

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री इंद्ररी रामा राव, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
Before Shri Inturi Rama Rao, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I.T.A. No. 431/Chny/2015
निर्धारण वर्ष/Assessment Year: 2002-03

Shri P. Thangavel,
No. 46, III Street,
Thiruvalluvar Nagar,
Kumbakonam 612 001.
[PAN:AAEPT2699C]

The Income Tax Officer,
Vs. Ward I(1),
Kumbakonam.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri N. Arjun Raj, C.A. for
: Shri S. Sridhar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Ms. Vidya Ramachandran, Addl. CIT
सुनवाई की तारीख/ Date of hearing : 09.10.2019
घोषणा की तारीख /Date of Pronouncement : 20.11.2019

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), Tiruchirapalli, dated 03.11.2014 relevant to the assessment year 2002-03. The grounds raised by the assessee are that the Id. CIT(A) has erred in (i) confirming the addition on investment in properties to the tune of ₹.3,45,900/-, (ii) confirmation of addition made on account of investment in individual money lending at ₹.2,84,884 and interest income from private financing at ₹.1,56,398/- and (iii) confirmation of disallowance of agricultural income at ₹.91,000/-.

2. Brief facts of the case are that the assessee is a partner in a number of finance concerns deriving salary and interest and also engaged in money lending business. The regular assessment under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 ["Act" in short] was completed on 29.12.2006. The assessee preferred an appeal against the above order and the Id. CIT(A) partly allowed the appeal. Aggrieved by the above order of the Id. CIT(A), the assessee preferred an appeal before ITAT. An appeal has also been filed by the Department. The ITAT vide its combined orders in ITA No. 530/Mds/2010, 417/Mds/2010 & ITA No. 252/Mds/2010 dated 05.05.2011 set aside the order of the Id. CIT(A) and restored the matter back to the file of the Assessing Officer. After hearing to the assessee and considering the materials available on record, the Assessing Officer completed the assessment under section 143(3) r.w.s. 254 of the Act by making various additions.

2.1 Facts leading the ground of addition on investment in properties are that the assessee along with his brother has purchased a property at Door No. 4,5, 6 & 7 at Madurai Main Road, K. Abishekapuram, Crawford, Trichy on 09.05.2001. The cost of the property along with the stamp and registration charges works out to ₹.6,91,800/-. 50% share of the assessee works out to ₹.3,45,900/- and this has not been reflected in the balance sheet of the assessee. On perusal of the balance sheet for the current year,

the Assessing Officer noticed that there are 15 properties and out of these, 14 properties were existing from the year 1999-2000. There is only one other property and the same is viz., land at Malakarur (P.T. & P. K.) – ₹.1,15,005/-, which seems to have been purchased during the assessment year 2000-01. On a query, it was submitted that there is one asset in the balance sheet mentioned as “Building – ₹.3,83,000/- and this is the asset mentioned above. On perusal of the balance sheet of the assessment year 1999-2000, the Assessing Officer noticed that the said asset “Building – ₹.3,83,000/- is appearing from the assessment year 1999-2000 itself, whereas, the property is purchased during the previous year relevant to the assessment year 2002-03 i.e. Crawford land property (on which the building known as ‘Kalaivani Towers’ is built). Hence, the claim of the AR that the entry “Building – ₹.3,83,000/-“ in the balance sheet cannot represent the Crawford property which is purchased during the assessment year 2002-03. On perusal of the purchase deed, the Assessing Officer observed that the entire sale consideration of the above property (found during the survey) was paid only on the date of registration i.e., 09.05.2001. Accordingly, the investment of 50% share in the above property, which was not disclosed, amounting to ₹.3,45,900/- was brought to tax. On appeal, the Id. CIT(A) confirmed the unexplained investment since the assessee failed to explain the same.

2.2 On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that a sum of ₹.3,83,000/- was paid even in the earlier year related to the assessment year 1998-99. It was further submission that it is a normal practice that in the body of the document, the exact dates of payments are not mentioned unless the same are paid by way of cheque or demand draft. Further, it was the submission that there is no other property other than the above property which could be said to have been invested in by the assessee. When there was no other property omitted to be accounted by the assessee the fact that the payment has been made in advance should have been accepted by the assessing authority. It was further submission that at this point of time; it is not possible for the assessee to ask for confirmation of the transaction from the vendor and prayed for deleting the addition.

2.3 Per contra, the Id. DR has submitted that the assessee has not furnished any piece of evidence for the payment of ₹.3,83,000/- in the earlier assessment year 1998-99, instead, it was clearly mentioned in the purchase deed that the entire payment was made on the day of registration on 09.05.2001. Therefore, the Id. DR pleaded for confirming the orders of authorities below.

2.4 We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. With regard to the

claim of the assessee that the sum of ₹.3,83,000/- would have been paid earlier in the assessment year 1998-99 for the purchase of the Crawford land property, the assessee has not brought on record any material evidence. Moreover, from the purchase deed, the Assessing Officer noticed that the entire consideration was paid for the purchase of the Crawford land property on the day of registration on 09.05.2001, which is relevant to the assessment year 2002-03. In the absence of any material evidence, we find no infirmity in the order passed by the authorities below. Thus, the ground raised by the assessee stands dismissed.

3. The next ground raised in the appeal of the assessee relates to confirmation of addition on account of investment in individual money lending and interest income from private finance. Based on the survey findings a register containing details of loan outstanding as on 01.01.2004 and subsequent transactions, the Assessing Officer has worked out rate of interest on the above transactions. During the course of survey the amount outstanding as on 01.01.2004 was ₹.10,62,625/- since there is no quantification from the assessee's side for the income for money lending for the assessment year 2002-03. The Assessing Officer has extrapolated the available data to quantify the income earned by the assessee. The Assessing Officer has worked out the outstanding as on 01.04.2002 at ₹.5,84,884/- and the difference between the outstanding loan and the figure

declared in the balance sheet comes to ₹.2,84,884/- [₹.5,84,884 – ₹.3,00,000/-] was treated as unexplained investment of the assessee and added to the total income of the assessee. Similarly, interest income from private financing has been worked out at ₹.1,56,398/- being the difference between the outstanding as on 01.04.2001 and as on 01.04.2002 was treated as interest income earned from the money lending business and brought to tax. On appeal, the Id. CIT(A) confirmed the additions made on account of investment in individual money lending at ₹.2,84,884/- and interest income from private financing at ₹.1,56,398/- since the assessee has not filed any evidence contrary to the findings given by the Assessing Officer.

3.1 On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the assessment has been made only on backward working theory and without any supporting materials or evidence. It was further submission that the Department conducted survey and was in possession of all the materials with it. In spite of it, the addition was made on estimation based on surmises. By relying upon the decision of the Tribunal in co-partner's case similar addition was deleted and prayed that the same may be followed in this case. On the other hand, the Id. DR strongly supported the orders of authorities below.

3.2 We have heard the rival contentions perused the materials available on record and gone through the orders of authorities below including reliance placed by the assessee. On the date of survey, a register containing details of loan outstanding as on 01.01.2004 and subsequent transactions were found. The Assessing Officer requested the assessee to explain, the assessee has admitted that he was in the business of money lending in his individual capacity for the past 3-4 years. Further, he also admitted that he was in the habit of writing the accounts on a monthly basis and destroying the same as the month is over. It was also admitted that this money lending in individual capacity is not admitted in the returns. Also he explained the method of money lending elaborately. As per the assessee, if the borrower seeks one thousand rupees, then an amount of ₹.900/- would be advanced to him and the mode of repayment is ₹.10/- per day for 100 days. As per the above working the rate of interest works out to 40.5%, even without considering the fact that the interest collected on a daily basis is redeployed and earns interest, leading to a net rate of interest which is higher than 40.5% as calculated above. The assessee was requested to furnish the evidence regarding the details of loans advanced to various parties, such as date of loan advanced, amount of loan advanced, date of repayment of the loan by the parties, mode of payment of loan and receipt of the same, details of interest income earned, rate of interest, etc. However, the assessee has

not produced any details or evidences for the claim of outstanding loans at the end of the year, or for the interest income offered in the return of income filed. In the absence of any evidences/details for the individual money lending activity, the figures reported in the statements regarding the outstanding loans at the end of the year, or the interest income offered, cannot be relied upon. As per the details of statements filed during the course of assessment proceedings, the amount of loan outstanding and the interest income offered are reproduced below as given in the assessment order:

Period	Amount outstanding (₹.)	Interest income offered (₹.)	% of interest
31.03.1999	2,60,000/-	45,000/-	17.3
31.03.2000	2,10,000/-	56,400/-	26.85
31.03.2001	2,10,000/-	56,400/-	26.85
31.03.2002	3,00,000/-	72,000/-	24
31.03.2003	3,00,000/-	1,56,000/-	52

From the above data, the Assessing Officer has noted that the assessee was offering interest income as per his wish and not the actual income received, because the rate of interest varies from 17% to 52%, which defies logic. Further, the Assessing Officer noted that the amount outstanding at the end of the years are all round sum and also no much variation was seen between the years. During the course of assessment proceedings, the assessee filed the return of income for the assessment year 1999-2000 and the gist of computation is reproduced as under:

Income from business	: ₹. 25,123.25
Income from other sources (interest received)	: ₹.1,200/-
Net assessable income	: ₹. 26,323.25 or ₹.26,320/-
Agricultural income	: ₹. 80,000/-
Tax payable	: NIL

From the above details, the Assessing Officer observed that while presenting the details for the assessment year 2002-03, the assessee has conveniently claims that the interest income received was ₹.45,000/- [for the assessment year 1999-2000], whereas, as per original return filed on 22.02.2000, the income from other sources was only ₹.1,200/- as reproduced hereinabove. Similarly, the agricultural income as per the details filed during the proceedings for the assessment year 2002-03 [for the assessment year 1999-2000] is ₹.90,000/-, whereas, as per the original return, it was only ₹.80,000/-. Thus, it is amply clear that the assessee's statements are not backed up by evidences or facts, but has been tailored to suit the needs, which contradicts his own statement filed earlier. Hence, due to the reason of non-production of details and evidences for the claim of outstanding loan amount and the amount of interest income offered, the Assessing Officer could not place any on the figures submitted in the return of income. However, in the subsequent assessment year, the interest income has been estimated at ₹.2,50,000/- and the same has been accepted by the assessee. Though as per the working of the system of advancing loans to the parties, as narrated earlier, the interest rate works out to 40.5%, however considering the practical aspects of the business, and

probable time gap before redeployment of the funds, etc., the interest rate is conservatively estimated to be 36.5%. As per the assessee's admission, there are no books of accounts for this money lending carried out in the capacity of the individual, and also the inconsistencies in the statements filed by the assessee, leaves no other option to the Assessing Officer but to estimate the interest income earned from the money lending business and the loan outstanding at the end of the financial year. During the course of survey, the outstanding as on 01.0.2004 was ₹10,62,629/-. Thus, the Assessing Officer estimated the outstanding for the earlier period by extrapolating this outstanding and adopting a rate of 10% for three month period and for the period of one year, the rate is adopted at 36.5% as detailed below:

Outstanding as on 01.01.2004		₹10,62,629/-
Outstanding as on 01.10.2003	10,62,629 / 110%	₹9,66,026/-
Outstanding as on 01.07.2003	9,66,026 / 110 %	₹8,78,205/-
Outstanding as on 01.04.2003	8,78,205 / 110 %	₹7,98,368/-
Outstanding as on 01.04.2002	7,98,368 / 136.5 %	₹5,84,884/-
Outstanding as on 01.04.2001	5,84,884 / 136.5%	₹4,28,486/-

As the assessee in his statement has conceded that the accounts books are destroyed after each month, and also was not in a position to quantify what could have been his income from money lending for the assessment year 2002-03, there is no other option but to extrapolate the available date to quantify the income earned by the assessee. As seen above the difference between the outstanding as on 01.04.2002 estimated as above of

₹5,84,884/- and the figure declared in the balance sheet of ₹3,00,000/- was treated as unexplained investment of the assessee and brought to tax.

3.3 In this case, the assessee was not doing normal money lending business, in fact, in his individual capacity, the assessee was doing different kind of money lending business, as has been explained before the Assessing Officer, i.e., if the borrower seeks one thousand rupees, then an amount of ₹.900/- would be advanced to him and the mode of repayment is ₹.10/- per day for 100 days. In view of the above, the rate of interest could be arrived at 40.5%, even without considering the fact that the interest collected on a daily basis is redeployed and earns interest, leading to a net rate of interest which is higher than 40.5%. The assessee was required to furnish various details, as listed above, but could not produce any details or evidences for the claim of outstanding loans at the end of the year, or for the interest income offered in the return of income filed by the assessee. However, as per the details of statements filed during the course of assessment proceedings, the Assessing Officer noted that the assessee was offering interest income as per his wish and not the actual income received, because the rate of interest varies from 17% to 52%. Moreover, during the course of assessment proceedings, the assessee filed the return of income for the assessment year 1999-2000, the gist of computation is reproduced herein above, reveals that while presenting the details for the

assessment year 2002-03, the assessee has conveniently claims that the interest income received was ₹.45,000/- [for the assessment year 1999-2000], whereas, as per original return filed on 22.02.2000, the income from other sources was only ₹.1,200/- as reproduced hereinabove. Similarly, the agricultural income as per the details filed during the proceedings for the assessment year 2002-03 [for the assessment year 99-2000] is ₹.90,000/-, whereas, as per the original return, it was only ₹.80,000/-. Thus, it is amply clear that the assessee's statements are not backed up by evidences or facts, but has been tailored to suit the needs, which contradicts his own statement filed earlier. Moreover, in the subsequent assessment year, the interest income has been estimated at ₹.2,50,000/- and the same has been accepted by the assessee. Though as per the working of the system of advancing loans to the parties, as narrated earlier, the interest rate works out to 40.5%, however, considering the practical aspects of the business, and probable time gap before redeployment of the funds, etc., the interest rate is conservatively estimated to be 36.5%. Since the assessee in his statement has conceded that the accounts books are destroyed after each month, and also was not in a position to quantify what could have been his income from money lending for the assessment year 2002-03, there is no other option but to extrapolate the available data to quantify the income earned by the assessee. Accordingly, the difference between the

outstanding as on 01.04.2002 estimated as above of ₹5,84,884/- and the figure declared in the balance sheet of ₹3,00,000/-, the balance amount of ₹2,84,884/- was treated as unexplained investment and in the absence of any valid documentary evidence contrary to the findings of the Assessing Officer, the Id. CIT(A) has confirmed the addition.

3.4 Similarly, with regard to the interest income from private financing, the difference between the outstanding as on 01.04.2001 and as on 01.04.2002, was treated as interest income earned from the money lending business and this amounts to ₹1,56,398/-. Though the assessee has offered an interest income of ₹72,000/- no telescoping could be considered, as in the above extrapolation made, the Assessing Officer assumed that the interest earned would be reinvested in the financing itself. In the absence of valid documentary evidence, the Assessing Officer estimated the interest income of the assessee at ₹1,56,398/-, which was confirmed by the Id. CIT(A).

3.5 At the time of hearing, the Id. Counsel for the assessee has relied upon the decision of the Tribunal in assessee's partner's case in ITA Nos. 2985 to 2988/Mds/2014 & ITA Nos. 2980 to 2984/Mds/2014 vide order dated 01.09.2016, wherein, the Tribunal has deleted the addition by observing that estimation of interest made by the Assessing officer at 25% was highly arbitrary and without any supporting materials. The above case law has no

application to the facts of the present, because, by considering the system of money lending business explained by the assessee as well as gist of computation of income filed in the return of income for the assessment year 1999-2000 is the only basis for quantifying the rate of interest in the assessment year under appeal by the Assessing Officer. So far as assessee's partner's case, the basis for quantification of interest was not on record and nothing was available in the Tribunal's order. Therefore, we are of the considered opinion that the above additions made by the Assessing Officer was validly confirmed by the Id. CIT(A). Thus, the grounds raised by the assessee stand dismissed.

4. The next ground relates to confirmation of disallowance of agricultural income. During the current year, the assessee has claimed to have earned an income of ₹.1,10,000/- from agricultural operations. The assessee was requested to produce the bills, voucher, account books for agricultural operations, etc. in support of his claim. Apart from the copy of the patta, no other evidences for having earned the above income was produced. On perusal of the patta, the Assessing Officer observed that the assessee and his brother jointly own 5.5 hectares of dry land at Thirukoornam. In the absence of any supporting evidence, considering the details available on record, the Assessing Officer estimated the income from the dry land at ₹.38,000/- and the assessee's share would be ₹.19,000/-. Accordingly, out of

the agricultural income claimed of ₹.1,10,000/- an amount of ₹.91,000/- was disallowed and brought to tax, which was confirmed by the Id. CIT(A). What is possible to earn from the agricultural land is not the matter of dispute. In the absence of books of accounts for the agricultural operations in the dry land of 5.5 hectares, the Assessing Officer estimated the income at ₹.38,000/-, is admittedly very low, but the claim of the assessee of earning ₹.1,10,000/- (assessee's share) from the dry land is also exorbitantly higher. Though the Tribunal is of the considered opinion that the agricultural sector continues to remain unorganized and the agricultural produces are sold in an unregulated market, considering the relevant financial year as well as lack of details of the crop cultivated in the dry land, we are of the considered opinion that 50% of the claim of assessee's share of income would meet the ends of justice. Accordingly, we give relief to the extent of ₹.55,000/- and the balance disallowance of ₹.55,000/- stands confirmed. Thus, the ground raised by the assessee is partly allowed.

5. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on the 20th November, 2019 in Chennai.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, 20.11.2019
Vm/-

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.