

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 अपीलसं./ITA No.740/Chny/2020
(निर्धारणवर्ष / Assessment Year: 2006-07)

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आयकर अपीलसं./ITA No.741/Chny/2020
(निर्धारणवर्ष / Assessment Year: 2007-08)

&

आयकर अपीलसं./ITA No.742/Chny/2020
(निर्धारणवर्ष / Assessment Year: 2008-09)

&

आयकर अपीलसं./ITA No.743/Chny/2020
(निर्धारणवर्ष / Assessment Year: 2009-10)

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आयकर अपीलसं./ITA No.744/Chny/2020
(निर्धारणवर्ष / Assessment Year: 2010-11)

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आयकर अपीलसं./ITA No.745/Chny/2020
(निर्धारणवर्ष / Assessment Year: 2011-12)

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आयकर अपीलसं./ITA No.746/Chny/2020
(निर्धारणवर्ष / Assessment Year: 2012-13)

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आयकर अपीलसं./ITA No.747/Chny/2020
(निर्धारणवर्ष / Assessment Year: 2013-14)

&

आयकर अपीलसं./ITA No.748/Chny/2020
(निर्धारणवर्ष / Assessment Year: 2014-15)

Shri Gauthamchand No.83/81, Abdul Aziz Street, T. Nagar, Chennai-600017.	बनाम/ Vs.	DCIT Central Circle 2(1) Chennai – 600 034.
स्थायीलेखासं./जी आइ आरसं./ PAN/GIR No. AAJPG-5459-L		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri T. Vasudevan (Advocate)-Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Ms. Sheila Parthasarathy (Addl. CIT)-Ld. DR

सुनवाईकीतारीख/ Date of Hearing	:	16-06-2022
घोषणाकीतारीख / Date of Pronouncement	:	06-07-2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member):-

1. The grievance of the assessee in aforesaid appeals for Assessment Years (AYs) 2006-07 to 2014-15 is common. The appeals arise out of the common order dated 29.01.2020 passed by learned Commissioner of Income Tax (Appeals)-18, Chennai [CIT(A)] and order dated 28.02.2020 passed by same authority for AY 2014-15. In the appeals, the assessee is aggrieved by confirmation of certain additions.

The grounds taken for AY 2006-07 read as under: -

1. The appellate order u/s.250(6) of the Income-tax Act,1961 dated 28.02.2020 passed by the learned Commissioner of Income-tax (Appeals)-18, Chennai, is erroneous, opposed to law and facts of the case.
2. The learned Commissioner Income-tax (Appeals) erred in not appreciating the fact and claim of the appellant that he had not updated the books relating to the unredeemed articles and the amount arrived at by the Assessing officer is only based on doubt and not considering the actual transactions and value realized/outstanding thereon.
3. The learned Commissioner of Income-tax (Appeals) erred in not appreciating the fact that for computing the loan outstanding with respect to unredeemed articles, the Assessing officer had not considered the entries where the pledged article were redeemed and also where the pledged items are sold and the sale proceeds which were appropriated against the loan and interest outstanding and such entries were squared up which were omitted to be considered by the learned Assessing officer.

4. The learned Commissioner of Income-tax(Appeals) erred in not giving the appellant an opportunity to reconcile the transactions relating to unredeemed articles as prayed before him during the appeal proceedings in order to arrive at the correct amount of income under this head by rectifying the discrepancies before confirming the addition of Rs.32,54,000/- held as un-explained investment by the Assessing officer in the assessment order.
5. The learned Commissioner of Income-tax (Appeals) erred in confirming the addition of Rs.7,80,960 holding the same as interest earned on the amount considered as income on unredeemed articles and brought to tax in the assessment order by the Assessing officer.
6. The learned Commissioner of Income-tax (Appeals) erred in not considering the fact that the appellant had availed unsecured loans and the details were submitted during the course of appellate proceedings which were summarily rejected holding that the entire loan amount of Rs.23,04,411 was not proved which is based on the findings of the Assessing officer.
7. The learned Commissioner of Income-tax (Appeals) erred in not considering the fact that the loan of Rs.23,04,411 were obtained prior to the AY 2006-2007 and represents opening balance as on 01.04.2005 itself and not introduced during the year, hence the same cannot be treated as unexplained cash credit in the AY 2006-2007.
8. The learned Commissioner of Income-tax(Appeals) erred in not considering the fact that the appellant had availed unsecured loans for the business which is duly reflected in the financial statement of the appellant and also the said loan creditors.
9. The learned Commissioner of Income-tax(Appeals) erred in not considering the fact that the claim of the appellant is supported by documents and the interest paid against loans were genuine, however confirmed the addition made holding the transactions as not genuine.
10. The learned Commissioner of Income-tax(Appeals) erred in holding that the interest of Rs.3,95,662/- paid on the loan claimed by the appellant is not allowable on the ground that the loan credit is not proved and held as not genuine.

2. The Registry has noted delay of 147 days in all the appeals, the condonation of which has been sought by Ld. AR on the ground that the appeals could not be filed in time due to lockdown situation arising out of Covid-19 Pandemic. Though Ld. DR opposed the condonation of delay, however, considering the plea of Ld. AR, the bench deem it fit to condone the delay and proceed with adjudication of the appeals on merits.

3. The Ld. AR assailed the impugned additions and filed written submissions. The Ld. DR supported the orders of lower authorities. Having considered the same, our adjudication would be as under.

Assessment Proceedings

4. The assessee was subjected to reassessment proceedings and an assessment was framed u/s 143(3) r.w.s. 147 on 30.03.2015. The assessee is stated to be engaged in Pawn broking business. The assessee advanced loans to customers on pledge of gold jewellery. The customers of the assessee are middle income group people who generally take loan for emergent household needs like education, medical expenses and other domestic requirements etc. The loans are advanced on the security of petty items of gold jewellery, silver articles and other household articles etc. The loans are advanced for short period.

The assessee was subjected to survey u/s 133A on 22.05.2012. Certain books and documents were impounded therein on the basis of which various additions were made which are adjudicated as under: -

5. Unexplained investments

5.1 On the basis of documents, Ld. AO estimated the value of unredeemed articles at year-end as Rs.53.51 Lacs as against Rs.20.97 Lacs shown by the assessee. Accordingly, the differential i.e., Rs.32.54 Lacs was sought to be added as unexplained investment. The assessee submitted that the value was correct, however, the assessee could not file party wise details. Accordingly, the same was added to the income of the assessee along with estimated interest of Rs.7.80 Lacs (computed @24%).

5.2 During appellate proceedings, the assessee submitted that Ld. AO did not consider the entries wherein the pledged articles were redeemed and cases wherein pledged items for sold and appropriated against outstanding loans. However, rejecting the same, Ld. CIT(A) confirmed

the additions as well as consequential interest against which the assessee is in further appeal before us. Similar additions have been made for AYs 2007-08 & 2008-09 for Rs.54.72 Lacs & Rs.67.23 Lacs respectively.

5.3 After hearing the arguments of Ld. AR and after going through written submissions, we are convinced with the alternative argument of Ld. AR that telescoping benefit of addition made in AY 2006-07 should have been granted in subsequent years. Accordingly, the addition as sustained by us for AY 2006-07 would be Rs.32,54,000/-. The addition sustained for AY 2007-08 would be Rs.5,29,405/- (Rs.37,83,405/- – Rs.32,54,000/-). The additions sustained for AY 2008-09 would be Rs.2,77,059/- (Rs.40,60,464/- – Rs.37,83,405/-). The interest would be computed @12% on net amounts only since there is no basis to presume rate of 24%. We order so. The corresponding grounds raised in these years stand partly allowed.

6. Unexplained Cash Credit

6.1 In the Balance Sheet, the assessee reflected loan of Rs.23.04 Lacs. Since the assessee could not file confirmation letter, the same was added as unexplained cash credit. The interest on loans for Rs.3.95 Lacs was also disallowed as a consequence. The Ld. CIT(A) confirmed the stand of Ld. AO against which the assessee is in further appeal before us. This issue of unexplained cash credit arises only for AY 2006-07 whereas the issue of interest on these loans arises for AYs 2006-07 to 2014-15.

6.2 Upon perusal of details, we find that the assessee has obtained loan of Rs.23.04 Lacs from family members and the same has been added as unexplained cash credit u/s 68 on the presumption that the

loans have been obtained by the assessee during this year. It has been submitted that all these loans were obtained in earlier years. Considering the same, the addition could not be sustained if this fact is demonstrated by the assessee. Therefore, we direct Ld. AO to verify the same with a direction to the assessee to substantiate this fact. If loans are taken in earlier years, the impugned additions as well as addition of consequential interest would not be sustainable in law. The grounds raised stand allowed for statistical purposes.

7. Disallowance of Expenses

7.1 The assessee claimed Deepavali expenses of Rs.7124/- which were disallowed in the absence any proof thereof. The Ld. CIT(A) has confirmed the same. Similar disallowance has been made for AYs 2007-08 & 2008-09.

7.2 Considering the nature and quantum of expenditure, we delete this disallowance for all the three years and allow the grounds raised by the assessee.

Conclusion

8. All the appeals stand partly allowed in terms of our above order.

Order pronounced on 06th July, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

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

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

आदेश की प्रतिलिपि ञ 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