

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.Nos.113 to 119/Chny/2020

(निर्धारणवर्ष / Assessment Years: 2009-10 to 2015-16)

Mr. J.Srinivasan, 12B, Thanikachalam Street, Perambur, Chennai-600 011.	Vs	Assistant Commissioner of Income Tax, Central Circle-3(2) Chennai.
PAN: AOVPS 4456H		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

&

आयकर अपीलसं./I.T.A.Nos.354 to 356/Chny/2020

(निर्धारणवर्ष / Assessment Years: 2011-12 to 2013-14)

M/s. Sri Sarvalakshmi Chit Funds India Pvt.Ltd. 1 st floor, No.95 & 296, Paper Mills Road Perambur, Chennai-600 011.	Vs	Assistant Commissioner of Income Tax, Central Circle-3(2) Chennai.
PAN: AAOCS 6783K		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Mr. T.Banusekar, C.A
प्रत्यर्थी की ओर से/Respondent by	:	Mr. Durgesh Sumrott, CIT & Mr. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of hearing	:	10.03.2022
घोषणा की तारीख /Date of Pronouncement	:	18.03.2022

आदेश / ORDER

PER BENCH:

The bunch of ten appeals filed by two different assessesees are directed against separate, but identical orders of the learned Commissioner of Income Tax (Appeals)-19, Chennai, dated 29.08.2019 & 29.11.2019 and pertain to assessment years 2009-10 to 2015-16 and 2011-12 to 2013-14 respectively.

Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

2. The assessee in ITA Nos. 113 to 119/Chny/2020 has more or less raised common grounds of appeal for all these assessment years, therefore, for the sake of brevity, grounds of appeal filed for the assessment year 2009-10 are reproduced as under:-

“1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interest of the appellant and at any rate is opposed to the principles of equity, natural justice and fair play.

2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.

3. For that the Commissioner of Income Tax Appeals failed to appreciate that the additions made are without any link to the seized material.

4. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer had rejected the revised financial statements and books of account even though they presented a correct picture of the financial position of the appellant.

5. For that the Commissioner of Income Tax (Appeals) ought to have rejected the “net worth” method adopted by the Assessing Officer for determination of income.

6. For that the Commissioner of Income Tax (Appeals) erred in preparing the statement of affairs by considering partly seized

material, partly original financial statements and partly the revised financial statements in the application of net worth method for determination of income.

7. For that the Commissioner of Income Tax (Appeals) erred in not reckoning the correct balance of opening capital based on the revised Balance Sheet filed.

8. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the properties acquired prior to 01.04.2008 cannot be considered for the purpose of reckoning undisclosed income.

9. For that without prejudice to the above, the Commissioner of Income Tax (Appeals) ought to have considered an increase in the capital balance commensurate to the value of fixed assets introduced in the Balance Sheet considering the double entry accounting system followed by the appellant.

10. For that the Commissioner of Income Tax (Appeals) erred in not considering the differences in asset values arising out of the Balance Sheet prepared by the appellant as against the Balance Sheet prepared by the Assessing Officer.

11. For that the Commissioner of Income Tax (Appeals) failed to adjudicate on the fact the Assessing Officer erred in not considering loan from Perambur Co-operative and Housing Society in liabilities side of the Statement of Affairs.

12. For that the Commissioner of Income Tax (Appeals) failed to adjudicate that the Assessing Officer has not reckoned the rental advance as receivable by the appellant in the Statement of Affairs prepared by him.

13. For that the Commissioner of Income Tax (Appeals) failed to adjudicate on the issue raised that stock of raw material and work-in-progress should not be reckoned in the preparation of Statement of Affairs for the year under consideration.

14. For that the Commissioner of Income Tax (Appeals) failed to appreciate the fact that certain items of assets have been reckoned twice in the statement of affairs prepared by the Assessing Officer.

15. For that the Commissioner of Income Tax (Appeals) erred in not allowing the claim of interest paid to banks on loans raised from banks only due to the fact that the Net Worth

Method of computation of income was being followed and the question of allowability of specific deductions is of no relevance.

16. For that the appellant objects to the levy of interest under sections 234A, 234B and 234C.”

3. Brief facts of the case extracted in ITA No.113/Chny/2020 relevant to assessment year 2009-10 are that the assessee is engaged in the business of money lending, construction of apartments and chit fund business. A search and seizure operation u/s.132 of the Income Tax Act, 1961, was conducted on 28.01.2015 at the residential and business premises of the assessee. During the course of search, certain incriminating materials were found and seized and based on incriminating materials, a sworn statement u/s.132(4) of the Act dated 24.03.2015 was recorded from the assessee. In the sworn statement, the assessee has offered undisclosed income of Rs. 28,92,75,497/- for the assessment years 2009-10 to 2015-16. The surrender was reiterated by the appellant before the DDIT vide letter dated 15.09.2015. Consequent to search, notice u/s.153A of the Income Tax Act, 1961, was issued for six assessment years immediately preceding assessment years in which search took place. The assessee did not respond to

notice issued u/s.153A of the Act, despite number of reminders issued to the assessee. Finally, a letter dated 09.12.2016 was issued to the assessee to complete assessment on the basis of net worth method in absence of regular books of account. The assessee finally complied with notice u/s.153A of the Act, and filed return of income on 20.12.2016 and declared total income of Rs,1,03,72,719/-. The assessment has been completed u/s.143(3) r.w.s 153A of the Income Tax Act, 1961, on 29.12.2016 and determined total income at Rs.6,71,74,890/- by making additions towards undisclosed income of Rs.5,68,02,171/- on the basis of net worth method. The assessee challenged the assessment order before the first appellate authority and challenged additions made by the Assessing Officer towards undisclosed income on the basis of net worth method, but could not succeed. The learned CIT(A), rejected arguments of the assessee and sustained additions made by the Assessing Officer by holding that the assessee has failed to substantiate his claim with necessary evidences, including books of account to reconcile undisclosed income determined by the Assessing Officer on the basis of net worth

method. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

4. The learned AR for the assessee submitted that the learned CIT(A) has erred in confirming additions made by the Assessing Officer towards undisclosed income on the basis of net worth method, ignoring various evidences filed by the assessee, including books of account prepared for the relevant assessment years explaining source for various investments and expenses. The learned AR further submitted that the assessee has prepared books of account and explained source for investments. Further, the Assessing Officer has considered certain assets which were acquired prior to assessment year 2009-10 and made additions on the basis of net worth method by allowing deductions towards income declared by the assessee in the return of income filed for the relevant assessment years. Since, the Assessing Officer as well as learned CIT(A) have failed to consider reconciliation filed by the assessee explaining undisclosed income computed by the Assessing Officer, appeals may be set aside to the file of the

Assessing Officer to give another opportunity of hearing to the assessee to explain his case.

5. The learned DR, on the other hand, strongly supporting order of the learned CIT(A) submitted that the assessee neither filed necessary details nor produced books of account to explain undisclosed income computed by the Assessing Officer. Further, the assessee has not maintained regular books of account. In absence of books of account, the Assessing Officer left with no option, has computed undisclosed income on net asset method basis. Therefore, there is no error in the reasons given by the learned CIT(A) to sustain additions made by the Assessing Officer. However, he fairly agreed that if at all, the issue needs to be set aside, then it should be set aside to the file of the learned CIT(A) to reconsider the issue in light of various evidences filed by the assessee.

6. We have heard both the parties, perused material available on record and gone through orders of the authorities below. Admittedly, the Assessing Officer has computed

undisclosed income on the basis of net worth method, when the assessee has failed to produce necessary books of account and other details to reconcile various incriminating materials found during the course of search. It was the explanation of the assessee that while making additions towards undisclosed income, the Assessing Officer has considered certain assets, which were acquired before the assessment year 2009-10 for which the assessee has filed reconciliation explaining each and every item of assets considered by the Assessing Officer in light of evidences and argued that certain assets are outside impugned assessment year.

7. We have considered arguments of both the sides and find that during the course of search various incriminating materials were found and seized which needs to be thoroughly examined by the Assessing Officer in light of explanation furnished by the assessee. However, the Assessing Officer has determined undisclosed income on the basis of net worth method without considering explanation furnished by the assessee on certain incriminating materials found during the course of search. Admittedly, the assessee has made

disclosure of undisclosed income on the basis of net worth method and admitted undisclosed income of Rs.28,92,75,497/- for the assessment years 2009-10 to 2015-16. The Assessing Officer had also determined undisclosed income on the basis of net worth method, but there is difference between undisclosed income computed by the assessee, when compared to undisclosed income determined by the Assessing Officer for all assessment years. Before the learned CIT(A), the assessee claimed that he has reconstructed his books of account with reference to seized materials and has reconciled undisclosed income determined by the Assessing Officer to the undisclosed income offered by the assessee in returns filed in response to notice issued u/s.153A of the Act. The learned CIT(A) rejected books of account on the ground that same were reconstructed after date of search and said finding appears to be reasonable. However, when the assessee has filed reconciliation explaining difference in undisclosed income computed by the Assessing Officer when compared to undisclosed income returned by the assessee with certain explanation, then the learned CIT(A) ought to have been entertained arguments of the assessee. In

this case, learned CIT(A) has summarily rejected arguments of the assessee and sustained additions made by the assessee towards undisclosed income on net worth method. Therefore, we are of the considered view that the assessee should get one more opportunity before lower authorities to explain his case. The learned DR vehemently argued and requested to set aside appeals to the learned CIT(A) to re-examine claim of the assessee. Therefore, considering complexity involved in the case, we deem it appropriate to set aside appeals of the assessee to the file of the learned CIT(A) and direct the CIT(A) to reconsider the issues afresh in light of various additional evidences filed by the assessee, including reconciliation filed for explaining undisclosed income computed by the Assessing Officer. Further, the learned CIT(A) may call for remand report from the Assessing Officer, if necessary. Therefore, considering complexity involved in these appeals and also to give one more opportunity to the assessee, we are of the considered view that the appeals need to go back to the file of the learned CIT(A) to give one more opportunity of hearing to the assessee to explain his case.

8. In the result, appeal filed by the assessee for the assessment year 2009-10 is treated as allowed for statistical purposes.

ITA Nos.114 to 119/Chny/2020 (A.Y.2010-11 to 2015-16):

9. The facts and issues involved in ITA Nos. 114 to 119/Chny/2020 are identical to the facts and issues which we have already considered in ITA No.113/Chny/2020 for the assessment year 2009-10. The reasons given by us in the preceding paragraphs of ITA No.113/Chny/2020 shall *mutatis mutandis* apply to these appeals, as well. Therefore, for similar reasons, we set aside these appeals also to the file of the learned CIT(A) and direct the CIT(A) to consider the issues *de novo*, in accordance with law, after giving reasonable opportunity of hearing to the assessee.

10. In the result, appeals filed by the assessee for the assessment years 2010-11 to 2015-16 are treated as allowed for statistical purposes.

ITA Nos.354 to 356/Chny/2020 (A.Y. 2011-12 to 2013-14):

11. The facts and issues involved in ITA Nos. 354 to 356/Chny/2020 are identical to the facts and issues which we

have already considered in the case of Mr.J.Srinivasan in ITA No.113/Chny/2020 for the assessment year 2009-10. The reasons given by us in the preceding paragraphs of ITA No.113/Chny/2020 shall *mutatis mutandis* apply to these appeals, as well. Therefore, for similar reasons, we set aside these appeals also to the file of the learned CIT(A) and direct the learned CIT(A) to consider the issues *de novo*, in accordance with law, after giving reasonable opportunity of hearing to the assessee.

12. In the result, appeals filed by the assessee for the assessment years 2011-12 to 2013-14 are treated as allowed for statistical purposes.

Order pronounced in the open court on 18th March, 2022

Sd/-
(वी.दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member
चेन्नई/Chennai,
दिनांक/Dated 18th March, 2022
DS

Sd/-
(जी.मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.