

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.Nos.1816 & 1817/Chny/2017

(निर्धारणवर्ष / Assessment Years: 2006-07 & 2008-09)

Dr.D.Balamurugan, L/H of late S.Duraipandi, 86, 4 th Main Road, Natesan Nagar, Virugambakkam, Chennai-600 092.	Vs	Assistant Commissioner of Income Tax, Central Circle-3(4) Chennai.
PAN: AEDPD 9062N		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. B.Ramakrishnan, FCA
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. Guru Bashyam, CIT DR

सुनवाईकीतारीख/Date of hearing	:	11.07.2022
घोषणाकीतारीख /Date of Pronouncement	:	13 .07.2022

आदेश / ORDER

PER G. MANJUNATHA, AM:

These two appeals filed by the assessee are directed against common order passed by the learned Commissioner of Income Tax (Appeals)-19, Chennai, dated 04.05.2017 and pertain to assessment years 2006-07 & 2008-09. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

2. The assessee has raised following grounds of appeal for the assessment year 2006-07:-

"1. The order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case .

2. For that the Learned Commissioner of Income Tax (Appeals) erred in ' confirming the addition of Rs.15,00,000/- u/s 69 as unexplained cash credit.

3. For that the Learned Commissioner of Income Tax (Appeals) erred in not adjudicating the ground raised by the appellant pertaining to non-consideration of tax paid u/s 140A by the Assessing Officer.

4. For that the Learned Commissioner of Income Tax (Appeals) erred in indirectly confirming the action of the Assessing Officer in not considering of tax paid u/s 140A.

5. For that the Learned Commissioner of Income Tax (Appeals) erred in confirming the levy of interest u/s 243A, 234B, and 234C of the Act on the above additions made."

3. The first issue that came up for consideration for the assessment year 2006-07 is additions towards unsecured loan amounting to Rs.15 lakhs. The Assessing Officer has made addition of Rs.15 lakhs as unexplained cash credit on the ground that the assessee could not file supporting documents in support of loans claimed to have been received from unknown persons. It was explanation of the assessee before the learned CIT(A) that the assessee has wrongly classified a sum of Rs.15 lakhs as unsecured loan, but in fact, it was amount of drawings of the assessee from an AOP, for which the assessee has filed ledger extract of drawings from AOP and argued that during the relevant financial year, the assessee has drawn a

sum of Rs.45,40,402/- from AOP, which is sufficient to explain unsecured loan of Rs.15 lakhs.

4. We have heard both the parties, perused relevant material available on record. The assessee has shown unsecured loan of Rs.15 lakhs from unknown persons. Further, the assessee could not file any evidence before the Assessing Officer, including details of loan taken from persons and their name and address. However, the assessee has changed its stand before the first appellate authority and contended that he has wrongly classified drawings from an AOP as unsecured loan, but in fact, said amount represents drawings from AOP for which the assessee has filed ledger extract. We find that although the assessee has shown certain drawings from AOP, but could not explain how such drawings has been deployed to explain unsecured loan claims to have received from unknown persons either by filing cash flow statement or statement of affairs. Therefore, simply for the reason that the assessee has drawn some amount from AOP, it cannot be considered that that said drawings has been wrongly classified as unsecured loan in the books of account of the assessee. Therefore, we are

of the considered view that there is no merit in the arguments of the assessee that unsecured loan shown in the books of account amounting to Rs.15 lakhs is nothing but drawings from AOP and which is sufficient to explain source. Hence, we reject arguments of the assessee and sustain additions made by the Assessing Officer towards unexplained cash credit of Rs.15 lakhs.

5. In the result, appeal filed by the assessee for assessment year 2006-07 is dismissed.

ITA No.1817/Chny/2017 (A.Y : 2008-09) :

6. The only issue that came up for consideration for the assessment year 2008-09 is additions towards jewellery found during the course of search. During the course of search, jewellery worth Rs.18,69,179/- was found in the residence of the assessee. The assessee explained before the Assessing Officer that jewellery was purchased out of income declared for immediately two preceding years and drawings from other firms. The Assessing Officer, however, was not convinced with explanation furnished by the assessee and accordingly, made additions of Rs.18,69,179/- under the head 'unexplained

investment'. On appeal before the first appellate authority, the learned CIT(A) has allowed relief to the extent of 40% additions towards jewellery amounting to Rs.7,47,671/- on the ground that the assessee has drawings to explain source for purchase of jewellery.

7. The learned A.R. for the assessee submitted that when the assessee is having sufficient drawings from other firms / AOP, then the Assessing Officer / CIT(A) ought to have accepted arguments of the assessee that jewellery found during the course of search is purchased out of known source of income, unless the Assessing Officer demonstrates that drawings available with the assessee is used elsewhere or acquired any assets out of said drawings.

8. The learned DR, on the other hand, submitted that the assessee could not explain jewellery found during the course of search with known source of income. Although, the assessee claims to have acquired jewellery out of drawings, but no evidence, including bills and vouchers to prove that jewellery found during the course of search was acquired during the

relevant assessment year or immediately preceding assessment year.

9. We have heard both the parties, perused material available on record and gone through orders of the authorities below. We find that there is no dispute with regard to value of jewellery found during the course of search. In fact, the assessee has admitted that said jewellery was not disclosed in regular return of income filed for the relevant assessment year. The only argument of the assessee was that it had acquired jewellery during relevant financial year and also in the immediately preceding financial year out of known source of income being drawing from other firms / AOP. We find that the assessee has sufficient drawings from AOP, which is in excess of value of jewellery found during the course of search. Once the assessee has explained known source of income to cover up value of jewellery found during the course of search, then, in our considered view, the Assessing Officer ought to have accepted explanation of the assessee that jewellery found during the course of search is acquired out of drawings of immediately preceding financial year, unless the Assessing

Officer demonstrates with evidence that said drawings is applied for some other purpose. In this case, the Assessing Officer has made additions towards jewellery only on the ground that the assessee could not file necessary evidences, including bills and vouchers and except this, no other observation with regard to claim of the assessee that it has sufficient source of income. Therefore, we are of the considered view that the Assessing Officer has erred in making addition towards jewellery found during the course of search, even though the assessee has explained source for said jewellery. Although, the learned CIT(A) accepted explanation of the assessee in part, but failed to give any reasons as to why he has rejected source explained by the assessee for remaining amount of jewellery. Hence, we are of the considered view that the learned CIT(A) has erred in sustaining part amount of jewellery found during the course of search. Thus, we direct the Assessing Officer to delete additions made towards jewellery found during the course of search.

10. In the result, the appeal filed by the assessee for the assessment year 2008-09 is allowed.

11. To sum up, appeal filed by the assessee for the assessment year 2006-07 is dismissed and for the assessment year 2008-09 is allowed.

Order pronounced in the open court on 13th July, 2022

Sd/-
(वी. दुर्गा राव)
(V. Durga Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी. मंजुनाथ)
(G. Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 13th July, 2022.

DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.