

**आयकर अपीलीय अधिकरण 'डी' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, CHENNAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ **ITA No.1236/Chny/2017**  
(निर्धारण वर्ष / **Assessment Year: 2011-12**)

&

आयकर अपील सं./ **ITA No.1235/Chny/2017**  
(निर्धारण वर्ष / **Assessment Year: 2012-13**)

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| <b>M/s Ponmahal Income</b><br>25/2, Ramakrishnapuram North<br>Karur | <b>बनाम/<br/>Vs.</b> | <b>ACIT</b><br>Central Circle-II<br>Trichy |
| स्थायी लेखा सं./जीआइ आर सं./ <b>PAN/GIR No. AAOFP-5566-E</b>        |                      |  |
| (□ पीलार्थी/ <b>Appellant</b> )                                     | :                    | (प्रत्यर्थी / <b>Respondent</b> )          |

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| अपीलार्थी की ओरसे/ <b>Appellant by</b>   | : | Shri N.Quadir Hoseyn (Advocate) – Ld. AR |
| प्रत्यर्थी की ओरसे/ <b>Respondent by</b> | : | Shri S. Palani Kumar- Ld. CIT-DR         |

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| सुनवाई की तारीख/<br><b>Date of Hearing</b>       | : | 12-01-2022 |
| घोषणा की तारीख /<br><b>Date of Pronouncement</b> | : | 14-02-2022 |

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeals by assessee for Assessment Years (AY) 2011-12 & 2012-13 arises out of common order passed by learned Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] dated 22.12.2016 in the matter of assessment framed by Ld. Assessing Officer

[AO] u/s.143(3) r.w.s. 153A of the Act vide separate orders both dated 24.03.2014. In AY 2011-12, the assessee is aggrieved by confirmation of interest addition for Rs.2.62 Lacs and another addition on account of commission for Rs.13.26 Lacs. In AY 2012-13, the assessee is aggrieved by confirmation of additions u/s 69A as well as u/s 69B of the Act.

2. The Ld. AR, drawing attention to the factual matrix, submitted that the income as estimated for AY 2011-12 was not supported by any seized material. For AY 2012-13, the additions were merely based on loose dumb document which did not belong to the assessee. The Ld. CIT-DR supported the findings given by lower authorities and submitted that the additions were based on seized material found during the course of search action. Having heard rival submissions and after considering the material on record including the orders of lower authorities, our adjudication would be as under.

3.1 The assessee firm was constituted on 25.02.2010 and is stated to be engaged in money lending business and allied businesses. The firm had six partners but the day-to-day affairs of the business were looked after by Shri T. Kannan, husband of one of the partners. Consequent to recovery of cash of Rs.122.43 Lacs by Madurai Police on 30.08.2011 from employees of the assessee, the assessee firm was subjected to search proceedings on 01.09.2011 wherein certain books of account and other papers were found and seized besides seizure of cash of Rs.8.78 Lacs. Consequently, notice u/s 153A was issued to the assessee on 08.06.2013 in response to which the assessee offered income of Rs.100.28 Lacs for AY 2011-12 in the return of income filed on 13.09.2013.

3.2 Upon perusal of ledger as requisitioned u/s 132A, it transpired that the details of interest received by the assessee were available only up-to 31.01.2011. However, interest receipts for the month of February, 2011 and March, 2011 were not recorded in the ledger. The assessee submitted that it had stopped money lending business from 31.01.2011 onwards and thus, no interest was earned. However, the seized document loose sheet No.12 of Annexure PAF/DAM/LS/S, Sl. No.1 contained the list of persons against whom loans were outstanding as on 31.07.2011. Therefore, rejecting assessee's submissions, Ld. AO extrapolated the income for these two months by taking average interest income of ten month. The same resulted into addition of Rs.2.62 Lacs in the hands of the assessee.

3.3 Another addition of Rs.13.26 Lacs stem from the fact that the details of money transfer business were not available for the month of November and December, 2010. Therefore, Ld. AO proceeded to estimate the income for these months based on the entries available in the seized document. The assessee submitted that the commission was worked out as per seized books. However, finding that the details of commission for these two month was not available, Ld. AO extrapolated commission income for these two months by taking average commission of 5 months for which details were available. The same resulted into another addition of Rs.13.26 Lacs in the hands of the assessee.

3.4 During appellate proceedings, the assessee reiterated that money lending business was stopped on 31.01.2011 and therefore, extrapolation was not justified. Similarly, there was no business activity in other allied businesses during the month of November and December, 2010 and therefore, no income was recorded in the books for these two

months. The assessee assailed the action of Ld. AO on the ground that there was no tangible evidence for taxation of these income. However, Ld. CIT(A) rejected the submissions by observing that there may not be any evidences for the intervening period. Nonetheless, the assessee was known to have been in the same business and admitted the same during search proceedings. Therefore, both the additions as made by Ld. AO were confirmed. Aggrieved the assessee is in further appeal before us.

4.1 The facts in AY 2012-13 are that the assessee filed return of income at Rs.0.89 Lacs. As noted in preceding paragraphs, a rough day book written up-to 31.01.2011 for the money lending business was seized. The assessee did not maintain any books of accounts for money lending business after January, 2011. It was held by Ld. AO that the intention of the assessee was never to disclose the transaction of money lending as well as money transfer business. Therefore, the business was being done in a secret manner on computer system with use of codes / cryptic short name. It also transpired that the assessee had done business in the name of other group concerns viz. M/s Ponmahal Auto Finance and M/s Srimahal Finance also which had either common partners or the family members as partners. Accordingly, Shri T. Kannan, who was managing day-to-day affairs of the business, was asked to furnish the amount of loan outstanding in these three firms as on 31.08.2011. However, he expressed inability to disclose the exact amount. In the Balance Sheet for 31.03.2011 as well as for 31.03.2012, the assessee had not shown any loan outstanding. The Ld. AO opined that the amount of loan outstanding on the date of search was to be ascertained from loose sheet no.12 of Annexure PAF/DAM/LS/S, Sl.

No.1 seized u/s 132. The loose sheet was stated to be computerized printout of the working of interest earned on individual loan accounts for the month of July, 2011 i.e., one month prior to the date of search. As per this sheet, the loans outstanding as on 30.07.2011 was Rs.620.54 Lacs and interest pending was shown to be Rs.10.41 Lacs. Accordingly, the assessee was directed to explain the source of the loan given by the firm and also explain as to why these loans were not reflected in the Balance Sheet.

4.2 However, the assessee, vide reply dated 07.03.2014, refuted the allegations of Ld. AO and submitted as under: -

- a. In continuation of reply filed earlier, we hereby submit the following particulars regarding the computerized printout sheet no. 12 in Annexure PAF/DAML/LS/S, SI.No. 1 containing the loan outstanding of Rs.6,20,54,000 as on 31.07.2011 from various persons.
- b. The computerized printout sheet had been found in a dust bin box along with some 800 of other irrelevant papers.
- c. We usually buy one side papers from second hand paper merchants for the purpose of bundling parcels and for scribbling. This paper may be one among them.
- d. This may be a paper brought in by our customers by bundling their courier parcels. Since we were transacting with various persons we could not able to identify the person who might have brought in this paper.
- e. The computerized printout sheet neither has any heading nor any title to indicate that the sheet is belonging to our firm.
- f. The contents of the computerized printout sheet does not totally related to any of the transactions recorded in our regular books of accounts
- g. The font style of letters in the computerized printout sheet does not match with the font style of the any of the books, documents and papers used by us for recording our transactions which were also found at the time of search.
- h. We have submitted our borrower's names and amounts they had borrowed from us. The names mentioned in the computerized printout sheet do not have any relation with our regular transacting parties.
- i. Our regular books of accounts which were also seized at the time of search clearly shows our money lending transactions and amount of loan lend by us together with the name of the borrowers. As per our regular books of accounts the loan outstanding is only Rs.66,91,137. Whereas the computerized printout sheet no. 12 in Annexure PAF/DAM/LS/S, SI.No.1 shows the loan outstanding as Rs.6,20,54,000 which is an unimaginable figure for a small money lending firm like us.

j. We don't know from where the single sheet of paper had been brought into our firm and we totally disown it.

In other words, the assessee disowned this sheet of paper and submitted that it did not belong to the firm.

4.3 However, Ld. AO rejected the same on the ground that the assessee did not raise any such contention while replying to various questions put before him during search proceedings. The Ld. AO opined that the assessee had done the business clandestinely without any intent to declare the transactions to the department. The books were titled in fictitious name to mislead the authorities in believing that the records do not belong to the firm. In fact, other loose sheets bundles as seized did not bear the name of the firm but still it was accepted by the assessee that the bundles belonged to the firm. Further, it was not possible to go through every paper at the initial stage since there were numerous print outs of money transfer business and Annexure-12 may have remained unnoticed. The assessee did not maintain proper books of accounts. Even after the date of search, the assessee did not furnish any details of money lending business from 01.02.2011 to the date of search i.e., 01.09.2011. This would show that the assessee did not want to present correct state of the business for income tax purpose. The onus was on assessee to explain the documents as seized from its premises. Another objection of the assessee that the loan creditors as per manual books did not match with Annexure-12 was to rejected since manual book was a rough book and maintained from 25.02.2010 to 31.01.2011 wherein outstanding loans as on 31.01.2011 were reflected at Rs.66.91 Lacs. After that, there was no books maintained for the business. The

assessee was unable to explain as to how the amounts of loans were received back and about further utilization of loans received back. The assessee gave loan for short period of up-to 45 days whereas the list of loan creditor was as on 31.01.2011. Therefore, the need not be common names with the list as on 31.07.2011. The manual book did not reflect correct financial position of the business and could not be relied upon to determine the income of the assessee. The contention that loan of Rs.66.91 Lacs rose to unimaginable figures of Rs.620.54 Lacs was to be rejected since the assessee did not maintain proper books of accounts and tried to mislead by not mentioning the name of the concerns in many documents and loose sheets. The transactions done in the name of other firms was not recorded in any of the books. Therefore, the figure of Rs.620.54 Lacs was to be accepted as true amount of loan outstanding as on 31.07.2011. The objection regarding difference in fonts was to be rejected since there was no standardized stationery or programme used by the assessee. The presumption of Sec.292C would operate against the assessee. In the above background, assessee's submissions were rejected. The assessee had declared capital introduced by the partners of the firm for Rs.130 Lacs. Therefore, the set-off of the same would be available to the assessee. Finally, the differential of Rs.490.54 Lacs was added to assessee's income as undisclosed investment u/s 69B.

4.4 The assessee was saddled with another addition on account of aggregate cash seized for Rs.131.33 Lacs. The amount of Rs.75.83 Lacs was seized by the Police from the employees of the assessee. The cash of Rs.46.60 Lacs was seized by the Police from the business premises of the assessee. The cash of Rs.8.89 Lacs was seized during search operations. It was submitted that the money was sourced out of

capital of firm. However, in the absence of any satisfactory evidences, the submissions were rejected and the amounts were added as unexplained cash u/s 69A.

### **Appellate Proceedings**

5.1 During appellate proceedings, the assessee relied on the decision of Hon'ble Supreme Court in the case of **CBI V/s V.C.Shukla (1998 3 SCC 410)** wherein it was held that file containing loose sheet of papers are not 'books' and hence entries made therein are not admissible u/s 34 of the Evidence Act. The Hyderabad Tribunal in the case of **DCIT V/s Shri K. Babu Rao (ITA No.329/Hyd/2012 24/01/2014)** held that other than loose papers, AO had not brought on record any corroborative material or evidence to show that inference made by hm was correct. Guess work is not possible in case of search proceedings and it is not permissible to assess the undisclosed income in the absence of any evidence. The unsubstantiated loose sheets cannot be considered as conclusive evidence to make additions of undisclosed income. Regarding addition of cash seized, it was submitted by the assessee that cash stood explained in the Balance Sheet filed along with the return of income.

5.2 The Ld. CIT(A), after considering the findings of Ld. AO as well as assessee's submissions, held that any document found in the premises of the assessee is presumed to be belonging to the assessee unless otherwise proved. Shri T. Kanan, who was actually managing the affairs, identified, owned and described the documents in serial no.11,13,14,17 & 22 of the said annexure in reply to question no. 5 to 9 of the statement. Though the assessee disowned this document, Ld. AO countered the

submissions of the assessee. Therefore, both the additions were justified. The relevant observations were as under: -

11. The assessee has simply claimed that the incriminating documents do not belong to them without stating to whom it belongs to. The clinching evidence in this regard is the statement given by Shri Kannan, Manager of the Firm and husband of one of the partners, who identified all the documents as belonging to the Firm and explaining entries therein. In fact, this explanation has been offered even after 16 months after the seizure of incriminating documents on 1.9.2011. The contents of the documents are crystal clear in explaining the entries contained therein. Considering the compelling evidence against the assessee the addition of Rs.4,90,54,000 is sustained.

12. The assessee has not had anything substantial to say as regards the source of cash seized of Rs.1,31,33,495. In fact, the books of accounts of the firm had not been maintained by the assessee to offer explanation as regards cash in hand on any given day. Moreover, the assessee was in the illegal "Hawala Business" and may not have given out any names of any alleged owners of said unaccounted cash. Considering the same, the cash inventorised and seized to the extent of Rs.1,31,33,495 is sustained as validly made addition in the assessment order. The grounds of appeal are dismissed.

5.3 For AY 2011-12 also, both the additions were confirmed. Aggrieved, the assessee is in further appeal before us.

### **Our findings and Adjudication**

6. Upon careful consideration of factual matrix as enumerated by us in preceding paragraphs, it could be seen that the assessee has been saddled with addition of Rs.490.54 Lacs which is solely based on entries stated to be contained in one seized document i.e., loose sheet No.12 of Annexure PAF/DAM/LS/S, Sl. No.1. It has been alleged by Ld. AO that the said document contained the list of persons against whom loans were outstanding as on 31.07.2011. In other words, it is the allegation of Ld. AO that the assessee had advanced loans to all these persons and earned interest for the month of July, 2011. The copy of this document is on record. The same was seized during search proceedings. However, after going through the statement of Shri T. Kannan, it could be seen that this document was never confronted to him by the search team. The

perusal of this document, as placed on record, would show that it is a two-sheet paper and does not bear any date, title, description or any inscription which would show that it was, in any way, connected with the assessee firm. It is an unsigned document. There is no other evidence on record that the assessee was doing money lending business after 31.01.2011. In fact, no such interest income has been offered to tax by the assessee during this year and no such interest income has finally been assessed by Ld. AO for any part of the year in the assessment order. Pertinently, this document supposedly contains the amount of interest earned by the assessee. However, even the same has not been considered to be the income of the assessee which would show that the lower authorities, themselves, were unsure as to the contents of this document. Considering all these facts, the inescapable conclusion would be that the impugned addition is based merely on the suspicion, conjecture and surmises. The same stem from the allegation that the aggregate of loans purportedly contained in this document was advanced by the assessee and the assessee earned interest on such loans. However, such a conclusion is bereft of any corroborative positive evidence which would show that the assessee was even in this kind of business during the year and advanced loans and earned interest income during the year. No investigation, whatsoever, has been carried out by Ld. AO to find out the identity of the person as mentioned in this document to support the additions. Except for mere allegations that this document belongs to the assessee, there is no evidence / material in the kitty of the revenue to link the assessee with this document. Thus, this document was nothing but merely a 'dumb document' which could not, on standalone basis, form the basis to make impugned additions in the

hands of the assessee. In such a case, the revenue could not rely on this document merely by pressing into service the presumption of Section 132(4A) read with Section 292C of the Act. These two sections merely contain a deeming fiction on the assessee in case of search proceedings wherein it could be presumed that any such document found during the course of search from the possession or control of person searched shall belong to such persons and the contents of such documents are true. However, this presumption is rebuttable one. In the present case, the assessee, right from search proceedings, has dis-owned this document and thus, the onus was on revenue to establish that this document belonged to the assessee and the contents of the same were duly supported by corroborative evidences. In the absence of such an exercise, no arbitrary addition could be made on the basis of a dumb documents or loose papers containing scribbling / rough / vague notings in the absence of any independent and corroborative material or evidence on record. The Ld. AO was obligated to establish that the notings revealed either unaccounted income or unaccounted investment or unaccounted expenditure of the assessee. Additions could not be made simply on the basis of loose unsigned and undated computer sheets. These sheets were to be considered in the nature of 'dumb document' having no evidentiary value and could not be taken as the sole basis for determination of undisclosed income of the assessee. No fact-based finding has been rendered by Ld. AO that such transactions gave rise to the income in the hands of the assessee.

7. Proceeding further, it is trite law that in case of search proceedings, the additions are to be based solely on the basis of incriminating material found during the course of search operations. Guess work or estimation

or extrapolation of income is not permissible unless there are strong evidences to suggest otherwise. The additions are to be based solely on tangible material and not on the basis of estimations or extrapolation theory.

8. The aforementioned legal position is duly supported by the judgment of Hon'ble Supreme Court in case of **CBI v. V.C. Shukla (1998 3 SCC 410)** wherein it was held that any presumption of transaction on some vague, tenuous and dubious entries in a sheet of paper is not rational unless there is corroboration by corresponding entry in regular accounts of both the parties to the transaction. The Hon'ble Court observed that 'Book' ordinarily mean a collection of sheet or papers or other material, blank or written or printed, fastened or bounded together so as to form a material as a whole. Loose sheets are scraps of papers cannot be termed as books for they can easily be detached and replaced. Therefore, these are not admissible evidences. Similar is the subsequent decision of Hon'ble Supreme Court in **Common Cause v. UOI, [2017] 77 taxmann.com 245** wherein it was reiterated that only when the entries are in the books of account regularly kept, would be admissible. Similarly, Hyderabad bench of Tribunal in the case of **DCIT V/s Shri K. Babu Rao (ITA No.329/Hyd/2012 24/01/2014)** held that other than loose papers, AO had not brought on record any corroborative material or evidence to show that inference made by him was correct. Guess work is not possible in case of search proceedings and it is not permissible to assess the undisclosed income in the absence of any evidence. The unsubstantiated loose sheets cannot be considered as conclusive evidence to make additions of undisclosed income.

9. Therefore, on the given facts and circumstances, we are of the considered opinion that the impugned addition of unexplained investment in loans u/s 69B is not sustainable for AY 2012-13. By deleting the same, we allow the grounds thus raised by the assessee.

10. Having deleted the addition u/s 69A as above, the second addition of unexplained money u/s 69A representing cash seized for Rs.131.33 Lacs from the assessee, would also stand deleted since it is undisputed fact that the partners of the firm have introduced capital of Rs.130 Lacs during the year. This credit of the same was already allowed by Ld. AO while computing addition u/s 69B. Therefore, consequent to deletion of addition u/s 69B, this addition would stand deleted. The ground as well as the appeal for AY 2012-13 stand allowed.

11. The subject matter of addition in AY 2011-12 is addition of undisclosed interest for Rs.2.62 Lacs and undisclosed commission income for Rs.13.26 Lacs. Upon perusal of orders of lower authorities, we find that these additions are merely extrapolated additions by taking average of such income earned in other months. However, there is no incriminating material which would show that both the income was earned by the assessee. These are not supported by any incriminating material found during the course of search operations and merely based on the assumption that the assessee would have earned such income. This being so, in the light of legal propositions as noted by us in earlier paragraphs, these additions are not sustainable in the eyes of law. By deleting both the additions, we allow the appeal for AY 2011-12.

**Conclusion**

12. Both the appeal stands allowed in terms of our above order.

Order pronounced on 14<sup>th</sup> February, 2022.

**Sd/-**  
**(MAHAVIR SINGH)**  
**उपाध्यक्ष / VICE PRESIDENT**

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
**लेखासदस्य / ACCOUNTANT MEMBER**

चेन्नई / Chennai; दिनांक / Dated : 14-02-2022  
EDN/-

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