

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री इंटर्री 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. 2157/Chny/2019
निर्धारण वर्ष/Assessment Year: 2010-11

Shri Ramanathan Subramanian,
403/21, Sky City Apartments,
Vanagaram, Chennai 600 095.
[PAN:AEYPR4368E]

The Income Tax Officer,
Vs. Non Corporate Ward 8(3),
Chennai 600 034.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri K. Balasubramanian, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri A. Sundararajan, Addl. CIT
सुनवाई की तारीख/ Date of hearing : 21.01.2020
घोषणा की तारीख /Date of Pronouncement : 28.01.2020

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) 9, Chennai, dated 10.05.2019 for the assessment year 2010-11. Besides challenging the confirmation of addition of ₹.23,34,871/-, which was raised before the Id. CIT(A) as an additional ground, the assessee also challenged the confirmation of estimating net profit at 8% of credits in bank accounts as against 5%.

2. Brief facts of the case are that the assessee is an individual and engaged in the business of trading in textiles, failed to file the return of

income for the assessment year 2010-11. Since the Department was in possession of information that the assessee has made huge cash deposits in the saving bank account and the banking company to an extent of ₹.2,83,41,254/-, notice under section 148 of the Income Tax Act, 1961 [“Act” in short] dated 30.03.1017 was issued on the assessee. Subsequently notice under section 142(1) r.w.s. 129 of the Act was also issued on 11.08.2017. In reply to the above notice, the AR of the assessee stated that since the assessee was not having any taxable income, he had not filed the return of income for the year under consideration and requested the reason for reopening. The AR was informed to file the return of income and then request for the reason for reopening. In adherence to the same, the AR filed the return of income for the assessment year 2010-11 on 13.09.2017 admitting an income of ₹.2,650/- only. After filing the return of income, the reason for reopening was provided to the assessee. Subsequently, notice under section 143(2) of the Act was issued against which, the AR of the assessee furnished all required details and the reconciliation on cash deposits. After considering the submissions of the assessee, by adopting an amount equal to 8% of the total turnover of the business as income, the Assessing Officer made an addition of ₹.45,76,881/- and brought to tax. On appeal, the Id. CIT(A) confirmed the addition.

3. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has contended that the Assessing Officer estimated the profit at 8% of credits in the bank account is arbitrary and is on the high side and prayed for adopting reasonable estimated profit percentage at 5%. On the other hand, the Id. DR strongly supported the orders of authorities below.

4. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. During the financial year relevant to the assessment year, the assessee made huge deposits of ₹.2,83,41,254/-. During the course of assessment proceedings, the assessee has admitted following two bank accounts belong to the assessee:

1. Axis Bank current A/c No. 09001020003 in the name of S&M Kids Wear
2. Axis Bank savings A/c No. 090010100433574 in the name of S. Ramanathan.

It was the submission of the AR of the assessee that the assessee has agreed to pay tax at a reasonable estimated profit percentage of 5%. However, the Assessing Officer had ascertained that there are no books of account and there was no tax audit report. Therefore, the Assessing Officer adopted 8% of profit as income after giving due relief of ₹.5 lakhs towards cheque returned and ₹.35,09,304/- being commodity loan received. It was the submission of the assessee during the course of appellate proceedings that the Axis Bank Current Account is in the name of

M/s. S&M Kids Wear and therefore, the transactions in the said bank account are to be excluded. However, the Id. CIT(A) has observed that as per the written submissions dated 22.12.2017 before the Assessing Officer, the assessee has categorically admitted that this bank account belongs to the assessee only. The AR of the assessee has submitted before the Id. CIT(A) that M/s. S & M Kids Wear is a separate assessee which has filed the return of income for the assessment year 2011-12, which was also assessed by the Assessing Officer. However, the Id. CIT(A) has observed that the transactions under consideration is for the financial year relevant to the assessment year 2010-11 and the Department has not assessed the deposits in this account for the financial year 2010-11. He further observed that the AR of the assessee vide written submission dated 22.12.2017 clearly admitted that these transactions also belong to the assessee. The Id. CIT(A) has noted that the expenses which are not allowable as per the provisions of section 40A(3), section 40(a)(ia), Explanation 1 to section 37(1) of the Act and moreover, the expenses which are wholly and conclusively incurred for business which were supported by necessary bills/vouchers, etc. were also not available since the assessee has not produced books of account and along with tax audit report. In view of the above facts and circumstances, the Id. CIT(A) confirmed the addition of ₹.45,76,881/- by adopting the estimated profit percentage of 8%. Since the assessee has not

furnished the books of account and tax audit report as required under section 44AB of the Act, to ascertain various expenses, we find no infirmity in the order passed by the Id. CIT(A) and accordingly, the ground raised by the assessee stands dismissed.

5. The next ground raised in the appeal of the assessee is that the net profit of the firm assessed in the hands of the assessee to the extent of ₹.23,34,871/- is incorrect. Similar ground was raised before the Id. CIT(A) as additional ground against which, the Id. CIT(A) has observed that the transactions in Axis Bank account in the name of S&M Kidswear for the assessment year 2011-12 belongs to the assessee are separate firm itself is not established as the assessee himself during the course of assessment proceedings in the case of the assessee has stated that these transactions pertain to the assessee only and had gone a step further by offering income at 5% on such transactions as well. It was the further observation that the Department has taxed the transactions with respect to Axis Bank account in the name of S&M Kids wear only for the assessment year 2011-12 and not for the assessment year 2010-11. Therefore, since the assessee has not established the fact that the transactions in the name of S&M Kids Wear for the assessment year 2010-11 belong to another assessee, the Id. CIT(A) dismissed the ground raised by the assessee.

6. However, before the Tribunal, the assessee filed copy of the return of income for the assessment year 2010-11 in respect of S & M Kids Wear, which was filed on 15.10.2010 along with copy of the statement of account, the Id. Counsel for the assessee has submitted that S&M Kids Wear is a separate entity and assessing the net profit of the firm in the hands of the assessee to the extent of ₹.23,34,871/- is not correct. We find force in the argument of the Id. Counsel. Accordingly, we set aside the order of the Id. CIT(A) on this issue and remit the matter back to the file of the Assessing Officer to examine the return of income of the firm and decide the issue in accordance with law after affording an opportunity of being heard to the assessee.

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

Order pronounced on the 28th January, 2020 in Chennai.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, 28.01.2020

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.