

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

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.1843/Chny/2019**
(निर्धारण वर्ष / **Assessment Year: 2012-13**)

Shri V.A Jahafar Sadiq Prop. Asika Thangamaligai, No.25, Nageswaran North Street, Kumbakonam – 612 001.	बनाम/ Vs.	ACIT Circle-1, Kumbakonam.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. ADVPJ-5479-N		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri K.B. Muralidharan (CA)-Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri P. Sajit Kumar (JCIT)-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	09-03-2022
घोषणा की तारीख / Date of Pronouncement	:	14-03-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2012-13 arises out of the order of learned Commissioner of Income Tax (Appeals)-1, Trichy [CIT(A)] dated 11.04.2019 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s.143(3) of the Act on 26.03.2015. The grounds raised by assessee read as under:

1. The order passed by the learned CIT(A) is arbitrary, incorrect and also against the facts and circumstances of the appellant's case.
2. The order of the CIT(A) is bad in law as he had no reasons to assess an assess an income different from what had been offered by the appellant.
3. The CIT(A) had failed to appreciate that there was no proper opportunity given before the passing of the impugned order and any order passed in violation of the principles of natural justice would be nullity in law.
4. The CIT(A) had failed to appreciate and accept the explanations given by the appellant during the course of appellate proceedings.
5. The CIT(A) had failed to follow the correct position of law and the order passed by CIT(A) is bad in law for want of findings and reasons for addition.
6. While the CIT(A) has not disputed the purchases, he erred in sustaining the addition of difference in stock valued at Rs.81,00,000.
7. The CIT(A) failed to appreciate the accounting treatment of the appellant and erred in understanding the quantitative details of the stock.
8. Both CIT(A) and AO failed to appreciate by not distinguishing the facts related to appellant and his firm.
9. Without prejudice to our right, we submit that the CIT(A) had erred in sustaining the addition on account of difference in stock as presumed by AO u/s. 69 when the purchases were accounted and sales offered in the profit and loss account.
10. The appellant craves leave to amend, add or delete any ground(s) of appeal at any time before or during the hearing of this appeal.
11. The appellant prays to delete the addition sustained by the CIT(A).

As evident, the assessee is aggrieved by confirmation of addition of Rs.81 Lacs as made by Ld. AO while framing the assessment.

2. The Ld. AR, taking us through the documents, submitted that closing stock at year-end was fully transferred by the assessee to a firm and therefore, the addition as made by Ld. AO was not sustainable. The Ld. Sr. DR, on the other hand, submitted that there was difference in stock which could not be explained by the assessee. For the same, Ld. Sr. DR drew our attention to the findings of lower authorities.

Having heard rival submissions and after going through relevant material on record, our adjudication would be as under.

3.1 The material facts are that the assessee being resident individual is stated to be engaged in jewellery trade under proprietorship concern namely M/s Ashika Thangamaligai. A survey u/s. 133A of the Act was

conducted on the assessee on 11.10.2012 wherein purchase invoice folder for financial year (FY) 2011-12 was impounded. It transpired that the assessee made bullion purchase of 3 Kilograms from M/s Surana Corporation Ltd. on 31.03.2012. The total quantity of bullion purchased by the assessee, during the year, from that entity was 15 Kilograms. However, the quantity of bullion as issued to goldsmith Shri Nantha Kishore, as per issue book, was only 12 Kilograms. On the basis of same, it was concluded by Ld. AO that there was a difference of 3 Kilograms which was neither appearing as sales nor appearing as quantity break-up in the closing stock as on 31.03.2012. Therefore, 3 Kilograms of gold having approx. value of Rs.81 Lacs was held to be unexplained and the same was added to assessee's income.

3.2 The assessee explained that it became partner in a firm i.e., M/s Ashika Thangamaligai w.e.f. 01.04.2012 and all the stock and other material as held by the assessee was transferred to the firm at the agreed price on 31.03.2012. Therefore, there was no purchase omission of any bullion during the year. The assessee also stated that the bullion purchased during the year 2011-12 had duly been accounted for in the books and there were no unexplained purchases or sales. However, rejecting the submissions, Ld. AO added an amount of Rs.81 Lacs to the income of the assessee which was confirmed by Ld. CIT(A). Aggrieved, the assessee is in further appeal before us.

4. Upon due consideration of documents on record, we find that the assessee has purchased 3 Kilograms of bullion from M/s Surana Corporation Ltd. on 31.03.2012 against invoice no.G30011 for Rs.85.60 Lacs. These purchases form part of supplier's ledger (page-22 & 23 of the paper-book) and therefore, the purchases have duly been accounted

for by the assessee. Upon further perusal, we find that the assessee has purchased new jewels, bullion and old gold weighing 86907.688 grams during the year. After adding the same to the opening stock and after adding the quantity of copper, the total stock held by the assessee comes to 223597.993 grams which has been fully sold during the year. The sale include sale made by the assessee to the partnership firm on 31.03.2012. The sale and purchase has duly been accounted for by the assessee in the trading account and the closing stock at year-end is nil. Thus, the allegation of Ld. AO is bereft of any merits. The Ld. AO has failed to take note of the fact that the bullion of 3 Kilogram was sold by the assessee to the firm on 31.03.2012 and thus, it would not form part of 'smith issue' book. It would also not form part of closing stock. Hence, by deleting the impugned addition, we allow the appeal.

5. The appeal stand allowed.

Order pronounced on 14th March, 2022.

Sd/-
(V. DURGA RAO)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 14-03-2022
EDN/-

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded 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