

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' 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.3000/Chny/2019**
(निर्धारण वर्ष / **Assessment Year: 2010-11**)

&

आयकर अपील सं./ **ITA No.3001/Chny/2019**
(निर्धारण वर्ष / **Assessment Year: 2011-12**)

Shri K. Chandirasekaran No.37, N.S.B. Road, Teppakulam, Trichy-620002.	बनाम/ Vs.	ITO Ward-3(2), Trichy.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AACPC-4786-F		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri T. Vasudevan (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri Varuvoor Sreedhar (Addl. CIT)-Ld. DR
सुनवाई की तारीख/ Date of Hearing	:	07-06-2022
घोषणा की तारीख / Date of Pronouncement	:	07-06-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. The grievance of the assessee in captioned appeals is common and the impugned order is common order for both the years. First, we take up appeal for AY 2010-11 which arises out of the order of learned Commissioner of Income Tax (Appeals)-1, Tiruchirapalli [CIT(A)] dated 23-08-2019 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s.143(3) r.w.s. 147 of the

Act on 26-12-2018. The sole grievance of the assessee is addition of Rs.19.51 Lacs which represent investment in insurance policies allegedly out of unexplained sources. The assessee also assails the validity of reassessment proceedings. The grounds taken by the assessee read as under: -

1. The order of the Commissioner of Income-tax (Appeals) dismissing the appeal is contrary to law, erroneous and unsustainable on the facts of the case.
2. The CIT(A) erred in holding that the notice u/s.148 was not barred by limitation.
3. The CIT(A) failed to appreciate that the notice u/s.148 was served on the assessee on 06/4/2017 and hence the notice is clearly barred by limitation and so is void in law.
4. The CIT(A) further failed to appreciate that there was no income escaping assessment, since the premium payment to LIC was made on 31/3/2009, falling in the previous asst. year and hence the reopening of assessment to consider the investment in A.Y.2010-11 was untenable in law.
5. The CIT(A) also ought to have seen that the notice u/s.148 was issued by a non-jurisdictional officer and hence in the absence of objective satisfaction reached by the jurisdictional officer, the notice and the consequential proceedings are invalid in law.
6. The CIT(A) ought to have appreciated that the source for the investment in LIC was the amount from his wife, which was given to her by her father, Mr. Marimuthu Pillai and the assessee having explained the source of the source for the LIC premium payment, and hence confirming the addition made by the AO was merely on surmises and conjectures and the addition needs to be deleted.
7. The CIT(A) failed to appreciate that the amount given to the assessee was clearly reflected in the balance sheet filed along with the ROI by his father-in-law and his reference to the net income to conclude that source is not proved is untenable and unsustainable on the facts of the case.
8. The CIT(A) further failed to appreciate that the ADI(Inv.) had enquired and obtained statements u/s.131 from the concerned persons, who had deposed that the amount was given by the father-in-law of assessee, and hence ought to have deleted the addition made by the officer.
9. The CIT(A), in any view of the matter, ought to have considered the contentions of the assessee in the proper perspective, deleted the addition and allowed the appeal.

Having heard rival submissions, our adjudication to the subject matter of appeal would be as under.

Assessment Proceedings

2.1 The assessee is partner in various firms. The case was reopened vide notice u/s 148 dated 31.03.2017 on the allegation that the assessee paid LIC insurance premium in cash for Rs.19.51 Lacs. The assessee filed return of income admitting nil income. The assessee submitted that insurance policies was taken in the name of the assessee by his father-in-law Shri Marimuthu Pillai on behalf of assessee's wife Smt. Parameswari Sekar. The source of the premium was explained as under: -

"Late Mr. Marimuthu Pillai, who is assessed to income tax (PAN: AAEPM5108M) was indulging in finance business under the name of Ajantha Finance. In addition to the indulging in the finance business, he was partner in Akila Finance and Balakrishna & Co. In this he used to lend money against jewels and promissory notes. The loan party and collection details and "madyastha Vouchers" for weighing the jewels pertaining to earlier period of four months in the year 1999 of his finance business are attached herewith for your reference. In this finance business normally the lender used to raise money through re-pledge and availing loan through which the used to raise additional capital in the form of cash.

Late Marimuthu Pillai had only one child, which is assessee's wife, Paramaeswari sekar. Late Marimuthu Pillai planned to hand over the legacy of funds through winding up of the finance business by investing in her name. In such scenario he identified this LIC investment as one mode but instead of investing in her daughter's name he decided to invest in the name of the bread-winner of the family, M. AKK Chandrasekarn, the assessee, so as to safeguard the livelihood of his daughter."

However, in the absence of sufficient documentary evidences, the aforesaid explanation was not accepted by Ld. AO particularly in view of the facts that Shri Marimuthu Pillai declared income of less than Rs.2 Lacs for AYs 2007-08 & 2008-09 whereas no return was filed in subsequent years.

2.2 Similar payments were made in AY 2011-12 which were stated to be paid by assessee's wife Smt. Parameswari Sekar. The source of the same was explained by Smt. Parameswari Sekar as under: -

"The incident of taking insurance policies in my husband's name is out of legacy from my mother M. Mariyayee Ammal (died on 3-10-2009). Death Certificate enclosed. (I am the only legal heir) with the sale of silver utensils held by her with my father. It was deposed in the statement taken from me by the Assistant Director of Investigation, Investigation wing, Tiruchirapalli though investment made in my husband's name, it belongs to me. This is also confirmed by my husband, A.K.K. chandirasekaran, LIC agent Subramanian and his assistant Rengarajan deposed before Deputy director of agent investigation. The source for making investment is met out of sale proceeds of silver utensils being the legacy from my mother administered by my father, A. Maimuthu Pillai of Kariyamanickam with the knowledge of Mr.Subramanian LIC agent and his assistant Rangarajan who confirmed the payment by A.Marimuthu Pillai of paying the premium due. Hence though the policy is taken in the name of A.KK. chandirasekeran, the premiums are paid by the deponent. I am eligible to invest LIC in the name of my husband and claim exemption u/s 80-C of the Income Tax Act, 1961 against income returned by me."

The said explanation was rejected as mere after-thought. Finally, the amount of premium paid by the assessee was added in his hands, for both the years, as investment out of unexplained sources.

Appellate Proceedings

3. During appellate proceedings, the assessee challenged the validity of reassessment proceedings on legal grounds. The assessee, inter-alia, submitted that income, if any, was to be assessed in the hands of the wife. The assessee's submissions were subjected to remand proceedings. It was submitted by Ld. AO that the assessee's wife claimed deduction under Chapter VI-A for Rs.1.89 Lacs in AY 2010-11 whereas she claimed deduction of Rs.1.15 Lacs in AY 2011-12 and thus, full investments were not shown in her return for AY 2011-12. On the basis of the same, Ld. CIT(A) held that the assessee failed to establish the source of investment for both the years and

accordingly, the appeals were dismissed. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

4. So far as the legality of reassessment proceedings for AY 2010-11 are concerned, the opening paragraph of assessment order for AY 2010-11 record a finding as under: -

Notice u/s 148 dated 31.03.2017 was served on the assessee on 06.04.2017.

Thus, quite clearly the notice has been issued within 6 years from the end of relevant assessment years though the same has not been served within that period. What the provisions of Sec.149 envisages is issue of notice and not service of notice. The language employed is 'issuance of notice' which would mean that the order of notice is signed by the competent authority and once the order of notice is signed by the Competent Authority, that is sufficient that the actions are initiated. Thereafter, delivery or receipt of the order is irrelevant as far as the requirements contemplated under the provisions of the Income-tax Act is concerned. The arguments, thus raised by Ld. AR, in this regard, are not to be accepted. The notice for AY 2011-12 is well within time. No other infirmity has been shown in the jurisdiction acquired by Ld. AO in reopening the case of the assessee. Therefore, we dismiss the legal grounds raised by the assessee, for both the years.

5. On merits, the undisputed facts that emerge are that the assessee has paid LIC premium amounts in cash. For AY 2010-11, the amounts are stated to have been sourced out of funds provided by assessee's father-in-law whereas premium paid for AY 2011-12 is stated to have been sourced out of sale of old silver utensils belonging the mother of assessee's wife. It is also discernible that the assessee

failed to furnish documentary evidences in this regard. The explanation furnished by the assessee may be true but the onus to establish the same was on assessee. Considering the aforesaid facts, we deem it fit to provide another opportunity to the assessee to substantiate the source of investments, in both the years. For the same, we remit the matter of both the years back to the file of Ld. CIT(A) for fresh adjudication with a direction to the assessee to furnish requisite documents to establish the claim. Needless to add that, adequate opportunity of hearing shall be afforded to the assessee.

6. In the result, both the appeals stand partly allowed for statistical purposes.

Order pronounced on 07th June, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

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

चेन्नई / Chennai; दिनांक / Dated : 07-06-2022
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