

आयकर अपीलीय अधिकरण, 'सी' न्यायापीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथ लेखासदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T(SS)A Nos.11/Chny/2016 & ITA No.2099/Chny/2016
निर्धारण वर्ष/Block Assessment Years:1996-97 & 1997-98 (part)
&

आयकर अपील सं./ITA No. 2100/Chny/2016
निर्धारण वर्ष/Assessment Years:1997-98

M/s. Murugan's,
263-265, J.N. Street,
Pondicherry – 605 001.
[PAN: AADFM 3549H]

The Asst. Commissioner of Income
Vs. **Tax,**
Central Circle-I(2),
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by

: Shri N. Arjunraj, C.A for Shri S. Sridhar,
Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri M. Rajan, CIT

सुनवाई की तारीख/ Date of hearing

: 18.05.2022

घोषणा की तारीख /Date of Pronouncement

: 01.06.2022

आदेश / O R D E R

PER V. DURGA RAO., JUDICIAL MEMBER:

These three appeals filed by the assessee are directed against the orders of the Id. Commissioner of Income Tax (Appeals), Puducherry, dated 31.12.2015.

2. There is a delay of 111 days in filing the above appeals, for which, the assessee filed affidavits/petitions in three appeals for condonation of delay, wherein he has stated as under:

"I am one of the partners of the Petitioner/Appellant firm and am well acquainted with the facts of the case, competent to swear to this affidavit. I state that three appeals were filed in the Registry on 12.07.2016 against the common order of the CIT (Appeals), Puducherry dated 31.12.2015 and the delay of 111 days in filing the said three appeals before the Bench is neither willful nor deliberate but due to the circumstances beyond my control.

I state that the dissolution of the partnership firm consisting of myself and my brother, Mr.S.Sivapalani is pending before the Principal Sub-Judge, Pondicherry in O.S.No.189/2001 and due to the differences between the partners coupled with several criminal cases in relation thereto, the income tax matters of the partnership firm is taken care and addressed from my side.

I celebrated my daughter's wedding on 24.01.2016 and during the wedding celebration, the said common order of the CIT (Appeals), Puducherry dated 31.12.2015 was received on 23.01.2016 and thereafter there are several connected ceremonies which I attended thereby the receipt of the Appellate Order dated 31.12.2015 served on me on 23.01.2016 was not noticed.

I state further that due to severe medical complications in view of the tremendous stress, I was under continuous medical treatment thereafter and in the process the common appellate order was not appealed against. I state that after completion of the medical treatment, I met the counsel on record to ascertain the fate of the appeals filed before the CIT (Appeals) and after verification of the records I found that the common order of the Appellate Authority was not appealed against. I state that necessary instructions were immediately given for preparing the appeals and accordingly three appeals were filed belatedly on 12.07.2016. In these circumstances, I pray for the admission of the three appeals arising from the common order of the CIT (Appeals), Pondicherry dated 31.12.2015 and further prays for decision on merits in the interest of justice."

3. We have gone through the petitions for condonation filed by the assessee in three appeals and find that the assessee was prevented by sufficient cause. Thus, the delay of 111 days in filing of the appeals stand condoned and the appeals are admitted for adjudication.

4. The Ld. CIT(A) has passed a common order in both the assessment years. The facts of the case of all appeals of the assessee

are similar in both the assessment years. Since, common grounds have been raised in both the appeals, we shall take up the facts in the assessment year 1996-97 for adjudication.

5. The assessee is a firm constituted by a deed of partnership dated 06.03.1995 with two partners viz. Shri S. Muruvappan and Shri S. Sivapalani. The business of the assessee is retail trade of textiles and readymade garments, which was commenced on 13.12.1995. The business premises of the firm and the residential premises of the partners were searched u/s. 132 of the Income Tax Act, 1961 (hereinafter "the Act") on 06.03.1997 which was concluded on 16.04.1997. The assessee has filed return of income for assessment years 1996-97 and 1997-98. The Assessing Officer (A.O) after considering the entire material on evidence adopted the addition of gross profit @ 20% on the basis of sworn statement of Shri S. Muruvappan, partner of the assessee dated 07.04.1997 in response to answer to Question No.12, wherein he has admitted that the closing stock has been arrived at taking the figures of purchases, sales on the gross profit @ 20%. The A.O has given a finding that the assessee has given consent of adopting turnover at Rs. 1,74,95,889/- and the closing stock at Rs. 2,92,81,980/-. This aspect has not been disputed in appeal. Further, no issue in this order regarding purchase has been raised. In the circumstances, if any figure other than gross profit @ 20% is taken, the

figures would not tally. The same has been verified and accepted by the assessee as genuine and the rate is also as per the sworn statement of the partner of the assessee. In the circumstances, no case exhaust for allowing lower gross profits in this case. From the above observations, the Ld. CIT(A) confirmed the order of the A.O.

6. The Ld. Counsel for the assessee has submitted that the subsequent years the A.O has adopted GPA @ 15% and the same may be adopted.

7. On the other hand, the ld. DR strongly supported the order passed by the A.O.

8. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. We have gone through the entire facts of the case and other details. There is every possibility of increase or decrease of sale considering the marketing of the item sold and thus, prima-facie, we are of the opinion that 18.02% may be adopted as gross profit instead of 20%. Accordingly, we direct the A.O to calculate the gross profit as directed above.

9. The second ground of appeal relating to expenses in respect of sales commission, pongal bonus, interest payments, commission, etc., which was denied by the A.O and confirmed by the Ld. CIT(A). The total expenses claimed by the assessee before the Ld. CIT(A) was at Rs. 13,39,435/-. The

expenses incurred by the assessee are very common in the line of business of the assessee and thus, the Ld. Counsel for the assessee has prayed for grant of relief on the expenses incurred by the assessee.

10. On the other hand, the Id. DR strongly supported the orders passed by the authorities below.

11. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. We find that though the assessee has not filed any relevant material, the assessee might have incurred some expenses to carry out his business and incurring such expenses are inevitable and cannot be ruled out. Accordingly, the Assessing Officer is directed to allow 50% of the expenses as claimed by the assessee. Hence, both the grounds of appeal are allowed for statistical purposes.

12. So far as estimation of GP rate for the assessment year 1997-98 is concerned, we direct the A.O to take 18.02% as taken in the assessment year 1996-97. Hence, this ground of appeal is allowed for statistical purposes.

13. So far as other expenses claimed by the assessee, the A.O is directed to allow Rs. 3,00,000/- further instead of denial of entire expenses. Hence, this ground is also allowed for statistical purposes.

14. So far as in ITA No.2100/Chny/2016 for Assessment Year 1997-98 is concerned, in view of our decision above, it is a mere academic and no adjudication is required and hence, the same is dismissed.

15. In the result, the appeals of the assessee in IT(SS)A No.11/Chny/2016 & ITA No.2099/Chny/2016 are partly allowed for statistical purposes and ITA No.2100/Chny/2016 is dismissed.

Order pronounced on the 01st June, 2022 in Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 01.06.2022
EDN/-

आदेश की प्रतिलिपि ँग्रेषित/Copy to: 1. ँपीलर्ी/Appellant, 2.प्रत्यर्ी/
Respondent, 3. आयकर आयुक्त (ंपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5.
विभर्ीय प्रतिनिधि/DR & 6. गर्ई फर्ईल/GF.