

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'D' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. Nos.2409 and 2410/Chny/2018
निर्धारण वर्ष/Assessment Years: 2008-09 & 2009-10

Smt. Premlata Chhajed,
No. 48/2, Hunters Road,
Vepey, Chennai 600 007.

Vs. The Income Tax Officer,
Non Corporate Ward 5(4),
Chennai.

[PAN:AADPC7080R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri P.C. Jain, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri G. Johnson, Addl. CIT
सुनवाई की तारीख/ Date of hearing : 05.04.2022
घोषणा की तारीख /Date of Pronouncement : 12.04.2022

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

Both the appeals filed by the assessee are directed against different orders of the Id. Commissioner of Income Tax (Appeals)-5, Chennai both dated 14.06.2018 relevant to the assessment years 2008-09 and 2009-10.

2. The first common ground raised in both the appeals of the assessee relates to reopening of assessment under section 147 of the Income Tax Act, 1961 ["Act" in short]. Since common grounds have

been raised in both the appeals, we shall take up the facts in the assessment year 2009-10 for consideration and adjudication.

2.1 Brief facts of the case are that the assessee has filed her return of income for the assessment year 2009-10 on 04.03.2010 admitting a total income of ₹.1,99,877/-. The case was reopened under section 147 of the Income Tax Act, 1961 ["Act" in short] and the notice under section 148 of the Act was issued on 09.03.2015 and the same was served upon the assessee. The reasons recorded by the Assessing Officer are reproduced as under:

"The case was reopened for the following reasons:

It is seen from the material available on record that assessee Smt. Premalatha Chhajed had made huge cash deposit and made huge credits and debits on various dates during the F.Y. 2008-09 amounting to Rs.5,86,500/-. This needs to be verified. The assessee has also made share transaction of Rs.20,000/- or more of Rs.10,00,311/- on 04.04.2008; Rs.1,03,292/- on 23.04.2008 ad Rs.3,69,375/- on 12.05.2008, which are to be verified and the income escaped from assessment are to be brought to tax.

Hence, I have reason to believe that the income has escaped assessment and therefore the assessment for the A.Y. 2009-10 needs to be reopened as per explanation 2(a) to Section 147 of the Income Tax Act, 1961.the case has to be reopened to assess the huge cash deposits and to bring the income escaped from assessment to Tax as per Explanation 2(a) to Section 147 of the Income Tax Act, 1961.

Proposal submitted to the Joint Commissioner of Income Tax, NCR-5, Chennai for kind approval. Request for approval for reopening of the case u/s.147 has been made in AST also. Hence, approval for reopening may kind be given in AST also."

2.2 Subsequently notice under section 142(1) of the Act dated 04.11.2015 and letters were issued calling for details. The Books of Accounts, Documents, Bank Statement etc. furnished by the assessee's Authorised Representative were examined by the Assessing Officer. After scrutinizing the details furnished by the assessee's representative, a show-cause notice dated 16.03.2016 was issued to the assessee, which is reproduced as under:

'In connection with the assessment proceedings in your case for Asst. year 2009-10 your AR filed the table showing source of funds which were deposited into Bank account vide letter dated 07.12.2015. In this connection, you are requested to furnish the documentary evidences for having cash received from various persons.

For A. Y.2009-10, while explaining the source for deposit you have stated that the funds received from Arihant Capital was lying with you more than 2 months as cash and then it was deposited in the bank. What is the necessary to keep such huge cash as balance in your hand for more than two months that too you are being a financier. Hence, the reply filed by your AR is not at all acceptable and it is an afterthought only. Hence, I proposed to make an addition of Rs.5,86,000/- for the said discrepancies found. Please offer your explanation.'

2.3 In response to the letter dated 16.03.2016, the AR of the assessee has filed a written submission dated 24.03.2016 before the Assessing Officer, wherein it was stated as under:

"Mere withdrawal of funds from Bank Account which was received from Arihant Capital Markets Ltd - our share Broker and

other Debtors and its subsequent deposit into my bank account does not give you any hint of Discrepancies for addition of the same as my Income for the relevant A.Y. I would further like to bring reference to the similar and decided case law of ITO Ward 42) Meerut Vs Mrs. Deepali Sehgal decided by the ITAT, Delhi Bench dated 04.09.2014 that 'Mere withdrawal of cash and its further deposit to the bank account shall not be treated as Income of the Assessee.

In this connection, I would like to submit that I had kept cash for my business purpose to run my business efficiently to meet my business needs on immediate basis for providing Instant and Hassle Free Finance to the known and regular customers on demand to meet their spontaneous needs.

I would further like to state that, I am a law abiding citizen of the country and have been paying all my taxes regularly. Keeping cash for my business is a must and it is not mentioned in any law of the land that an individual has to keep the cash in his bank accounts only and cannot keep cash for his business purpose.'

2.4 After considering the explanations of the assessee and in the absence of any documentary evidences filed for the cash deposits made in the bank account to the extent of ₹.86,500/- was treated as unexplained cash deposits and brought to tax. Besides the above, the assessee has not filed any wealth tax return or wealth tax computation, and there is no documentary evidences filed by the assessee with respect to the opening, balance of cash shown as on 01.04.2009 of ₹.1,26,000/- and therefore, the same was added into the total income of the assessee of ₹.2,12,500/- (86,500 + 1,26,000) as unexplained

cash balance available as on 31.03.2009. On appeal, the Id. CIT(A) confirmed the additions made by the Assessing Officer.

3. On being aggrieved, the assessee is in appeal before the Tribunal. With regard to the reopening of assessment, the Id. Counsel for the assessee has submitted that there is no tangible material available before the Assessing Officer for reopening of assessment under section 147 of the Act and therefore, the reopening of assessment is invalid. On merits with regard to the additions, while reiterating the submissions as made before the Id. CIT(A), the Id. Counsel for the assessee has prayed for deleting the additions.

4. On the other hand, the Id. DR has strongly supported the reopening of assessment under section 147 of the Act by relying on the reasons recorded by the Assessing Officer.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In this case, original assessment was completed under section 143(1) of the Act and therefore, there was no occasion for the Assessing Officer to examine all the relevant information to complete the assessment.

Subsequently, the Assessing Officer has noted that there is a huge credits and debits on various dates and therefore, the Assessing Officer was of the opinion that there is an escapement of income chargeable to tax and reopened the assessment. In view of the above facts, we find that the Assessing Officer has validly reopened the assessment. We find no merits in the arguments of the Id. Counsel and accordingly, the ground of reopening of assessment raised by the assessee is dismissed.

6. So far as merits of the case is concerned, the Id. Counsel for the assessee has submitted with regard to the addition of ₹.86,500/- that the assessee has received the said amount from Arihant Capital Markets Limited, share broker and member of NSE and is registered with SEBI. It was further submitted that the receipt of funds from Arihant Capital Markets Limited are from trading of securities only and that all the receipts and payments are being made through banking channel only. Once the receipts and payments are being made through banking channel and not disputed by the authorities below, we are of the opinion that the addition made by the Assessing Officer of

₹.86,500/- is liable to be deleted and accordingly, the addition is deleted.

6.1 So far as addition of ₹.1,26,000/- is concerned, the Assessing Officer made the addition of ₹.1,26,000/- being the amount shown as opening cash balance as on 01.04.2009 since no wealth tax return has been filed by the assessee. The Id. Counsel for the assessee has submitted that the net wealth of the assessee is far below the taxable limit and there is no need for the assessee to file her wealth tax return. In case, the Assessing Officer is of the opinion that the net wealth of the assessee is more than the prescribed limit, the Assessing Officer can proceed for making wealth tax assessment than adding the sum under the income tax assessment. Accordingly, the addition made by the Assessing Officer of ₹.1,26,000/- is deleted. Thus, the grounds raised by the assessee on merits are allowed.

6.2 So far as assessment year 2008-09 is concerned, since the facts and grounds raised by the assessee in the assessment year 2009-10 are similar and our decision hereinabove shall apply for the assessment year 2008-09 as well.

7. In the result, both the appeals filed by the assessee are partly allowed.

Order pronounced on 12th April, 2022 at Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 12.04.2022

Vm/-

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.