.AR.Com, in fact, I do not know whether it is a company or proprietorship concern or Partnership firm.

Q.14. In answer to question No.11, you have stated that you have paid cash amounting to Rs.3.05 crores for obtaining cheques, Please state what is your source for this amount of Rs.3.05 crores ?

Ans: The above amount of Rs.3.05 Crores is out of my earnings as well as fund mobilized from my friends and relatives. Now I am unable to give the names and address of the persons from whom I have mobilized funds.

Q.15. When will you furnish the names and address of the persons from whom you have stated to have mobilized funds along with their income tax assessment details.

Ans: I am not able to produce names and address of any persons and the entire money is received by me in cash from these persons. Hence, I admit the above amount of Rs.3.05 crores as income in my hands. I undertake to pay the taxes on the above amount within a week's time."

4. The learned Senior Standing Counsel for the Revenue further submitted that though the said statement was later on retracted by the Assessee, but the time gap between the such retraction and the said statement is more than one year. The next statement, which was recorded by the Assessing Authority, in which the said retraction was made and which was relied upon by the learned counsel for the Assessee also is of dated 20.12.2011, which too is quoted in the Inspector's report dated 09.12.2011 and the same is again extracted below for ready reference:

"In continuation assessment proceedings summon u/s. 131 of the Income-Tax Act, 1961 dated 20-12-2011 was issued to the assessee. The copy of Sworn statement deposed by the assessee on 01.02.2010, the copies of Inspectors enquiry report furnished in respect of M/s.AR.Com and its partners Mr.ASRATH and Mr.Mohamed Kasim were shown to the assessee. The copies were perused by the assessee and sworn statement was recorded u/s.131 of the Income-Tax from him.

Copy of the sworn statement is reproduced below:

Q.1. Have you been told about the consequences of giving false information under oath?

Ans: Yes, I have been told about the consequence of giving false information under oath.

Q.2. Please identify yourself?

Ans: I am C.V.Ravi, S/o. Late C.K.Varadhachari, Aged 60 years residing in the above address. I am a post graduate in Economics. I am married and my wife is housewife, Mrs.R.Subhadra. I have one daughter who is married, presently at USA.

Q.3.Will you go through your sworn statement deposited u/s.131 of Income Tax Act, 1961 before Shri K.V.Dillibabu, Income Tax Officer, Investigation, Unit-III, Chennai - 34 on 01.02.2010?

Ans: OK

Q.4.Have you read the sworn statement deposited by you?

Ans: Yes

Q.5.Have you gone through your confirmation given by you in your own handwriting about the mode of recording of your sworn affidavit.

Ans: Yes, I have gone through confirmation given by me on 01.02.2010.

Q.6.Why at present you are retracting your statement?

Ans: At that time under stress and I gave that statement now I am in clear better state of mind to retract the statement deposited by me. "

5. The learned Senior Standing Counsel for the Revenue Mr.T.Ravi Kumar, therefore submitted that on account of failure of the Assessee to produce any confirmation or the Assessee himself, the additions made in the hands of the Assessee with regard to the alleged loan of M/s.AR.Com is justified and the findings of facts do not deserve to be disturbed by this Court and they are binding on this Court under Section 260A of the Income Tax, 1961.

6. Having heard the learned counsel for the parties at length and having perused the materials on record, we are satisfied that no question of law, arises in the present appeal filed by the Assessee. On account of failure of the Assessee to produce any confirmation from the said alleged creditor M/s.AR.Com and producing the Assessee in person before the Assessing Authority for cross examination, the Assessee has obviously failed to establish even the identity of the Creditor

much less the genuineness of the alleged loan transaction. There seems that a Survey had taken place at the place of the Assessee and during that Survey, the statements recorded by the Assessing Authority, the Assessee has not only admitted his ignorance of even knowing the said Creditor M/s.AR.Com, from whom he has alleged to have been taken Rs.3.5 Crores as loan itself was enough to draw an adverse inference against the Assessee and the belated retraction, at a much later stage was of little help to the Assessee. If at all the original statement was recorded by the Assessing Authority, under duress of coercion, the Assessee could have retracted the same at the earliest available opportunity, after such statement was recorded. Taking a period of more than one year and again except such retraction of statement, in the course of second round of recording statements under Section 131 of the Act only, retraction of such statement, without adducing any cogent evidence to establish the identity of the said Creditor and genuineness of the alleged loan transaction, the Assessee seems to have done nothing to establish the genuineness of the entire loan transaction. It is not even believable that from a person, from whom the loan of Rs.3 Crores is taken, is not even known to the Assessee and only the banking channels are relied upon to establish the genuineness of the so called transaction, which banking channels can be used even for fake transactions of circulating one's own unaccounted money in fake names.

7. It is not unknown in the Income Tax field that such banking transactions can always be "created" by creating even the shell companies for the circulation of the black money. It is the burden cast upon the Assessee to establish, not only the identity of the Creditor, but also to establish the genuineness of the loan transaction itself, including the capacity of the person, for giving the loan, for a specified purpose. Neither any written contract nor any identity of the Creditor, having been established in the present case, we cannot find any fault with the findings concurrently rendered by the three authorities below, that the said addition deserves to be made under Section 68 of the Act. Merely because other two loan transactions, with two other persons was believed to be genuine and additions were set aside, that is not a sufficient ground to hold that a similar treatment should have been given with respect to the alleged loan transaction of M/s.AR.Com also.

8. In these view of the facts, we are satisfied that the findings of facts rendered by the learned Tribunal, do not call for any interference by this Court under Section 260A of the Income Tax Act, 1961, and no question of law arises in the

present Appeal and the Appeal filed by the Assessee is found to be devoid of any merit and the same is liable to be dismissed. Accordingly, the Tax Case Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

TK

To

1.The Income Tax Officer
Business Ward - II (4)
Chennai - 600 034.

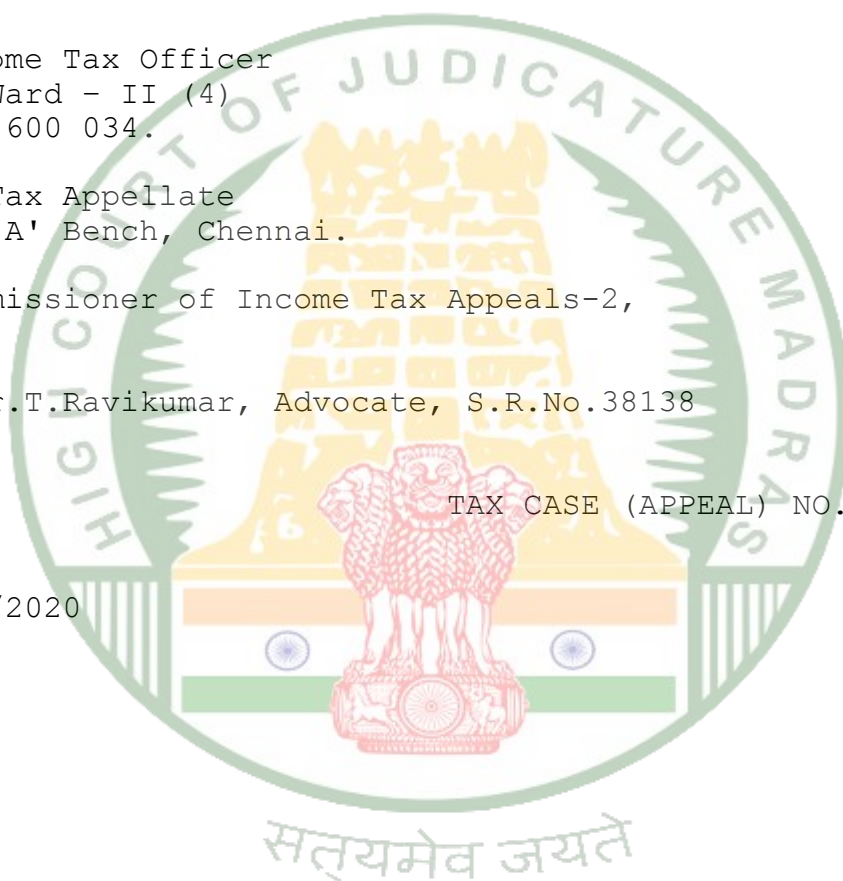
2.Income Tax Appellate
Tribunal 'A' Bench, Chennai.

3.The Commissioner of Income Tax Appeals-2,
Chennai.

+1cc to Mr.T.Ravikumar, Advocate, S.R.No.38138

TAX CASE (APPEAL) NO.630 OF 2017

NRL(CO)
KKV/31/12/2020



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