

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखासदस्य एवं श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष
BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER AND
SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.583/CHNY/2017
निर्धारण वर्ष /Assessment year : 2013-2014.

Shri. H. Abuthahir,
No.11, Rose Garden,
Annex 2nd Cross,
South Ukkadam,
Coimbatore 641 001.

Vs. The Deputy Commissioner of
Income Tax,
Non Corporate Circle 1,
Coimbatore.

[PAN AITPA 0537F]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. R. Sivaraman, Advocate
प्रत्यर्थी की ओर से /Respondent by : Ms. S. Vijayaprabha, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 28-02-2018
घोषणा की तारीख /Date of Pronouncement : 28-02-2018

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER:

Assessee in this appeal, filed against an order dated
30.12.2016 of Id. Commissioner of Income Tax (Appeals)-2,
Coimbatore, has raised the following grounds:-

“(1)The learned CIT(A) has erred in confirming the order of the AO, making the addition u/s. 69A of the I.T. Act, 1961, of Rs.59,09,990/-, in the facts and the circumstances of the case and in law.

(2)The learned CIT(A) ought to have held that the AO cannot apply the provisions of section 69A of the Income Tax Act, 1961 to fix a higher income, on an erroneous basis, to raise a demand of Rs.20.49,720/-, in the facts and the circumstances of the case and in law

3) The learned CIT(A), having held that the TCS amount did not belong to the appellant, the AO could not apply the provisions of section 69A and to deny the refund by estimating the income at 3.5% by imposing an additional burden, which is outside the scope of income, u/s 69A of the I T.Act, 1961, in the facts and the circumstances of the case and in law.

(4) The learned CIT(A) ought to have held that the amount represented by TCS in the name of the appellant only accrued to the appellant, in the facts and the circumstances of the case and therefore, the appellant is justified in admitting the said amount of TCS, as accruing to him, and therefore, is liable to tax on the amount, which accrued to him, as claimed by him, in the facts and the circumstances

S) The learned CIT(A) ought to have held that computation of income is arbitrary and excessive and quashed the addition of Rs.59,09,990/-, in the facts and the circumstances of the Case.

(6) For these and other additional grounds of appeal that may be adduced at the time of hearing, the order of the CIT(A)-2, Coimbatore, is opposed to law and unsustainable in the facts and the circumstances of the case”.

2. A reading of the above grounds clearly shows that assessee is aggrieved on an addition of ₹59,09,990/ made u/s.69A of the Income Tax Act, 1961 (in short ‘the Act’). As per the assessee,

Section 69A of the Act could not have been used for fixing a higher income when estimated rate of return was adopted.

3. Facts apropos are that assessee engaged in the business of buying and selling of old gold jewellery had filed his return of income for the impugned assessment year disclosing income of ₹18,35,640/-. In such return, assessee had claimed refund of ₹17,45,898/- being tax collected at source on old gold purchased through jewellery auction. Ld. Assessing Officer required the assessee to reconcile the TDS as per Form No.26AS with the income admitted in the profit and loss account. In reply, assessee stated that he was participating in gold auction for gold commission agents, goldsmiths, traders and their representatives, on their behalf. As per the assessee, when financial institutions auctioned jewellery, he bided on behalf of such gold commission agents, goldsmiths, traders etc., Contention of the assessee was that he paid the bid amount and took delivery of the old gold using the funds given by such persons. As per the assessee, the gold once received was given it to the actual buyers. As per the assessee, the auctioneers collected tax from him, considering him to be the purchaser of the gold and this was a reason why such tax collection was reflected in form No.26A. Further, as per the assessee, he was entitled only for a commission of Rupees one thousand only, per

kilogram of gold purchased. In other words, as per the assessee, he was representing the parties who required the gold and participated in the auctions on their behalf, for a small commission.

4. Ld. Assessing Officer after analyzing the reply given by the assessee, required the assessee to produce confirmation from the parties on whose behalf he acted as an commission agent. Assessee was required to file name, address, PAN, details gold purchased and amount received from the parties for whom he was acting. However, it seems assessee was unable to file any confirmation. Ld. Assessing Officer did not accept the contention of the assessee that he was only a commission agent, entitled only for a commission for his work as an appraiser. According to him, assessee had done all the transactions in cash mode, and failed to produce books of accounts. From form No.26AS, Ld. Assessing Officer found that assessee had paid ₹23,32,17,428/- for purchase of gold. Ld. Assessing Officer estimated business profit at 3.5% of such purchase turnover. Such estimate came to ₹81,62,609/-. He deducted therefrom the income of ₹23,46,620/- returned by the assessee and made an addition of ₹58,15,990/-. Observation of the Ld. Assessing Officer appearing at para 1 to 6 of his order is reproduced hereunder:-

1) *The assessee is doing the jewellery business in a small scale by acting as a commission agent for a old gold jewellery purchase anti Sale and has not maintained any books of account as per section 44AA of the IT Act 1961.*

2) *The assessee has not submitted any proof regarding the parties for whom he was acting as a commission agent. However as stated by the AR on 5/2/2016 and reply filed by the assessee on various dates it is understood that "the assessee has acted as the accommodating party for the purchaser of old gold, from whom the cash was deposited to the assessee's account and the same was withdrawn and remitted at the auction centre on behalf of the purchaser. For which the assessee has received commission of Rs 94,000/- from various purchaser". This was not admitted in the return of income by the assessee.*

3) *Since the old-Gold purchase auction has been reported by the seller in the 26AS as TCS (which is ultimately related to the old gold purchaser), the assessee has reported the commission of Rs 23,46,620/- bogusly received @ 1% for the quantum Rs 23,32,17,428/- and claimed refund of ₹17,45,900/-*

4) *The assessee is not eligible to claim refund, because the TCS reflected in 26AS belonged to the purchaser of different parties.*

5) *The assessee is claiming that he is a commission agent and received ₹94,000/- as commission for the FY, 12-13 from the old gold auction, but the assessee admitted bogus commission receipts*

estimated @ 1% for the unclaimed receipt reported in his 26AS, Rs. 23,32,17,428/- and illegally claimed and received the refund of Rs. 17,45,900/-- from the department

6) Since the refund received by the assessee for the TCS reported in his account which is not related to the assessee's income, the refund should be reversed and collected from the assessee. Therefore, the amount estimated to the extent of refund received, Rs. 58,15,990/- is to be added as unaccounted income U/S 69A of the Income-Tax Act 1961. Also, Rs, 94,000/- commission received during the Financial Year which is not reported by the assessee in the return of income is to be added as unaccounted income u/s 69A of the Income-Tax Act 1961”.

5. Aggrieved, assessee moved in appeal before the Id. Commissioner of Income Tax (Appeals). Argument of the assessee was that he had participated in the auctions held by M/s.Manappuram Finance Ltd and had bid for various parties like gold commission agents, goldsmiths, traders etc. According to the assessee, he was only an agent participating in the auction. Contention of the assessee was that estimation of profit at 3.5% of the purchases was beyond reasonable limits, considering his nature of business as a jewellery appraiser. As per the assessee, he was only a jewellery broker and his

turnover from jewellery was only ₹30.95 lakhs, during the relevant previous year.

6. However, Id. Commissioner of Income Tax (Appeals) was not appreciative of the above contention. He held as under:-

'I have considered the grounds, facts and circumstances of the case and written submissions/ arguments made by the AR. During the hearings, the AR also submitted certificates issued by two Jeweller shops of Coimbatore certifying that the appellant is a gold appraiser whom they know for past 7 years. However, even before me, the AR has not produced details of parties on whose behalf the appellant participated in the auction conducted by Manappuram Finance during the relevant year. It is quite clear from the submissions that the appellant is making contradictory claims. On one hand, he states that the payments towards purchases of gold from Manappuram Finance as appearing in Form 26AS were made by different parties and on the other hand he claims that TCS made on those purchase belong to him because it appears in his name in Form 26AS. This is unacceptable. Even assuming that he was only an agent, the TCS having been made on purchases of gold, it is the tax collected from the purchasers and they are actually entitled to credit of this TCS. The appellant did not identify the parties on whose behalf the jewellery was purchased in the auction held by Manappuram Finance. He therefore acted in a way to shield actual purchasers from disclosing their identities and PAN, thereby helped them to keep these transactions out of tax net. That could be the reason why those parties did not bother to get TCS, which is just 1 % of purchases, in their names. This peculiar situation in which TCS was made in appellant's name cannot be a ground to get the TCS credit

in his name and claim refund. The offer of TCS amount as his income has no rationale particularly when he states that he gets a commission of 50 paise to one rupee per gram of gold purchases made by the parties on whose behalf he participated in the auction. It was offered as income only to claim credit of TCS against the tax chargeable on that income. Another absurdity in this claim is that income offered is equivalent to tax credit sought against that income which in any case does not belong to him for the reasons stated above. In fact, the appellant did not produce any evidence in support of actual quantum of commission earned from this business Under these circumstances, I am convinced that the AO has rightly estimated income corresponding to refund already paid and income so estimated clubbed with income already offered works out to 3.5% of purchases as proposed by the AO during the assessment proceedings. Accordingly the addition made is upheld and grounds are dismissed”.

7. Now before us, the Id. AR strongly assailing the order of the Id. Commissioner of Income Tax (Appeals) reiterated the contentions taken by the assessee before the lower authorities. Further, according to him, Section 69A of the Act could be applied only where assessee was found to be the owner of any money, bullion, jewellery or other valuable article, which was not recorded in the books of accounts and where assessee offered no explanation on the nature and source of acquisition. As per the Id. Authorised Representative, here profits of the assessee was estimated, and Section 69A of the Act had no application. In any case, as per the Id. Authorised Representative,

income of 3.5% of the purchase turnover was impossible to achieve for a gold commission agent. Thus, according to him, lower authorities fell in error in making the addition.

8. Per contra, Id. Departmental Representative strongly supported the orders of the lower authorities.

9. We have considered the rival contentions and perused the orders of the authorities below. Though the assessee states that he was participating in old gold auction done by M/s. Manappuram Finance Ltd, on behalf of various parties, he could not produce any confirmation from any such parties. Form No.26AS was in the name of the assessee and this admittedly reflected purchases of gold worth ₹23,32,17,428/-. Assessee had also claimed refund for the tax of ₹17,45,898/- collected at source. Assessee having failed to produce any evidence in support of its contention that he was acting on behalf of others, when participating in the bid, the only reasonable presumption that can be drawn is that assessee himself was doing business. In such a situation, assessee having failed to produce any books of accounts, in our opinion, Id. Assessing Officer was left with no choice but to make an estimate of income, based on value of purchases made by the assessee. Estimation of 3.5% was in our

opinion reasonable. No doubt Assessing Officer has cited Section 69A of the Act while making the addition. However this by itself does not make the addition by estimating the income at 3.5% of the purchase turnover bad in law. Even dehorse the said Section, the addition was very much fair and in accordance with law. We do not find any reason to interfere with the order of the Id. Commissioner of Income Tax (Appeals).

10. In the result, the appeal of the assessee stands dismissed.

Order pronounced in the open court at the time of hearing on Wednesday, the 28th day of February, 2018, at Chennai.

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai

दिनांक/Dated:28th February, 2018.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/**ACCOUNTANT MEMBER**