

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1717/Chny/2017

&

**C.O. No.128/Chny/2017**

(in I.T.A. No.1717/Chny/2017)

निर्धारण वर्ष / Assessment Year : 2012-13

The Deputy Commissioner of  
Income Tax, Circle – 1,  
Nellai City Centre, Rahmath Nagar,  
Tirunelveli.

v.

M/s Aryaas Super Market,  
139A, Trivandrum Road,  
Palayamkottai,  
Tirunelveli – 627 002.

(अपीलार्थी/Appellant)

PAN : AAHFA 9672 P

(Respondent & Cross Objector)

आयकर अपील सं./ITA No.1718/Chny/2017

&

**C.O. No.126/Chny/2017**

(in I.T.A. No.1718/Chny/2017)

निर्धारण वर्ष / Assessment Year : 2012-13

The Deputy Commissioner of  
Income Tax, Circle – 1,  
Nellai City Centre, Rahmath Nagar,  
Tirunelveli.

v.

M/s Hotel Aryaas,  
29, Madurai Road,  
Tirunelveli – 627 001.

(अपीलार्थी/Appellant)

PAN : AADFH 0482 N

(Respondent & Cross Objector)

आयकर अपील सं./ITA No.1719/Chny/2017

निर्धारण वर्ष / Assessment Year : 2012-13

The Deputy Commissioner of  
Income Tax, Circle – 1,  
Nellai City Centre, Rahmath Nagar,  
Tirunelveli.

v. M/s Hotel Aachees,  
10A/5, Trivandrum Road,  
Palayamkottai,  
Tirunelveli – 627 002.

(अपीलार्थी/Appellant)

PAN : AADFH 0484 L  
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri V. Nandakumar, JCIT

प्रत्यर्थी की ओर से/Respondents by : Shri Y. Sridhar, CA

सुनवाई की तारीख/Date of Hearing : 14 05 2018

घोषणा की तारीख/Date of Pronouncement : 08.06.2018

### **आदेश /ORDER**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

The appeals of the Revenue in respect of three independent assesseees are directed against the respective orders of the Commissioner of Income Tax (Appeals)-3, Madurai, dated 17.04.2017 for the assessment year 2012-13. The first two assesseees filed cross-objections in support of the orders of the CIT(Appeals). Since common issue arises for consideration in all the appeals and cross-objections, we heard all these together and disposing of the same by this common order.

2. Shri V. Nandakumar, the Ld. Departmental Representative, submitted that the only issue arises for consideration is with regard to a sum of ₹5 Crores towards construction of hotel known as "Hotel Apple Tree" in the hands of the assesseees. According to the Ld. D.R., there was a survey in the premises of the assesseees on 18.02.2013. Some of the account books were found and impounded. A statement from one of the partners, namely, Shri Jayaprakash Narayanan was also recorded. According to the Ld. D.R., the Revenue authorities found that all the assesseees invested ₹9 Crores in the construction of a hotel known as "Hotel Apple Tree". The assesseees have borrowed a loan of ₹4 Crores. Therefore, according to the Ld. D.R., the Assessing Officer accepted the source of ₹4 Crores and the balance of ₹5 Crores could not be explained by any of the assesseees. In fact, during the course of survey operation, according to the Ld. D.R., Shri Jayaprakash Narayanan admitted an additional income of ₹5 Crores in the hands of each assessee. However, while filing the return of income, the same was not offered by the assesseees. Therefore, according to the Ld. D.R., the Assessing Officer made an addition of ₹5 Crores in the hands of all the assesseees. Hence, the

CIT(Appeals) is not justified in deleting the addition made by the Assessing Officer. According to the Ld. D.R., the accounts were prepared to accommodate the investment made in the construction. Therefore, the source of income from the partners for making investment is not accepted and the Assessing Officer made addition in the respective hands of the assesseees.

3. On the contrary, Shri Y. Sridhar, the Ld. representative for the assesseees, submitted that all the assesseees are engaged in the business of hospitality, grocery and consumer products. There was a survey in the group concern on 18.02.2013. According to the Ld. representative, on the basis of the balance sheet, the Assessing Officer found that there was investment of ₹9 Crores in the hotel M/s Ramyaas Inn (Hotel Apple Tree). According to the Ld. representative, the investment in the hotel to the extent of ₹9 Crores is not in dispute. The dispute is only with regard to ₹5 Crores accepted by one of the partners Shri Jayaprakash Narayanan while recording a statement during the course of survey operation. The Ld. representative further submitted that the hotel M/s Ramyaas Inn is also an independent assessee. The investment of ₹9 Crores was disclosed in the balance sheet of M/s Ramyaas Inn as on

31.03.2013. According to the Ld. representative, this was brought to the notice of the Assessing Officer during the course of assessment proceeding. The assessee explained before the Assessing Officer that the sum of ₹4 Crores was from the loan borrowed and the balance of ₹5 Crores was from the withdrawal from the accounts of the partners from various concerns. According to the Ld. representative, the Assessing Officer has not doubted the loan borrowed by the assessee to the extent of ₹4 Crores. No material evidence was found contrary to the explanation of the assessee that the balance of ₹5 Crores was invested from the amount withdrawn made by the partners from various concerns. According to the Ld. representative, the Assessing Officer made addition only on the basis of the statement said to be recorded under Section 131 of the Act during the course of survey operation. According to the Ld. representative, during the course of survey operation under Section 133A of the Act, the Assessing Officer was not empowered to administer oath before examination of any person. Therefore, the statement said to be recorded during the course of survey operation under Section 133A of the Act has no evidentiary value. Hence, according to the Ld. representative, the

statement said to be recorded from Shri Jayaprakash Narayanan has no evidentiary value, therefore, assessment cannot be framed on the basis of the statement said to be made by Shri Jayaprakash Narayanan. The Ld. representative placed his reliance on the judgment of Madras High Court in CIT v. S. Khader Khan Son (2008) 300 ITR 157.

4. Referring to the circulars issued by the CBDT in F.No.286/2/03 IT (INV) dated 10.03.2003 and 18.12.2014, the Ld. representative for the assessee submitted that the CBDT, being the apex administrative body to administer the direct taxes in the country, instructed its officers, including the Assessing Officers, to search for material evidences during the course of survey operation and not to extract disclosure statement from the taxpayers while recording statement under Section 133A / 132 of the Act. According to the Ld. representative, the judgment of Madras High Court in S. Khader Khan Son (supra) and the CBDT circulars were brought to the notice of the CIT(Appeals). The CIT(Appeals), after placing reliance on the judgment of Madras High Court and CBDT circulars, found that there is no material available on record other than the statement recorded by the Assessing Officer during the course of

survey operation to doubt the source of investment from ₹5 Crores. According to the Ld. representative, the Assessing Officer made an improper observation that the accounts were prepared to accommodate the investment in construction without any material available on record. The attempt made by the Assessing Officer to find out the defects in the accounts in the form of cash deficiency was factually found to be incorrect by the CIT(Appeals) on the basis of the reconciliation statement filed which was noted as Annexure-1 of the impugned order of the CIT(Appeals). Therefore, according to the Ld. representative, there is no cash deficiency as projected by the Assessing Officer in the assessment order. Hence, the CIT(Appeals) has rightly deleted the addition made by the Assessing Officer in all the appeals.

5. The assesseees, M/s Aryaas Super Market and M/s Hotel Aryaas, have filed cross-objections in support of the order of the CIT(Appeals).

6. We have considered the rival submissions on either side and perused the relevant material available on record. During the course of survey operation, on the basis of the disclosure made by

the assessees in the balance sheet, the Revenue authorities found an investment of ₹9 Crores by each assessee in Hotel M/s Ramyaas Inn, which is also known as Hotel Apple Tree. The assessees explained before the Assessing Officer that out of ₹9 Crores invested in the construction of hotel, ₹4 Crores was from the loan borrowed. Therefore, the Assessing Officer accepted the source for investment of ₹4 Crores. The assessees further explained before the Assessing Officer that the balance amount of ₹5 Crores was from the withdrawals from the accounts of the partners from various concerns. The Assessing Officer rejected the explanation of the assessees on the ground that there was no evidence to show that the partners withdrew the money from other concerns as claimed. The assessees also filed a reconciliation statement before the CIT(Appeals) which was made as Annexure-I to the order of the CIT(Appeals). The Assessing Officer disbelieved the entries found in the books of account on the ground that the accounts were prepared to accommodate the investment in the construction. However, there is no material available on record to suggest that the accounts were prepared to accommodate the investment made in the construction. When the books of account

indicate withdrawal of money by the respective partners from various concerns, and the same was invested in the construction of hotel building, this Tribunal is of the considered opinion that the same cannot be ignored by the Assessing Officer on the basis of the statement said to be recorded during the course of survey operation.

7. The Madras High Court in the case of S. Khader Khan Son (supra) found that Section 133A of the Act does not empower the authorities to administer oath, therefore, the statement recorded during the course of survey operation has no evidentiary value. In view of this judgment of Madras High Court, the statement said to be recorded from Shri Jayaprakash Narayanan alone cannot be a basis for any making any addition with regard to cost of construction of the hotel building. Moreover, the CBDT, being the apex body to administer the direct taxes, instructed its officers to search for material evidence during the course of survey operation and not to extract statement from taxpayers. In the case before us, there is no evidence found during the course of survey operation to disprove the claim of the assessee that the source of funds were from the amount withdrawn by the respective partners from various

concerns. As rightly found by the CIT(Appeals), the statement recorded from Shri Jayaprakash Narayanan during the course of survey operation has no evidentiary value, therefore, that alone cannot be a basis for making any addition. Moreover, the assessee also filed reconciliation statement which was made as a part of order of the CIT(Appeals). We find no reason to ignore the reconciliation statement filed by the assessee. Hence, the Assessing Officer is not justified in making any addition on the basis of the statement said to be recorded by Shri Jayaprakash Narayanan. In view of the above, we do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

8. The cross-objections filed by the two assesseees were only to support the order of the CIT(Appeals). In view of our decision confirming the orders of the CIT(Appeals), the cross-objections become infructuous.

9. In the result, all the appeals filed by the Revenue and the cross-objections filed by the assesseees stand dismissed.

Order pronounced on 8<sup>th</sup> June, 2018 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 8<sup>th</sup> June, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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