

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.: 259, 260 & 261/CHNY/2017

निर्धारण वर्ष /Assessment Year: 2009-10

**Shri T. Sakthivel,**  
Prop. Sakthivel Agencies,  
No.26/5, Gandhi Road,  
Sadhanandapuram, Srinivasa  
Nagar, Perungalathur,  
Chennai – 600 063.

**The Income Tax Officer**  
v. Ward I(4),  
Tambaram.

**PAN: AXYPS 8424P**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Shri S. Sridhar, Advocate  
: Shri G. Johnson, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 21.03.2022

घोषणा की तारीख/Date of Pronouncement

: 28.03.2022

**आदेश /O R D E R**

**PER MAHAVIR SINGH, VP:**

These 3 appeals by the assessee are arising out of the common order of the Commissioner of Income Tax (Appeals)-10, Chennai in ITA Nos.74, 75 & 76/2013-14/CIT(A)-10 dated 31.10.2016. The Assessment was framed by the ITO, Ward I(4), Tambaram for the assessment year 2009-10 U/s 144 of the Income Tax Act, 1961

(hereinafter 'the Act') vide order dated 29.12.2011. The penalty u/s.271(1)(b) of the Act was levied by the ITO, Business Ward I(4), Tambaram vide his order dated 15.06.2012. The penalty u/s.271(1)(c) of the Act was also levied by the ITO, Business Ward I(4), Tambaram vide his order dated 15.06.2012.

2. First, we will deal with quantum appeal in **ITA No.259/Chny/2017**. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the addition made by the AO of cash deposits made by assessee with Tamilnadu Mercantile Bank, Tambaram Branch amounting to Rs.22,16,600/-, completing the assessment ex-parte. For this, assessee has raised six effective grounds, which we need not to reproduce.

3. The brief facts relating to the issue are that the AO noticed from the Annual Information Return (AIR) that the assessee has made cash deposit of Rs.22,16,600/- with Tamilnadu Mercantile Bank, Tambaram. The AO required the assessee to explain cash deposit vide letter dated 15.12.2011 but no details were filed. Again, the assessee was given final opportunity to appear on 22.11.2011 but no response. Hence, assessment was completed u/s.144 of the Act, by making addition of Rs.22,16,600/- as

unexplained investment u/s.69 of the Act. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) also confirmed the action of AO and for this, he observed in para 4.5.2 as under:-

I have considered both the points of view. The appellant has claimed to be a trader in construction material. Admittedly, the appellant has not maintained books of accounts. Even after sufficient opportunity was given, the appellant could not reconstruct the books of accounts and there is no basis for accepting the financial statements submitted by the AO. Therefore, the financial statements submitted by the appellant are rejected as they are not based on books of accounts. Now, coming to the appellant's claim that the source for the cash deposit was out of sale proceeds in the appellant's business of trade in construction material. It is very strange to note that on the one hand the appellant has issued cheques to his suppliers for the construction material, but on the other hand, all the sales of the appellant were realized through cash. It is illogical that in the same line of business only the purchase can be done through cheques but sales are done only through cash. In spite of reasonable opportunity given, the appellant could not submit the ledger copies of the appellant from the books of the buyers of the construction material, who have purportedly purchased material from the appellant and paid in cash. Therefore, the appellant has not discharged his primary onus.

Aggrieved assessee came in appeal before the Tribunal.

5. Before us, the Id.counsel for the assessee stated that the assessee is dealing in the business of supply of construction material such as sand, blue metals, bricks, cements, steel and other construction items. The Id.counsel for the assessee explained that

naturally the business of the assessee is on the basis of cash and carry. He stated that the cash collection is out of sales made of above items and the cash is deposited in the bank account of the assessee. The Id.counsel explained that the assessee before AO during the remand proceedings filed details of suppliers and suppliers confirmed that receipt of payment through account payee cheques but Id.counsel stated that the items purchased by assessee like sand etc., is sold in cash and that very cash is deposited in the bank account of the assessee. The Id.counsel for the assessee explained that this fact is admitted by the AO in his remand report dated 11.05.2016 and the relevant portion of the remand report reads as under:-

Based on the directions of the Commissioner of Income tax (Appeals) for submitting Remand Report, a letter sent to the assessee on 06.10.15 requesting the assessee to appear before the undersigned on 14.10.2015 for verification of the details/documents furnished before the Commissioner of Income tax (Appeals). In response to the same, the assessee's authorized representative Shri A.R. Annamali, FCA requested further time. On 19.01.2016 the Authorized representative filed copies of VAT license, copy of bank analysis, copy of letters from suppliers (which are not having dates) and unsigned computation of income, balance sheet and Trading Profit and Loss accounts for the Assessment Year 2007-08. When this was pointed out to the representative, signed copies were provided.

On verifying the letters of suppliers, it was noted that the suppliers have confirmed the receipt of payment through cheques by furnishing the cheque numbers and dates. The assessee has only filed the confirmation letters of the suppliers for the good received by him. The assessee has not explained about the source for the cash deposited into bank account for honouring the cheques issued to the above suppliers. Hence, the action of the Assessing

Officer treating the above cash deposits as unexplained cash credit is fully justified.”

In view of the above, the Id.counsel stated that going through the business model of the assessee i.e., the receipts of supplies is always in cash and the same cash is deposited and in that eventuality entire cash cannot be treated as unexplained because the assessee is able to explain the same. The Id.counsel stated that in case the matter is restored back to the file of the AO, the assessee will be able to prove by producing the parties or a fair estimate of profit can be made at the stage of Tribunal to end the litigation.

6. On the other hand, the Id. Senior DR heavily relied on the assessment order and that of the CIT(A). He stated that till now the assessee is unable to prove the cash deposits made by him and the sources for the same. The Id. Senior DR stated that there is no basis for estimating the profit rate and there is no purpose for the issue to go back to the AO for fresh adjudication because the assessee has no evidence available with him to prove that the cash is received on the basis of sales made to various parties. In view of these arguments, the Id. Senior DR asked the Bench to confirm the orders of lower authorities.

7. We have heard rival contentions and gone through facts and circumstances of the case. We have gone through the case records including the assessment order and order of CIT(A). We have also gone through the remand report of the AO dated 11.05.2016. We noted that the assessee has filed copies of VAT license, copy of bank analysis, copy of letters from suppliers, unsigned computation of income, balance sheet and trading profit & loss accounts for the assessment year 2007-08. We noted that the AO, on verifying the letters of suppliers noted that suppliers have confirmed the receipt of payment through cheques and the details were furnished before the AO. But, the AO in his remand report further noted that the source of cash deposit out of sales made by the assessee is not proved. We noted that, as explained by assessee, the business model of the assessee is cash and carry basis i.e., the assessee is dealing in the business of supply of construction materials such as cement, blue metals, bricks, cement, iron & steel and other construction materials. The nature of business is such that it is made normally in the towns on cash and carry basis. Hence, to put an end to the litigation, we are inclined to accept the arguments of the Id.counsel of the assessee that fair and reasonable estimate of profit be made. Hence, we are of the view that the assessee has made sales in cash or might not have issued bills and vouchers and

for that purpose might have saved VAT etc. Hence, the profit element will be more in this case and accordingly, we estimate the profit rate of cash deposit of Rs.22,16,600/- at the rate of 15% because these cash deposits can be treated as unaccounted sales. Hence, treating these as unaccounted sales, we estimate the profit rate @ 15% and direct the AO to assess the deposit. Accordingly, this issue of assessee's appeal is allowed in term of the above.

### **ITA No.260/CHNY/2017**

8. The AO levied penalty u/s.271(1)(b) of the Act, on the ground that the assessee has not responded to notice issued u/s.142(1) of the Act dated 01.02.2011. Subsequently, several notices and letters dated 15.12.2011 and 22.12.2011 were issued and there was no response or adjournment petition filed. Accordingly, assessment was completed u/s.144 of the Act. Even during the penalty proceedings, the assessee objected stating that he has no knowledge about tax matters and entirely depends upon the representative. The CIT(A) confirmed the action of the AO levying penalty at Rs.10,000/- u/s.271(1)(b) of the Act, by observing in para 5.2 as under:-

5.2 I have carefully considered the AO's observation for the levy of penalty u/s 271(1)(b) and the appellant's submission before the CIT(A) as mentioned above. It is clear from the Assessment order as well as the

penalty order u/s 271(1)(b) of the Income Tax Act that the appellant did not care to respond to the statutory notices issued by the AO repeatedly. The appellant failed to substantiate with supporting document that there was reasonable cause for his failure as required u/s 273B, during either the penalty proceeding or the appeal proceedings. The appellant's AR has merely submitted that the appellant has no knowledge about the tax matters and entirely depended upon the representative. It has been held in several decisions that ignorance of law is no excuse. The appellant has failed to establish that there was reasonable cause for his failure for not complying with the notices u/s 143(2) and 142(1) issued by the AO during the assessment proceedings. Therefore, I am of the considered opinion that the AO's levy of penalty u/s 271(1)(b) amounting to Rs.10,000/- is to be upheld. Accordingly, the appellant's grounds are dismissed.

9. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that even now before us assessee could not argue any reasonable cause for non-attendance of the notice issued u/s.142(1) of the Act dated 01.02.2011. Since there is failure for complying with the notice issued u/s.142(1) of the Act, the AO has rightly levied penalty and CIT(A) has upheld the same. We also confirm the same. This appeal of assessee is dismissed.

### **ITA 261/CHNY/2017**

10. This appeal by assessee is against the order of CIT(A) confirming the levy of penalty u/s.271(1)(c) of the Act. The AO made addition of cash deposit to the extent of Rs.22,16,600/- in the savings bank account maintained with Tamilnadu Mercantile Bank

Ltd., as unexplained investment and the CIT(A) confirmed the same. In the above order in ITA No.259/CHNY/2019, vide para 8, we have restricted the profit rate of the above cash deposits in the bank treating the same as sales made of construction materials supplied by the assessee and assessed the profit rate @ 15%, which is purely on estimate basis. The assessee is able to prove the nature of business and its model of business, on the basis of which the estimate is made. Hence, according to us, this is not a case of concealment of income. Hence, we delete the penalty levied by AO and allow the appeal of assessee.

11. In the result, the appeals filed by the assessee in ITA Nos.259 & 261/CHNY/2017 are allowed and ITA No.260/CHNY/2017 is dismissed.

Order pronounced in the court on 28<sup>th</sup> March, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह )

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 28<sup>th</sup> March, 2022

**RSR**

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.            |