

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' 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.No.2924/Chny/2019

(निर्धारणवर्ष / Assessment Year: 2011-12)

Mr. K. Ahamed Thambi 45, VGP Street, Chidambaram-608 001.	Vs	Income Tax Officer, Ward-3, Cuddalore.
PAN: APYPA 3993H		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

&

आयकर अपीलसं./I.T.A.No.2925/Chny/2019

(निर्धारणवर्ष / Assessment Year: 2011-12)

Mr. Mohamed Nasurudeen 817-B South Street, Ammappattinam, Pudukottai-614 617.	Vs	Income Tax Officer, Ward-3, Cuddalore.
PAN: AZWPM 6686K		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Mr. N.V.Balaji, Advocate & Ms.N.V.Lakshmi, Advocates
प्रत्यर्थी की ओरसे/Respondent by	:	Mr. P.Sajit Kumar, JCIT

सुनवाईकीतारीख/Date of hearing	:	30.03.2022
घोषणाकीतारीख /Date of Pronouncement	:	11.04.2022

आदेश / ORDER

PER G.MANJUNATHA, AM:

These two appeals filed by two different assesseees' are directed against separate, but identical orders passed by the learned Commissioner of Income Tax (Appeals), Puducherry, dated 20.08.2019 and pertain to assessment year 2011-12. Since, facts are identical and issues are common, for the sake

of convenience, these appeals are heard together and are being disposed off, by this consolidated order.

2. The assesseees have more or less filed common grounds of appeal in their respective memo of appeals, therefore, for the sake of brevity, grounds of appeal filed in ITA No.2924/Chny/2019 are reproduced as under:-

“1. The order of the Commissioner of Income Tax (Appeals) is against the law, the facts and circumstances of the case and the principles of equity and natural justice.

2. The CIT(A) erred in confirming the addition to the extent of Rs.52,92,858/, being cash deposits into the bank account as unexplained investments.

3. The CIT(A) failed to appreciate that the appellant has done Maligai business and the income returned by him includes sales realisation out of such business. The net income from the said business having been assessed, the CIT (A) erred in confirming the sales realisation as unexplained investments

4. The CIT(A) ought to have appreciated that the appellant had carried on Maligai business, particularly when the assessing officer himself has assessed income from the said business as returned by the appellant.

5. The CIT(A) ought to have noted that the appellant had disclosed about his individual maligai business even in the return filed prior to issuance of notice under section 148.”

3. Brief facts of the case are that the assessee is an individual, who had not filed his return of income for the assessment year 2011-12. As per information available on record, during the financial year 2010-11 relevant to assessment year 2011-12, the assessee had made cash deposits of Rs.1,09,75,089/- and non-cash deposit of Rs.3,29,043/- in Axis Bank, Chidambaram. Therefore, assessment has been reopened u/s.147 of the Act, on the ground that income chargeable to tax had been escaped assessment. The assessee did not file return in response to notice issued u/s.148 of the Income Tax Act, 1961. Therefore, notice u/s.142(1) dated 28.09.2018 was issued and posted the case for hearing on 08.10.2018 and called upon the assessee to explain source for cash deposits made in bank account. The Assessing Officer had also obtained copy of bank account statement from Axis Bank, Chidambaram u/s.133(6) of the Income Tax Act, 1961. The assessee did not respond to notice issued u/s.142(1) dated 28.09.2018 and thus, show-cause notice dated 03.12.2018 was issued and called upon the assessee to explain as to why cash deposits in bank account cannot be treated as unexplained money. In response, the

assessee vide letter dated 11.12.2018 stated that he is a partner in M/s. National Maligai and cash deposited into bank account is out of business receipts from the firm. The assessee had also explained that part of cash deposits is out of opening cash balance shown in statement of account. The Assessing Officer did not accept explanation furnished by the assessee and according to him, the assessee could not file necessary evidences to prove that he is into business of paddy trade and cash deposits in bank account is out of business receipts. Therefore, the Assessing Officer made additions of Rs.1,13,14,132/- towards deposits found in Axis bank account u/s.69 of the Income Tax Act, 1961. The Assessing Officer had also made additions towards opening capital claimed by the assessee amounting to Rs.14,55,125/- on the ground that the assessee could not establish availability of opening capital with known source of income.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before learned CIT(A). Before the learned CIT(A), the assessee reiterated his submissions made before the Assessing Officer and argued that cash deposits found in bank account is out of his business receipts. The assessee had

also challenged additions towards opening capital cash balance. The learned CIT(A), after considering relevant submissions of the assessee and also taken note of various facts, sustained additions made by the Assessing Officer towards cash deposits plus other deposits found in Axis bank account by holding that the assessee could not furnish any evidence to prove that he has done paddy business. The learned CIT(A) further noted that the assessee neither maintained books of account nor furnished bills and other vouchers to justify his case that cash deposit is out of business receipts, therefore, confirmed addition of Rs.1,13,14,132/-. As regards additions made towards opening capital of Rs.14,55,125/-, deleted additions made by the Assessing Officer by holding that when the Assessing Officer had accepted fact that the assessee was a partner in M/s. National Maligai and statement of account filed by the assessee proves that there is opening balance, then the Assessing Officer ought not to have made addition towards opening capital, because opening balance cannot be assessed for the impugned assessment year. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

5. The learned A.R for the assessee submitted that the learned CIT(A) has erred in sustaining additions made towards cash deposits found in bank account as unexplained investments without appreciating fact that the assessee has filed necessary evidence to prove that he was into paddy business and source for cash deposits is out of business receipts for the relevant assessment year.

7. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that the assessee could not file any evidence, including bills & vouchers and books of account to support his argument that he was into paddy trade and thus, arguments of the assessee that cash deposits found in bank account is out of his business receipts cannot be accepted.

8. We have heard both the parties, perused material available on record and gone through orders of the authorities below. Although, the assessee claims to have involved in paddy trade, but could not substantiate his claim with necessary evidence, including registration with sales tax department or market committee and further, purchase or sale bills to support his argument that he was into paddy trade and cash deposits

found in bank account is out of business receipt. It is also an admitted fact that the assessee neither filed return of income for the impugned assessment year before reopening of assessment nor filed any return for earlier assessment year to establish fact that he was into paddy business. Therefore, we are of the considered view that arguments of the assessee cannot be accepted, unless his argument is substantiated with necessary evidences. Further, the assessee has neither maintained books of account nor submitted any other details to prove source of cash deposits with name of the party & their addresses. There is no material to link cash deposited into bank account from any business activity of the assessee. The learned CIT(A), after considering relevant facts has rightly confirmed additions made by the Assessing Officer towards cash deposits found in bank account. Therefore, we are of the considered view that there is no reason to interfere with the findings of learned CIT(A) and thus, we confirm additions made by the Assessing Officer and dismiss appeal filed by the assessee.

9. In the result, appeal filed by the assessee is dismissed.

ITA No.2925/Chny/2019 (A.Y.2011-12):-

10. The facts and issues involved in ITA No.2925/Chny/2019 are identical to the facts and issues which we have already considered in ITA No.2924/Chny/2019 for the assessment year 2011-12. The reasons given by us in the preceding paragraphs of ITA No.2924/Chny/2019 shall *mutatis mutandis* apply to this appeal, as well. Therefore, for similar reasons, we are of the considered view that there is no reason to interfere with the findings of learned CIT(A) and thus, we confirm additions made by the Assessing Officer and dismiss appeal filed by the assessee.

11. In the result, appeal filed by the assessee is dismissed.

12. To sum up, both these appeals filed by the assessees are dismissed.

Order pronounced in the open court on 11th April, 2022

Sd/-
(वी. दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member

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

चेन्नई/Chennai,

दिनांक/Dated 11th April, 2022

DS

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.p