

आयकर अपीलीय अधिकरण , 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S.JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos: 916 & 917/Chny/2017

निर्धारण वर्ष/Assessment Years: 2011-12 & 2012-13

The Assistant Commissioner of
Income Tax,
Central Circle -1,
No. 44, Williams Road,
Cantonment, Trichy – 620 001.

Shri. K. Udhayakumaran,
No. 1-A, Vignesh Complex,
Dindigul Road,
Trichy – 620 001.

[PAN: AALPU 6054B]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

Shri. S. Bharath, CIT

प्रत्यर्थी की ओर से/Respondent by

Shri. S. Sridhar, Advocate

सुनवाईकीतारीख/Date of Hearing : 28.11.2019

घोषणाकीतारीख/Date of Pronouncement : 25.02.2020

आदेश / O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The Revenue filed these appeals against the order of the Commissioner of Income Tax -19, Chennai in ITA No. 730/31/14-15 dated 12.01.2017 for assessment year 2011-12 & 2012-13, respectively.

ITA 916/Chny/2017 for assessment year 2011-12:

2. At the time of hearing, the Ld.AR submitted that the tax effect is below Rs.50 lakhs and hence the Revenue's appeal would be covered

by the CBDT Circular No.17/2019 dated 08.08.2019, fixing the monetary limit of Rs.50 lakhs, The Ld. DR on verification admitted that the tax effect involved in the appeal is less than Rs.50 lakhs.

3. On hearing both sides, we find that the tax effect in this case is less than Rs. 50 lakhs. The CBDT in its Circular No. 17/2019 dated 08.08.2019 instructed its officers to withdraw all the appeals pending before the ITAT where the tax effect is less than Rs. 50 lakhs. This Tribunal is of the considered opinion that this circular of CBDT is binding on the officers of the Department. Therefore, the Revenue cannot proceed further in this appeal. Accordingly, the appeal stands dismissed.

ITA 917/Chny/2017 for ay 2012-13:

4. Shri. K. Udhayakumaran, the assessee, is deriving income from Omni bus operation and claims to have done real estate business. Rs. 5,10,75,500/- was found and seized by the Revenue Divisional Officer(RDO)/Returning Officer, 140- Trichirapalli West Assembly Constituency on 04.04.2011 from a vehicle operated by Shri. K. Udayakumaran, he admitted that the money belonged to him, but could not satisfactorily explain the sources. Therefore, on requisition u/s. 132A from RDO Rs. 5,10,75,500/- was seized. During the assessment

proceedings for the ay 2012-13, the assessee was not able to produce any evidence to prove that the sources of seized sum are from the real estate business, Therefore, the AO assessed it u/s. 69A. Further, the assessee claimed depreciation on a bus bearing no. TN 46K 2829, registered in the name of L. Jayaraman. Therefore, the AO disallowed the assessee's claim of depreciation. Further, the assessee claimed Rs. 1,38,67,650/- towards the expenditure on diesel, driver batta, toll charges, vehicle maintenance and tyre expenses. In the absence of vouchers for verification of this expenditure, the AO disallowed 5% of the expenditure claimed under the head diesel, driver batta, toll charges, vehicle maintenance and tyre expenses at Rs. 6,93,383/-. Aggrieved, the assessee filed an appeal before the CIT(A). The CIT(A) allowed the appeal. Aggrieved against that order, the Revenue filed this appeal.

5. The Ld. DR submitted that Rs. 5,10,75,500/-, cash was found in gunny bags by officials conducting and monitoring elections on 04.04.2011 from the top of vehicle owned and operated by the assessee, it was intercepted and the cash was seized. The assessee admitted that the money belonging to him, but he could not satisfactorily explain the sources. Subsequently, the assessee approached the settlement commission, but the settlement commission

rejected the case for not fully disclosing the manner in which the income was earned and for not making full and true disclosures. The assessee went back to the AO and claimed that he has done real estate business from assessment year 2006-07 to 2011-12, earned Rs. 5,20,00,000/- from real estate business between assessment year 2007-08 to 2011-12 etc. The AO did not agree with the same. He held that the burden lies on the assessee to explain the nature and sources of the cash of Rs. 5,10,75,500/- found on 04.04.2011 and therefore relying on the Supreme Court cases in the case of Durga Prasad More 82 ITR 540, Sumathi Dayal 214 ITR 801 and P.K. Noorjahan 237 ITR 570 etc. the AO held that the assessee could not explain the sources from which he earned the said income nor he could produce evidence in support of accumulation of the said income in cash from that period of time. Therefore, the AO brought the seized sum to tax u 69A. On appeal, the Ld . CIT(A) accepted the explanations offered by the assessee that he has earned income from assessment year 2007-08 to 2012-13 for which the assessee filed returns only after long time from the search and seizure action dated 04.04.2011. The assessee filed the returns on 23.05.2012 and 26.08.2013 only. here fore, the Ld. DR submitted that the CIT(A) ought to have considered the fact that the assessee has failed to furnish any evidence to prove that the cash of Rs. 5,10,75,500/-found and seized from the assessee in April 2011 was

arising from the real estate business income. Therefore, he pleaded to restore the order of the Ld. AO, Per contra, the Ld. AR supported the order of the Ld. CIT(A) submitting that the Ld. CIT(A) has correctly accepted the explanation furnished by the assessee that he has earned income from real estate business from assessment year 2007-08 to 2012-13 and out of which the seized cash came from. Therefore, taxing the same amount for a later year would amount to double jeopardy. The Ld. CIT(A) has correctly allowed the benefit of telescoping the amounts of income declared for earlier years towards the cash seized at a later date. Therefore, he supported the order of the Ld. CIT(A) and relied on it. Alternatively, the AR submitted that if the seized amount is to be assessed in this year, the tax paid in the earlier years viz., 2007-08 to 2012-13 be adjusted against it.

6. We have heard the rival submissions, gone through the relevant material. It is clear from the above that cash of Rs. 5,10,75,500/- was found and seized by the officials conducting and monitoring elections of Trichirapally West Assembly Constituency on 04.04.2011 from the top of the vehicle owned and operated by the assessee. Though, the assessee admitted that the money belonging to him, he could not satisfactorily explain the sources of the funds. The assessee's claim before the settlement commission was already rejected for the reason

that he has not fully disclosing the manner in which the income was earned and for not making full and true disclosure. Thereafter, the assessee filed returns for assessment year 2007-08 to 2011-12 on 23.05.2012 almost after one year and one month from the end date of seizure claiming that he earned income from real estate business and the cash seized came from them. It is clear from the orders of the lower authorities that the assessee has not laid any material/evidence to prove that he was in real estate business and earned such income as disclosed in the returns from it. He has also not explained as to how the entire income was kept in cash and transported on the date of seizure etc. Therefore, the AO is correct in bringing to tax the seized sum as deemed income u/s. 69 during the period relevant to assessment year 2012-13 in which it was seized. We have considered the assessee's alternate plea. Since, along with the appeal of this assessment year 2012-13, the Revenue filed appeal for the assessment year 2011-12 and it is being dismissed only on the criteria of tax effect, we are of the view that the income admitted for explaining sources of the seized cash during the assessment year 2011-12 having been rejected, the fairness demand that the tax paid on that income either need to be refunded or adjusted towards the income assessed and confirmed by us, supra, as the case may be. Therefore, we direct the AO to do so subject to this, the corresponding grounds of the Revenue are allowed.

7. The next issue is on the disallowance of depreciation towards which, the Ld. DR submitted that the Ld. CIT(A) failed to note that the assessee is not a owner of the bus route permit and the bus is registered in the name of L. Jayaraman. Though the assessee is operating the biis and admitting income from bus operations, the assessee is not entitled for claiming depreciation u/s, 32 in the absence of ownership in document. Therefore, he submitted the order of the Ld. AO be restored. Per contra, the Ld. AR submitted that the bus registered was in the name of Shri. L. Jayaraman, the assessee was the effective owner of the bus having paid for it and having operated the and offered his income from such operations, the Ld. CIT(A) has correctly allowed the depreciation, Therefore, he supported the order of the Ld. CIT(A) and relied on it.

8. We have heard the rival submissions. Since, the assessee has purchased the bus, operating and admitting the income from it, we do not find any reason to interfere with the order of the Ld. CIT(A) and hence the corresponding grounds of the Revenue fail.

9. With regard to the disallowance made on diesel, driver batta, toll charges, vehicle maintenance and tyre expenses, the Ld. DR submitted that the Ld. CIT(A) erred in deleting them. Per contra, the Ld. AR submitted that since the assessee has declared Rs. 38,39,118/- as

income from business of omni bus operation, the Ld. CIT(A) after considering the assessee's plea allowed the appeal holding that the impugned expenditure commensurate with the admitted income and therefore he supported the order of the Ld. CIT(A). Therefore, the Ld. AR pleaded that the Revenue's appeal may be dismissed.

10. We heard the rival submissions. We find that the income admitted by the assessee being substantial, the disallowance made by the AO is unwarranted and hence we do not find any reason to interfere with the order of the Ld. CIT(A). Corresponding grounds of the Revenue's appeal are dismissed.

11. In the result, the Revenue's appeals in ITA Nos. 916 is dismissed and the appeal in ITA No. 917/Chny/2017 is partly allowed.

Order pronounced on 25th February, 2020 at Chennai.

Sd/- (एन. आर. एस. गणेशन) (N.R.S. GANESAN) न्यायिक सदस्य/Judicial Member	Sd/- (एस जयरामन) (S. JAYARAMAN) लेखासदस्य/Accountant Member
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चेन्नई/Chennai,

दिनांक/Dated: 20th February, 2020

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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