

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 Nos.: **823 & 824/CHNY/2020**

निर्धारण वर्ष /Assessment Years: 2011-12 & 2012-13

Shri Yedla Sudhakar,
D2-205, Purva Windermere,
Vadakkupattu Road,
Pallikaranai, Chennai – 600 100.

The Income Tax Officer,
vs. Non-Corporate Ward- 23(3),
Chennai.

PAN: BDHPS 1107B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri S.R. Raaman, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 14.07.2022

घोषणा की तारीख/Date of Pronouncement

: 03.08.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

These appeals by the assessee are arising out of two different orders of Commissioner of Income Tax (Appeals)-10, Chennai in ITA No.159 & 167/CIT(A)-10/2018-19 both dated 28.02.2020. The assessments were framed by the Income Tax Officer, Non-Corporate Ward-23(3) Chennai for the assessment years 2011-12 & 2012-13 u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 (hereinafter the 'Act') vide orders of even date 28.12.2018.

2. At the outset it is noticed that these appeals are time barred by 147 days as the order of CIT(A) was received by assessee on 13.03.2020 and appeal was to be filed before Tribunal on or before 12.05.2020, instead the appeal was filed by assessee only on 06.10.2020 thereby delay of 147 days. The assessee has filed condonation petition along with affidavit stating that the delay was due to Covid-19 pandemic and the Hon'ble Supreme Court in Miscellaneous Application No.665 of 2021 vide order dated 23.03.2020 has given directions that the delay are to be condoned during this period 15.03.2020 to 14.03.2021 and they have condoned the delay up to 28.02.2022 in Miscellaneous Application No.21 of 2022 vide order dated 10.01.2022. In term of the directions of Hon'ble Supreme Court, we condone the delay in filing of these appeals by assessee and admit the appeals for adjudication.

3. The only common issue in these two appeals of assessee is as regards to the order of CIT(A) confirming the action of the AO in making addition of Rs.26,13,200/- & Rs.51,84,300/- for financial years 2010-11 & 2011-12 relevant to assessment years 2011-12 & 2012-3 as unexplained money u/s.69A of the Act. The facts and circumstances in both the years is exactly identical and grounds raised and statement of facts filed is verbatim except the quantum. Even

the assessment order and the order of CIT(A) in both the years is verbatim except the quantum. Hence, we will take the facts from assessment year 2011-12 in ITA No.823/CHNY/2020 and will decide the issue. For the above issue, the grounds raised by the assessee reads as under:-

1. The order passed by the learned Commissioner of Income Tax (Appeals) dismissing the appeal filed by the appellant is arbitrary and bad in law. The ld. CIT (Appeals) has grossly erred in allowing the net addition of Rs.26,13,200 for AY 2011-12 made by the AO treating the net cash deposits as unexplained money u/s 69A levying a tax demand of Rs. Rs.13,58,970.
2. During the assessment year, transactions such as cash deposits, withdrawals and transfers were made regularly in the bank account of the appellant. Therefore the learned AO ought to have treated the same as business turnover and addition should have been made only to the extent of profit from such business even though the assessee has not given documentary evidence of business turnover.
3. The CIT (Appeals) passed the order dismissing the appeal without considering the fact that withdrawals through cash and NEFT have been made throughout the year in the account for making payment to suppliers and meeting out other direct and indirect expenses.
4. It is the general practice of rice traders from Andhra Pradesh to sell rice directly to customers in Chennai. The appellant's uncle is also one such person who was selling rice to his customers directly and was depositing the money in the appellant's account. The learned officer could have considered the transaction in the account as business turnover and assessed certain percentage of profit as business income.
5. The learned CIT (Appeals) has erred in confirming the arbitrary view of the assessing officer. The procedure adopted by the assessing officer is against the principles of income tax law and orders of Income Tax Appellate Tribunals and Courts and therefore requires to be struck down.

6. The following cases are relied upon:

- a) Shri Vishan Lal, Lucknow vs Department Of Income Tax- ITAT Lucknow
- b) Subhash Chand Sharma, Agra vs Ito-2(2), Agra- ITAT Agra

7. Further the appellant craves leave for adducing necessary evidence, amendments, explanations including written one to the aforesaid grounds and also additional grounds in the course of hearing of the appellate proceedings.

4. Brief facts are that the assessee Shri Yedla Sudhakar is a salaried individual deriving income from salary and he does not have any other source of income. The AO got the information that the assessee has made cash deposits in his savings bank account maintained with ICICI bank amounting to Rs.33,09,000/- in assessment year 2011-12 and Rs.65,37,000/- in assessment year 2012-13. For assessment year 2012-13, the bifurcation of money explained by assessee's uncle Shri V. Muniaswamy and the AO after credit of self-withdrawal of Rs.13,52,700/- (ICICI bank-Rs.6,94,200/- and HDFC bank - Rs.6,58,500/-) out of the total cash deposits of Rs.65,37,000/- (ICICI bank - Rs.46,74,900/- and HDFC bank - Rs.18,62,100/-), added the balance amount of Rs.51,84,300/- (ICICI bank- Rs.39,80,700/- and HDFC bank - Rs.12,03,600/-) as unexplained money as per the provisions of section 69A of the Act. The AO required the assessee to explain the source of deposits and the assessee explained vide letter dated 12.12.2018 that the savings bank account was used by his late family friend referred as his uncle Shri Subbarao, PAN-ANFPG1420L

then residing at No.23/5, Peters Road, Royapettah, Chennai – 600014. It was explained that Shri Subbarao was a rice merchand from Nellore and distributed his rice through his employee Shri Muniaswamy in Chennai and collected money through him. Shri Subbarao who hails from a village was engaged in the business of trading of rice and was carrying on business through one Shri Muniaswamy. It was explained that since the assessee was a family friend of Shri Subbarao and also interested in doing some business, he allowed Shri Subbarao to use his bank account since the later did not have any bank account in Chennai. The transaction made by the latter by way of deposits in assessee's ICICI account from sale of rice for financial year 2010-11 relevant to assessment year 2011-12 was Rs.33,09,000/-. The assessee only pleaded mercy that since the assessee was not aware of tax implication owing to substantial cash deposit in his bank account, he did not object to the transactions by Shri Subbarao. It was also explained that in the year 2015, Shri Subbarao suffered huge losses and later, he died of heart attack. Since then, the assessee does not have any ties with the family after 2015 and he is unable to provide any evidence of Shri Subbarao business transactions. The assessee only pleaded that the AO and CIT(A) violated the principles of natural justice by passing order without giving sufficient opportunity to adduce evidence and the AO & CIT(A) grossly erred in their assessment and appellate proceedings by treating the net cash transactions as

unexplained money u/s.69A of the Act and not treating it as business income.

5. The Id.Senior DR relied on the assessment order and the order of CIT(A) and stated that even, if assessee produce any evidence he is ready to send the same for seeking remand report from AO and Id.Senior DR offered this to the Bench. According to Id. Senior DR, there is no evidence available with the assessee and this is a cooked up story by assessee and he has to explain the source of these cash deposits in these assessment years. The Id. Senior DR relied on the two judgments of Hon'ble Supreme Court in the case of Hon'ble Supreme Court in the case of Sumathi Dayal Vs. Commissioner of Income Tax, [1995] 214 ITR 801 and Commissioner of Income Tax Vs. Durga Prasad More (1971) 82 ITR 540 (SC).

6. On query from the Bench, the Id.counsel for the assessee only pleaded mercy but refused to file any evidence even though Bench specifically asked him if he wants some more time, he can buy some time for the same but he stated that matter be sent back and in case evidences are available, he will file.

7. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the assessee neither before

AO nor before CIT(A) filed any evidence in regard to prove the source of this cash, even the transactions of the alleged transactions of late Shri Subbarao. The assessee could not file even one evidence in regard to this except a bald statement made in the statement of facts, grounds of appeal before AO or before CIT(A). The assessee admitted the bank account maintained with ICICI bank and where this cash deposit made. Once the assessee is unable to prove the cash deposits, we have no alternative except to confirm the addition. Accordingly, in these two years, there is no reason to delete the addition and hence, we confirm the order of CIT(A) and dismiss the appeals of assessee.

7. In the result, the appeals filed by the assessee are dismissed.

Order pronounced in the open court on 3rd August, 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 3rd August, 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. |