

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./I.T.A. Nos.363 and 364/Chny/2016
निर्धारण वर्ष/Assessment Years: 2011-12 & 2012-13

Shri Subbunadar Chandrasekar
@ S.C. Sekar, No. 19, Thambusamy
Road, Kilpauk, Chennai 600 010.
[PAN:AAEPC4430C]

Vs. The Deputy Commissioner of
Income Tax, Company Circle VI(3),
121, Nungambakkam High Road,
Chennai 600 034.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri D. Anand, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri G. Johnson, Addl. CIT
सुनवाई की तारीख/ Date of hearing : 17.01.2022
घोषणा की तारीख /Date of Pronouncement : 24.01.2022

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

Both the appeals filed by the same assessee are directed against different orders of the Id. Commissioner of Income Tax (Appeals)-15, Chennai both dated 15.12.2015 relevant to the assessment years 2011-12 and 2012-13. Both the appeals were heard together and being disposed of by this common order for the sake of brevity.

I.T.A. No. 363/Chny/2016: [A.Y. 2011-12]

2. Brief facts of the case are that the assessee filed his return of income on 29.03.2012 for the assessment year 2011-12 admitting an

income of ₹.49,34,610/-. The return filed by the assessee was processed under section 143(1) of the Income Tax Act, 1961 ["Act" in short] on 04.10.2012. Subsequently, the case was taken up for scrutiny and after following due process, the assessment under section 143(3) of the Act was completed by determining the total income of the assessee at ₹.81,54,610/- after making additions towards unexplained cash credit under section 68 of the Act at ₹.27,20,000/- and income from other sources at ₹.5,00,000/-. On appeal, the Id. CIT(A) confirmed the additions.

3. On being aggrieved, the assessee is in appeal before the Tribunal. With regard to the addition towards unexplained cash credits under section 68 of the Act, the Id. Counsel for the assessee has submitted that the amount has been gifted to the assessee by his own mother and wife. Moreover, the assessee has proved the identity of the persons before the Assessing Officer and this prayed for deleting the addition made under section 68 of the Act.

4. On the other hand, the Id. DR strongly supported the orders of authorities below.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The assessee is the Managing Director of M/s. Southern Petro Oils Pvt. Ltd.. The assessee received income from salary, house property, capital gains and also from other sources. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that there were cash deposits in assessee's bank accounts. The assessee was asked to explain the source of cash deposits in his bank accounts as well as details of agricultural income shown by the assessee. With regard to the cash deposits, the assessee has submitted that the cash gifts were received from two persons namely Mrs. C. Menaka (assessee's wife) from whom he received ₹.12,20,000/- and Mrs. Kuruthammal (assessee's mother) from whom he received ₹.15,00,000/-. The assessee was asked to discharge his three fold liability i.e., identity, credit worthiness and genuineness of the two parties. The assessee vide letter dated 24.03.2014 has said that both of them are assessed to tax and have furnished the return of income for the assessment year 2011-12. The assessee has mentioned that vide letter dated 06.01.2014, he has submitted the confirmation from the above two parties and the acknowledgement No. of for the returns filed by them and hence he has discharged the onus of three fold liability. After considering the

submissions of the assessee, the Assessing Officer noted that the assessee has not furnished any confirmation from the two parties as stated by him in his letter dated 06.01.2014. Moreover, the assessee has not proved the genuineness and creditworthiness of the two parties. The Assessing Officer has observed that in the instant case, the assessee has only proved the identity of the persons and mere submission of the IT returns acknowledgement of Mrs. Menaka and Mrs. Kuruthammal cannot be considered as a valid explanation for the cash deposits in the assessee's bank accounts. Accordingly, the cash deposits amounting to ₹.27,20,000/- was added to the income as unexplained cash credits under section 68 of the Act. On appeal, the Id. CIT(A) has observed that the assessee has not produced any evidence to prove the credit worthiness of both his wife as well as his mother and he has also not been able to prove the genuineness of the so-called cash gifts received and confirmed the order of the Assessing Officer.

5.1 Since both the so-called donors are closely related to the assessee and it would not be difficult for the assessee to obtain the confirmations and other details we direct the assessee to furnish the above details before the Assessing Officer for verification. Accordingly, we remit the matter back to the file of the Assessing Officer to verify the details as may

be furnished by the assessee and decide the issue afresh in accordance with law by allowing an opportunity of being heard to the assessee.

6. The next ground relates to confirmation of disallowance of agricultural income. The assessee has claimed agricultural income to the tune of ₹.5,00,000/-. However, on perusal of the assessee's capital account in Schedule – 4, the Assessing Officer has noticed from “advances from premises, Pt. No. 10 that the assessee has shown land advance for ₹.1,57,05,000/- as on 31.03.2011. Similarly, during the financial year 2009-10 also, the assessee has shown land advance of ₹.1,74,45,000/-. Thus, the Assessing Officer asked the assessee to furnish party-wise break-up of these two land advance amounts, with party name, their PAN and address, amounts received from each party and mode of payment. The assessee was also asked to provide details of the land with location and address for both the year i.e., FY 2009-10 & FY 2010-11. Vide letter dated 26.03.2014, the assessee has submitted before the Assessing Officer that the land advance was received against the assessee's below mentioned property:

3.33 acres bearing survey No. 190/7B, 190/7C, 197/1A, 197/1B &
3.90 acres bearing survey No. 190/7A2, 198/1B, 190/7D, 1988/2,
198/3A, 198/3B located at 119, Kanthur Village, Sriperumbuthur
Taluk, Kancheepuram District.

7. After considering the reply of the assessee, the Assessing Officer has observed that the assessee's claim that he has earned agricultural income from his land lacks authenticity and further, the assessee has also not claimed any expenditure towards agricultural activity. Accordingly, the Assessing Officer disallowed the claim of agricultural income of ₹.5,00,000/- and added back to the income as "income from other sources". On appeal, since the assessee has not shown any expenditure towards earning agricultural income and for accepting advances from various persons, the assessee has to split his land into identifiable plots, the Id. CIT(A) confirmed the action of the Assessing Officer in taxing ₹.5,00,000/- under the head "income from other sources.

8. Before us, the Id. Counsel for the assessee has reiterated the submissions as made before the authorities below. In this case, for raising crops like paddy, cotton, etc. various agricultural operations are required to be carried out, besides, purchase of seed materials, insecticides, pesticides, manure, etc. However, the assessee has not admitted any expenditure for earning income of ₹.5,00,000/-. In these facts and circumstances, we are of the view that the assessee shall be given one more opportunity to produce any material evidences for carrying out the agricultural activity before the Assessing Officer for

examination. Accordingly, we remit the matter back to the file of the Assessing Officer to examine and decide the issue afresh in accordance with law after affording an opportunity to the assessee.

I.T.A. No. 364/Chny/2016: [AY: 2012-13]

9. The first ground raised in the appeal of the assessee relates to confirmation of disallowance made under section 14A of the Act. The assessee has earned dividend income of ₹.7,32,500/-, which is exempt from taxation. However, the assessee has not admitted any expenditure for earning the exempt income. Accordingly, by invoking the provisions of section 14A r.w. Rule 8D, the Assessing Officer determined the expenditure component to the extent of ₹.76,517/- under Rule 8D(2)(iii) and brought to tax. On appeal, respectfully following the ratio of the judgements of Delhi Special Bench in the case of M/s. Chem Invest Ltd. v. ITO 121 ITD 318 and ITAT Chennai in the case of Shiva Industries & Holdings Ltd. v. ACIT reported in 54 SOT 49 Chennai (2012), the Id. CIT(A) confirmed the disallowance made under section 14A of the Act.

10. We have heard the rival contentions and perused the materials available on record. Admittedly, the assessee has earned dividend income to the tune of ₹.7,32,500/-. However, the assessee has not admitted any expenses incurred for earning the dividend income.

Accordingly, by invoking the provisions of section 14A r.w. Rule 8D, the Assessing Officer determined the expenses to the extent of ₹.76,517/-. The Assessing Officer has dutifully adopted the methodology as mandated under Rule 8D(2) for determining the expenditure component which had been incurred in relation to income which did not form part of the total income and the same was rightly confirmed by the Id. CIT(A). The another contention raised by the assessee that the Assessing Officer has failed to record satisfaction is unwarranted in this case as the assessee has not voluntarily admitted any expenses for earning the exempt income. We find no infirmity in the order passed by the Id. CIT(A) and accordingly, the ground raised by the assessee is dismissed.

11. The next ground raised in the appeal of the assessee for the assessment year 2012-13 relates to confirmation of agricultural income of ₹.8,00,000/- under the head "income from other sources". In the grounds of appeal, the assessee has specifically agitated that the Id. CIT(A) failed to appreciate the evidence furnished by the assessee in regard to agricultural activity and the amounts received on sale of agricultural produce by establishing the same by way of sale of bills, purchase of fertilizer seeds, etc. However, no evidence as stated to have submitted before the Id. CIT(A) was not brought on record or furnished the same to

the Assessing Officer. Accordingly, the assessee is directed to furnish complete evidence before the Assessing Officer to examine and deciding the same afresh. Similar ground was also raised in the assessment year 2011-12 and the issue was remitted back to the file of the Assessing Officer for adjudication. Accordingly, the ground raised in the assessment year 2012-13 also remitted back to the file of the Assessing Officer for fresh adjudication after examining the evidences as may be furnished by the assessee.

12. In the result, the appeal filed by the assessee for the assessment year 2011-12 is allowed for statistical purposes and the appeal for the assessment year 2012-13 is partly allowed for statistical purposes.

Order pronounced on 24th January, 2022 at Chennai.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 24.01.2022

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.