

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **1385/CHNY/2017**

निर्धारण वर्ष /Assessment Year: 2013-14

Shri Subhan Khader Hussain,
No.68/4A, SKV Nagar,
Maniam Kaliappa Street,
K.K. Pudur, Saibaba Colony,
Coimbatore – 641 011.

The ACIT,
vs. Non-Corporate Circle-2,
Coimbatore.

PAN: AJGPK 4939F

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri R. Vijayaraghavan, Advocate
: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 12.07.2022

घोषणा की तारीख/Date of Pronouncement

: 20.07.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of order of the Commissioner of Income Tax (Appeals)-2, Coimbatore, in ITA No.265/15-16, order dated 31.03.2017. The assessment was framed by the ACIT, Non-Corporate Circle-2, Coimbatore for the

assessment year 2013-14 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 25.02.2016.

2. The two interconnected issues are that

(i) Whether the AO has rightly estimated the profit rate at 3.5% of the total turnover of assessee's purchase of gold and confirmed by CIT(A).

(ii) Whether the assessee can claim credit of TCS deducted on above purchase or not.

For these two interconnected issues, assessee has raised following four grounds:-

(1) The learned CIT(A) ought to have held that despite the fact that the appellant had not purchased goods for himself; but only on behalf of his principals, he cannot be denied the credit for the amount of tax collected by way of TCS, in his name and PAN, in compliance with the provisions of section 206C of the Income Tax Act, 1961, in the facts and the circumstances of the case and in law.

(2) The learned CIT(A) ought to have appreciated that only for the purpose of section 206C, the appellant was treated as a "buyer", by the seller, and refund of credit for tax collected at source, cannot be claimed by the actual buyer in his assessment, without the support of TCS certificates, in their names and the seller cannot issue such certificate u/s 206C, to anyone other than the "buyer" within the meaning of Section 206C, the appellant should not be denied the credit for tax collected at source in his name and be charged to tax on an income on an estimated basis, only to deny the claim made for refund, while such income did not even arise or accrue to him, in the facts and the circumstances of the case and in law.

(3) The learned CIT(A) ought to have held that in terms of section 198 of the I.T.Act, 1961, the tax deducted in accordance with the provisions of

Chapter XVII, shall for the purpose of computing the income of the assessee is deemed to be income received and therefore, the claim was made in accordance with the provisions of Section 198, could not be discredited, on any moral principles according to him, in the facts and the circumstances of the case and in law.

(4) The learned CIT(A) ought to have appreciated that principles of law do not operated on principals of equity, as it is settled that equity and tax laws are strangers, when really no other income accrued to or received by the appellant, falling within the scope of total income under the Income Tax Act, 1961, denying the claim for refund of the amount of TCS, is not warranted, in the facts and circumstances of the case and in law.

3. Brief facts are that the assessee is an individual and engaged in the business of jewellery appraiser. He filed his return of income for the relevant assessment year 2013-14 declaring total income of Rs.63,73,830/-. During the course of assessment proceedings, the AO required the assessee to produce the books of accounts, profit & loss account, balance sheet, purchase and sale vouchers / invoices, purchase and sale details party-wise & date-wise. But the assessee could not produce any of the details and explained that the assessee has not maintained any books of accounts. Admittedly this is not a case of maintenance of books of accounts and this is a case of no books.

3.1 The AO required the assessee to explain the nature of business. The assessee explained vide personal appearance on

04.09.2015 and explained that he is in the business of jewellery appraiser and he /acts as an agent between the purchasers and the financial companies and NBFC's who auction the unredeemed gold of the default borrowers (in this case it is the Manapuram Finance Limited). The assessee also explained that the purchasers who want to purchase the gold in those auctions used to approach the assessee and the assessee purchases gold in his name on behalf of the purchasers by paying their money to the finance companies. The assessee has also said that he is entitled for a commission of 1% of the whole transaction along with an amount of fifty paise to one rupee per gram of gold. He also said that he pays that 1% commission as TCS to the government account and filed the return of income showing 1% TCS + 50p to Rs.1/gram of gold as his taxable income i.e Rs.63,73,827/- which includes TCS of Rs.56,50,419/- (TCS credit available as on 04.09.2015) and Rs.7,23,408/- which is the amount of fifty paise to one rupee gram of gold purchased in the whole transaction and claims a refund of Rs.37,51,550/-

3.2 The AO issued notice u/s.133(6) of the Act on 19.11.2015 to Manapuram Finance Ltd from whom the assessee purchased gold and as per the invoice copies produced by Manapuram Finance

Limited, total transactions of 163, amounting to Rs.56,90,79,027/-. According to AO, the assessee is not entitled to claim the TCS credit as according to him, he is making purchases on behalf of customers and he is only receiving commission @ 1% and accordingly he has not given credit for TCS collected u/s.206C of the Act.

3.3 The AO issued show-cause notice vide dated 18.02.2016 requiring the assessee to show-cause why the refund claimed should not be denied by estimating the income at 3.5% of the total value of transactions of purchase of gold. The assessee could not prove by filing any evidence that the purchases are made on behalf of his customers as against commission of 1% and accordingly, the AO estimated the income by taking profit rate of 3.5% of the total transaction. The AO rejected the explanation and denied the credit of TCS and also estimated the income by applying profit rate of 3.5% by observing in para 8 & 9 as under:-

8. The explanation provided by the assessee is given due consideration. explanation is not acceptable for the following reasons.

1. The facts of the case of the assessee are different from the facts of the case laws submitted by the assessee and hence the case laws do not fit to the present case.
2. The assessee has not submitted any proof for his commission entitlement and hence the assessee's claim of 1% of TCS and Rs.1000/- per kg of gold is not genuine.
3. The assessee has also not submitted any proof or evidence to prove that he has not purchased the gold and not carried out any business activity.

9. Hence based on the above assessee's bogus claim of refund is denied a estimating the income 3.5 % of the total transaction of Rs.56,90,79,027/- The assessment is completed by making an addition of Rs.1,35,43.936 - to the returned income.

Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) just confirmed the action of the AO on the same set of lines and also noted that the assessee had not produced any details or books of accounts in support of his claim. The CIT(A) noted that the payments made towards purchases of gold from Manapuram Finance Ltd., is appearing in Form No.26AS and denied the claim made by assessee that the payments towards purchase of gold as appearing in Form No.26AS were made by different parties and he is working as agent and earning commission on behalf of these parties for purchase of gold. The CIT(A) confirmed the action of AO denying credit for TCS and also upheld the estimation of profit rate @ 3.5%. Aggrieved, assessee came in appeal before the Tribunal.

5. We have heard rival contentions and gone through facts and circumstances of the case. We agree with the arguments of Id. Senior DR that as per Form No.26AS, the assessee has made payments towards purchase of gold from Manapuram Finance Ltd., and gold is purchased by assessee. But assessee's case is of no

books as he has not maintained any books of accounts nor kept any sale and purchase details and details of parties to whom he has sold the gold. The assessee has not maintained any stock register etc., but TCS is deducted on the above purchases. According to us, we are in full agreement with the argument of Id. Senior DR that these purchases are of the assessee and in the absence of books of accounts, a reasonable estimate has to be made. The Id.counsel for the assessee also finally agreed that estimate should be reasonable but when asked to produce any comparable cases, he could not provide any, rather he made argument that 1% TCS is deducted and even after 1% TCS, the AO has estimated the profit rate at 3.5% for which some concession is required and profit rate should be a reasonable estimate. The Id.DR only stated that the AO has estimated profit at reasonable rate i.e., 3.5% apart from TCS collected. We are of the view, that the assessee is unable to produce anything to support the claim of reasonable estimate and how the estimation made by AO and confirmed by CIT(A) is unreasonable. No comparative cases were provided to us. Hence, we confirm the estimation made by AO and accordingly on this issue, assessee's ground fails.

6. Now coming to TCS collected on purchases of gold from Manapuram Finance Ltd., we are of the view that once we held that these purchases are of the assessee, the assessee is automatically entitled to get credit of TCS, there cannot be any different view than this. Hence, we direct the AO to allow credit of TCS to the assessee while giving appeal effect to the order of this Tribunal. Accordingly this issue of denying the credit of TCS is allowed in favour of assessee.

7. In the result, the appeal filed by the assessee is partly-allowed.

Order pronounced in the open court on 20th July, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 20th July, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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