

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

श्री धुव्वुरु आर. एल रेड्डी, न्यायिक सदस्य एवं, श्री एस जयरामनलेखा सदस्य समक्

BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 1849/Chny/2019

निर्धारण वर्ष/Assessment Year : 2008-09

Shri. B. Suresh,
No. 7/21, E.Type, Sidco Nagar,
Villivakkam , Chennai 600 049.

The Income Tax Officer,
Vs. Non Corporate Ward – 10(4),
Chennai 600 034.

[PAN: AROPS 7197M]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. G. Johnson, Addl. CIT

सुनवाईकीतारीख/Date of Hearing

: 04.01.2021

घोषणाकीतारीख/Date of Pronouncement

: 06.01.2021

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)-12, Chennai, in ITA No. 28/CIT(A)-12/2017-18 dated 26.02.2019 for assessment year 2008-09.

2. The assessee filed this appeal belatedly by 52 days. It was pleaded that the impugned order was misplaced, however, during the review of

Income tax issue by the CA, during May 2019 this issue came to notice and the assessee took steps in filing the appeal. It was pleaded that the delay in filing the appeal was neither wilful nor deliberate and may be condoned and due decision may be rendered on the merits, in the interests of justice.

3. We heard the rival parties and condone the delay.

4. Shri. B. Suresh, the assessee, is engaged in the business of automobile spares. During the assessment for assessment year 2008-09, from the AR information, the AO found that the huge deposits was made in the assessee's bank account. The assessee explained that the sources for the cash deposit of Rs. 41,02,625/- was out of interest free hand loan received from various friends and relatives for conducting/expanding the business. They were settled before the close of the financial year 2007-08. The balance of Rs. 25,12,525/- was on account of trading i.e., automobile turnover. The AO considered that entire amount of Rs. 66,15,150/- as sale receipts on which, he estimated the profit @ 12.67% and assessed the income. Aggrieved, the assessee filed an appeal. During the appeal proceedings, the Ld. CIT(A) proposed to add cash deposits as the sources of an unexplained cash deposits. The assessee raised a plea to adopt the peak of the cash credits as income. However, the Ld. CIT(A) dismissed the appeal which resulted in enhancement of the assessment. Aggrieved, the assessee filed this appeal.

3. The case was heard through video conferencing. The Ld. AR submitted that the assessee could not produce documentary evidences before the AO with regard to the loan taken from friends, relatives and well wishers. Therefore, a plea was taken before the Ld. CIT(A) that the peak of credits could be assessed as income of the assessee. However, the Ld. CIT(A) without appreciating the facts and circumstances of the case and the bank statements merely enhanced the assessment. Therefore, the Ld. AR pleaded in the facts and circumstances, the peak of the cash credits may be assessed as income. Per contra, the Ld. DR submitted that the assessee could not produce names and addresses of the persons from whom the cash loans was allegedly taken and hence, the Ld. CIT(A) confirmed the cash credits and thus supported the order of the Ld. CIT(A).

4. We heard the rival submissions. The assessee originally pleaded that the cash deposits of Rs. 41,02,625/- is the interest free hand loan from various friends and relatives obtained for the purpose of conducting/expanding business. However, he is not in a position to prove the ingredients required u/s. 68 of the Income Tax Act. However, a plea is made before the appellate authority that on the facts and circumstances the peak of the cash credits should be assessed as income of the assessee. We are of the view that the claim is, Prima Facie, is meritorious. However, it requires examination of the facts and circumstances and connected materials viz.,

bank statement etc. Therefore, we are of the view that this issue requires a fresh examination before the AO and hence remit this issue back to the AO. The assessee shall furnish the relevant particulars/materials in support of his contentions and comply with the requirements of the AO in accordance with the law. The AO on due examination of them and after giving due opportunity to the assessee, shall determine the issue in accordance with law.

5. In the result, the assessee's appeal is treated as partly allowed for statistical purposes.

Order pronounced on 06th January, 2021 at Chennai.

Sd/-

(धुव्वुरुआर.एलरेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसजयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 06th January, 2021

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त) अपील(/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF