

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

श्री धुव्वुरु आर.एल. रेड्डी, न्यायिक सदस्य एवं
श्री जी. मंजूनाथा, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU R.L. REDDY, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA No.	AY	Appellant	Respondent
81/Chny/2020	2011-12	Shri L. Arunachalam, No.21/3, Old No.43A, 2 nd Avenue, Indira Nagar, Adyar, Chennai-600 020. (PAN: ADWPA 9208 M)	The Income Tax Officer, Non-Corporate Ward-15(1), Chennai.
अपीलार्थी की ओर से / Appellant by : Mr.S.Sridhar, Adv. प्रत्यर्थी की ओर से / Respondent by : Mr.Suresh Periasamy, JCIT			

सुनवाई की तारीख/Date of Hearing : 28-01-2021

घोषणा की तारीख /Date of Pronouncement : 10-03-2021

आदेश / ORDER

PER DUVVURU R.L.REDDY, JUDICIAL MEMBER:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)-15, Chennai, in ITA No.259/CIT(A)-15/2018-19 dated 31.10.2019 for the AY 2011-12.

2. The assessee has raised the following grounds of appeal:

1. The order of the Commissioner of Income Tax (Appeals) - 15, Chennai dated 31.10.2019 in I.T.A.No.259/CIT(A)-15/18-19 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in passing the order exparte without assigning proper reasons and justification and ought to have appreciated that any order passed in violation of the principles of natural justice should be reckoned as nullity in law.

:: 2 ::

3. The CIT (Appeals) erred in sustaining the addition of Rs.1,13,65,465/- being the cash deposited into bank accounts of the Appellant as unexplained credit u/s 68 of the Act without assigning proper reasons and justification and ought to have appreciated that the lack of opportunity as well as absence of reasons for confirming the said addition would defy the provisions in 250(6) of the Act.

4. The CIT (Appeals) failed to appreciate that the improper analysis of bank statement and lack of opportunity to explain the source for cash deposits would vitiate the wrong addition made in the computation of taxable total income.

5. The CIT (Appeals) failed to appreciate that in any event taxing the entire credits without deducting the withdrawals as source for such deposits is wrong, erroneous and unsustainable in law and ought to have appreciated that the withdrawals from the bank accounts and the partnership firms would constitute the source for cash deposits thereby vitiating the sustenance of the wrong addition.

6. The CIT (Appeals) failed to appreciate that in any event the sustenance of the exparte assessment order u/s 144 r.w.s 147 of the Act on various grounds was wrong, erroneous, unjustified, incorrect and not sustainable in law and ought to have appreciated that the entire computation of taxable total income forming part of the exparte assessment order was incorrect and erroneous in view of the non-consideration of relevant materials.

7. The CIT (Appeals) ought to have appreciated that the order of reassessment was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

8. The Appellant craves leave to file additional grounds/arguments at the time of hearing.

3. The assessee filed return of income for the AY 2011-12 manually on 26.03.2013 admitting an income of Rs.3,00,000/-. Since the Investigation Wing has noticed that the assessee is getting credited in the form of cash deposits (transfer from individuals and PAN linked Account) whereas the debits were in the form of foreign outward remittance, cash paid self and transfer to purchase of gold coins. The case was reopened u/s.147 of the IT Act by issuing notice u/s.148. Again notice u/s.142(1) was issued to the assessee calling for certain information in connection with the assessment proceedings. The assessee filed return of income in response to the notice u/s.148 on 08.12.2018 admitting income of Rs.3,09,088/-. Notice u/s.143(2) was duly issued and served on the assessee. When the case

:: 3 ::

was posted for hearing, **none** appeared on behalf of the assessee. Since there was no response to the communications and statutory notices, the AO issued a show cause letter on 18.12.2018 posting the case for hearing on 21.12.2018. However, the assessee has not filed any reply to the above show cause letter. Since the assessee failed to furnish any details before the AO, the AO has proceeded to complete the proceedings to the best of the judgment u/s.144 r.w.s.147 of the IT Act on the basis of evidences gathered and available on record. The Department found that the assessee has made cash deposits in all his bank accounts to the extent of Rs.1,13,65,465/- and accordingly, the said amount was brought to tax as unexplained cash credit u/s.68 of the Act.

4. On appeal, since the assessee has not furnished any details towards the cash deposits, the Ld.CIT(A) confirmed the addition.

5. On being aggrieved, the assessee is in appeal before the Tribunal. The Ld.Counsel for the assessee has submitted that the Ld.CIT(A) erroneously passed the exparte order without issuing any notice u/s.250(1) of the Act by fixing the appeal for hearing or called for any details. Thus, the order of the appellate authority is liable to be set aside. On the other hand, the Ld.DR has submitted that the assessee has not at all cooperated with the Department either during the assessment stage or appellate stage by furnishing details with regard to cash deposit of Rs.1,13,65,465/-.

:: 4 ::

6. We have heard both the parties, perused the materials available on record and gone through the orders of authorities below.

7. On perusal of the appellate order, we find that the Ld.CIT(A) has not issued any notice fixing the appeal for hearing or called for any details from the assessee before concluding the appellate order. In view of the above, we set aside the order of the Ld.CIT(A) and direct him to afford one more opportunity to the assessee to represent his case. The assessee is also directed to cooperate with the Department, failing which, the Assessment Order passed u/s.144 r.w.s.147 of the Act stands confirmed.

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

Order pronounced on the 10th day of March, 2021, in Chennai.

Sd/-
(जी. मंजूनाथा)
(G. MANJUNATHA)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(धुव्वुरु आर.एल. रेड्डी)
(DUVVURU R.L. REDDY)
न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 10th March, 2021.
TLN

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