

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' 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.943/Chny/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)

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|-------------------------------------------------------------|--------------|-------------------------------------------------------------------------------------------------------------------|
| ACIT Central Circle-2, Trichy. | बनाम/ Vs. | Shri A Rameshkumar Bhuvana Palace 108, Siva Subramanian Road, Near D.B. Road, R.S. Puram, Coimbatore. |
| स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. ACFPR-5984-D | | |
| (□ पीलार्थी/ Appellant) | : | (प्रत्यर्थी / Respondent) |

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| अपीलार्थी की ओरसे/ Assessee by | : | Shri S.Sridhar (Advocate) – Ld. AR |
| प्रत्यर्थी की ओरसे/ Revenue by | : | Shri P. Sajit Kumar (JCIT) –Ld. DR |
| सुनवाई की तारीख/ Date of Hearing | : | 09-06-2022 |
| घोषणा की तारीख / Date of Pronouncement | : | 09-06-2022 |

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2013-14 arises out of the order of learned Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] dated 31-01-2017 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 04-02-2016. The grounds raised by the Revenue are as under:

1. The Order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

2. The Ld.CIT (A) is not justified in deleting the addition of Rs.6,09,30,410/-, made by the AO towards unexplained cash credit, arising from unexplained bank deposits in the assessment Order passed for the AY 2013-14.

2.1 On the facts and circumstances of the case and having regard to the reasons stated by the AO in the assessment order for the A.Y 2013-14, the Id CIT(A) ought to have upheld the addition of Rs.6,09,30,410/- made towards unexplained cash credit arising from unexplained bank deposits.

3. The Ld. CIT(A) erred in allowing relief to the assessee by entertaining additional evidences produced by the assessee during appeal proceedings, without allowing any opportunity to the AO to examine the same, in contravention of Rule 46A(3) of I.T. Rules, 1962, as evident from para 4 of the Id CIT(A)'s orders.

4. The Ld.CIT (A) is not justified in deleting the disallowance of Rs.6,21,848/-, made by the AO towards loss from chit fund in the assessment order passed for the AY 2013-14.

4.1. On the facts and circumstances of the case and having regard to the reasons stated by the AO in the assessment order for the A.Y 2013-14, the Id CIT(A) ought to have upheld the disallowance of Rs.6,21,848/- made towards loss from chit fund.

5. For these grounds and for any other ground including amendment that may be raised during the course of the appeal proceedings, the order of learned CIT (Appeals) may be set aside and that of the Assessing Officer be restored.

RELIEF CLAIMED IN APPEAL

The order of the learned CIT (Appeals) may be set aside and that of the Assessing Officer be restored.

2. As evident, the revenue is aggrieved by relief granted by Ld. CIT(A) in the impugned order in violation of Rule 46A, The Ld. Sr. DR submitted that the assessee did not furnish any details during assessment proceedings and Ld. CIT(A) erred in deleting the additions made by Ld. AO. The Ld. AR also drew attention to the computation of income to submit that no business was carried out by the assessee which is evident from the fact that the income has been offered as Income from other sources only. The Ld. AR, on the other hand, supported the findings given in the impugned order. Having heard rival submissions, our adjudication to the subject matter of appeal would be as under.

Assessment Proceedings

3.1 The assessee declared income of Rs.41.45 Lacs for the year under consideration which was processed u/s 143(1). However, during scrutiny proceedings, it transpired that the assessee made cash deposit Rs.630.06 Lacs in bank account and accordingly, it was required to explain the source of deposits. The assessee submitted that the deposits were not made on a single date and the all the bank accounts were declared in the return of income. It was further submitted that the assessee was carrying on money lending business and collecting advances made by him and periodically depositing the same in the Bank account. It was further submitted that the assessee advanced money for short periods of less than 30 days only. No individual accounts were maintained since the transactions were completed in short span of time and the assessee did not make second advance to the same person when earlier advance was pending. The advances so collected were deposited in the bank account. This activity was being carried out since earlier years. Further, the assessee contributes to Chit funds and utilizes the proceeds of chit auction for money lending business.

3.2 The assessee was required to produce the relevant details of money lending along with list of persons to whom the moneys were lent along with dates of lending and receiving back the same in order to prove the recycling of money. However, the assessee could not do so. No documentary evidences could be furnished by the assessee. The assessee's case would fall u/s 44AA & 44AB but the assessee failed to maintain the books of accounts. In the alternative, the assessee submitted that the cash deposits may be considered on peak cash

credit basis and submitted the working of the same. However, rejecting the same, Ld. AO added the amount of Rs.630.06 Lacs to the income of the assessee. The assessee claimed Chit fund loss of Rs.16.34 Lacs against income from other sources of Rs.80 Lacs. However, on the principal of mutuality, such loss could not be allowed to the assessee. Therefore, the same was also disallowed.

Appellate Proceedings

4. The assessee assailed the action of Ld. AO before Ld. CIT(A) and filed written submissions. The Ld. CIT(A) deleted the additions as under: -

The AR has also submitted copies of letters dated 4.11.2015, 16.11.2015, 20.11.2015 and 08.12.2015 wherein, the assessee had submitted various details including the balance sheet, statement of income, breakup of business income declared, cash flow statement and the like. The AR has also submitted detailed copies of all bank account statements and has explained each of the entries contained therein. The AR has also explained the business practices of the assessee and accounting of interest income on account of money lending business conducted. The amounts received from rented properties in the common bank accounts of the assessee and regularly offered to taxation have also been highlighted. The balance sheet reflects a total liability of Rs.10.17 Crores including a capital account of Rs.2.75 Crores of the assessee. On the asset side the fixed income bearing assets of the assessee are computed at Rs.3.70 Crores whereas the current assets are shown at Rs.6.47 Crores. As per the computation of income the assessee has shown an interest and commission income of Rs.35.02 Lakhs out of total income offered to tax at Rs.41.45 Lakhs. The assessee is maintaining books of accounts in rudimentary form with bank account ledger extracts as source of information. The assessee has been lending and receiving amounts through his bank accounts. There have been regular transactions in the bank accounts of the assessee. It would be incorrect on the part of the AO to bring the gross amount of all deposits for taxation. The assessee has explained the cash flow as well as the peak cash credit during the year. Considering the above, there is no merit in bringing the gross amounts of bank credits for taxation. The addition is deleted.

The loss in chit business was allowed on the ground that the assessee has been in regular business of money lending and the advances and

withdrawals from chits have been utilized for money lending business. Aggrieved, the revenue is in further appeal before us.

Our findings and Adjudication

5. Upon due consideration of assessment order, it could be gathered that the assessee has not offered any business income during the year. The interest and commission income has been offered as Income from other sources. This was despite the fact that the assessee was carrying on money lending business in a regular and systematic manner since past many years. The assessee could not furnish the relevant details of money lending business. Even the names of the borrowers could not be furnished. No books of accounts were maintained or produced by the assessee and no documents could be furnished in support of cash deposits in bank accounts. Accordingly, the deposits were added to the income of the assessee.

6. It appears that the assessee has produced Balance Sheet and cash flow statement etc. during appellate proceedings which were never furnished to Ld. AO. No books of accounts were produced before Ld. CIT(A). However, on the basis of abstract statement, Ld. CIT(A) reached a conclusion that the assessee was carrying on money lending business despite the fact that no business income was admitted by the assessee. The finding that each of the bank entry was explained by the assessee is not supported by any material on record. The impugned order record a contrary finding that the assessee maintained books of accounts in rudimentary form and has been lending and receiving amounts through his bank accounts whereas no such lending or borrowing took place through banking channels. Be that as may be, there was clear violation of Rule 46A and the

documents furnished by the assessee were never confronted to Ld. AO. The allowance of chit fund loss is also not supported by any concrete material on record. Considering the fact and circumstances, the impugned order is liable to be set aside. We order so. Consequently, the matter stand remitted back to the file of Ld. AO for de-novo adjudication with a direction to the assessee to substantiate the source of cash deposits and business loss as claimed by it. Needless to add that adequate opportunity of hearing shall be granted to the assessee.

7. The appeal stand allowed for statistical purposes.

Order pronounced on 09th June, 2022.

Sd/-
(MAHAVIR SINGH)
उपअध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखकसदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 09-06-2022
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