

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

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.890/Chny/2020**
(निर्धारण वर्ष / **Assessment Year: 2008-09**)

Shri Shantilal Navarathanmal No.216, Kamarajar Street, Villupuram – 605 602.	बनाम/ Vs.	ITO Ward-1, Villupuram.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AADPN-0503-A		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri Philip Geroge (Advocate) & Shri D. Palanivel (Advocate) – Ld. ARs
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri ARV Sreenivasan (Addl. CIT) –Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	05-05-2022
घोषणा की तारीख / Date of Pronouncement	:	12-05-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2008-09 arises out of the order of learned Commissioner of Income Tax (Appeals), Puducherry [CIT(A)] dated 28.02.2020 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s. 254 of the Act on 24.12.2018. The grounds raised by the assessee read as under:

1. The Order of the Commissioner of Income Tax (Appeals) in as much as it is against the Appellant is opposed to law and contrary to the facts and circumstances of the case.
2. **Addition u/s. 68 :**
 - 2.1. The Commissioner of Income Tax (Appeals) grossly erred in upholding the addition u/s. 68 to the tune of Rs.8,80,000/-.
 - 2.2. The Commissioner of Income Tax (Appeals) ought to have appreciated that in the facts and circumstances of the present case, addition is not warranted.
 - 2.3. The Commissioner of Income Tax (Appeals) grossly erred in observing that the Appellant had not explained the difference of Rs.10,80,000/- in the closing balance of advances in pawn broking business.
 - 2.4. The Commissioner of Income Tax (Appeals) ought to have appreciated that having accepted the claim of the Appellant regarding difference in the opening balance, the addition of Rs.10,80,000/- does not arise.
 - 2.5. The Commissioner of Income Tax (Appeals) therefore grossly erred in sustaining the addition of Rs. 10,80,000/-
 - 2.6. The Commissioner of Income Tax (Appeals) ought to have appreciated that the acceptance and agreement of the Appellant does not entitle the Assessing Officer to make addition.
 - 2.7. The Commissioner of Income Tax (Appeals) ought to have appreciated that the addition, if any, has to be made only on the basis of the actuals reflecting in the books of accounts and not as agreed by the Appellant.
 - 2.8. The Commissioner of Income Tax (Appeals) grossly erred in holding that the addition is sustained on the basis of the claim being already disclosed without appreciating that there is no basis to arrive at the closing balance at Rs. 33, 92,1 167- even though claimed by the Appellant.
 - 2.9. The Commissioner of Income Tax (Appeals) ought to have appreciated that it is the duty of the Assessing Officer to work out the actual closing balance and the disclosure by the Appellant alone cannot form basis for any addition.
 - 2.10. The Commissioner of Income Tax (Appeals) ought to have further appreciated that the Assessing Officer has made an addition of the entire amount of Rs. 10,80, 000/- without reducing the amount of Rs.2,00,000/- already disclosed in the return.
 - 2.11. Without prejudice to the above, the Commissioner of Income Tax (Appeals) grossly erred in taking the closing balance as per Balance Sheet at Rs. 23,12,116/- whereas the actual closing balance as per Balance Sheet is Rs. 23,92,116/- and therefore the addition, if at all, can be made only for Rs. 8,00,000/- being balance after reducing Rs.2 Lakhs disclosed in return and not Rs.8,80,000/-.
 - 2.12. The Commissioner of Income Tax (Appeals) ought to have therefore allowed the appeal in full by deleting the entire additions.
3. The Appellant contests all the findings of fact and law and all presumptions made against the Appellant by the Commissioner of Income Tax (Appeals).
4. The Appellant craves leave to file additional grounds of appeal at or before the time of hearing.

As evident, the assessee is aggrieved by confirmation of addition of Rs.10.80 Lacs.

2. The Registry has noted delay of 176 days in the appeal, the condonation of which has been sought by Ld. AR on the ground that the delay occurred due to lockdown situation arising out of Covid-19 Pandemic. The Ld. AR submitted that the order was received on 12.03.2020 and the last date for preferring appeal was 11.04.2020 which fall in the exclusion period commencing from 15.03.2020 to 28.02.2022. Though Ld. DR opposed condonation, however, keeping in view the adverse situation arising out of Covid-19 pandemic, we condone the delay and admit the appeal for adjudication.

3. The Ld. AR assailed the addition as sustained in the impugned order whereas Ld. Sr. DR justified the impugned additions on the given factual matrix. Having heard rival submissions, our adjudication would be as under.

4. This is second round of appeal since the appeal, in the first round, was restored by Tribunal to Ld. AO for fresh consideration. The assessee being resident individual is stated to be engaged in pawn broking business. In the assessment order, the assessee has been saddled with addition of Rs.10.80 Lacs which stem from the fact that pawnbroking advances at year-end were reflected by the assessee as Rs.23,12,116/- whereas Ld. AO worked out actual advances at Rs.33,92,116/-. Accordingly, the differential of the two i.e., Rs.10.80 Lacs was considered as unexplained cash credit u/s 68. Out of the same, the assessee had already offered Rs.2 Lacs in the return of income. Upon further appeal, Ld. CIT(A) confirmed the same since the assessee could not explain the difference. Aggrieved, the assessee is in further appeal before us.

5. Before us, the position remains the same and the difference in closing balance could not be explained by the assessee. The only relief that the assessee would get is for Rs.0.80 Lacs since the correct closing balance as per Balance Sheet is Rs.23,92,116/-. Therefore, we direct Ld. AO to restrict the addition to Rs.10 Lacs. Since the assessee has already offered Rs.2 Lacs in the return of income, the additional amount as sustained would be Rs.8 Lacs. We order so.

6. The appeal stands partly allowed in terms of our above order.

Order pronounced on 12th May, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

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

चेन्नई / Chennai; दिनांक / Dated : 12.05.2022
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