

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, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ITA No.32/Chny/2012
(निर्धारण वर्ष / Assessment Year:2005-06)

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आयकर अपील सं./ITA No.33/Chny/2012
(निर्धारण वर्ष / Assessment Year:2006-07)

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आयकर अपील सं./ITA No.34/Chny/2012
(निर्धारण वर्ष / Assessment Year:2007-08)

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| Shri A. Vijayakant No.54/12-A, Kannammal Street, Kannabiran Colony, Saligramam, Chennai – 600 093. | बनाम/ Vs. | ACIT Central Circle-I(2), Chennai. |
| स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. ABRPV-6479-N | | |
| (आपीलार्थी/ Appellant) | : | (प्रत्यर्थी / Respondent) |

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| अपीलार्थी की ओर से/ Appellant by | : | Shri T. Vasudevan(Advocate) – Ld. AR |
| प्रत्यर्थी की ओर से/ Respondent by | : | Shri Karthick Ranganathan (Senior Standing Counsel)-Ld. DR |

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|---|---|------------|
| सुनवाई की तारीख/ Date of Hearing | : | 19-05-2022 |
| घोषणा की तारीख / Date of Pronouncement | : | 05-08-2022 |

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AY) 2005-06 to 2007-08 arises out of the common order passed by learned

Commissioner of Income Tax (Appeals)-I, Chennai [CIT(A)] dated 29.11.2011 in the matter of assessment framed by the Ld. Assessing Officer [AO] vide separate orders. First, we take up appeal for AY 2005-06 wherein the concise grounds raised by the assessee read as under:

1. The order of Learned Commissioner of Income Tax (Appeals) is contrary to the law, facts and circumstances of the case.
2. For that the Learned Commission of Income Tax (Appeals) erred in not directing the Assessing Officer to provide the documents relied upon in the assessment to enable the appellant to give an effective rebuttal as per the directions of Hon'ble High Court.
3. For that the Learned Commission of Income Tax (Appeals) erred in confirming 20% disallowance of Mandaram expenses amounting to Rs.3,27,025/-.
4. For that the Learned Commission of Income Tax (Appeals) erred in confirming the disallowance of Business Promotion Expenses amounting to Rs.1,38,127/-.
5. For that the Learned Commission of Income Tax (Appeals) erred in sustaining the interest disallowance made by the Assessing Officer amounting to Rs.2,40,000/-.
6. For that the Learned Commission of Income Tax (Appeals) erred in confirming the disallowance of other expenses on 20% adhoc basis amounting to Rs.3,94,472/-.
7. For that the Learned Commission of Income Tax (Appeals) erred in confirming the addition of Rs.5,10,839/- as income from House Property.
8. For that the Learned Commission of Income Tax (Appeals) erred in confirming the advance received for the film "Perarasu" amounting to Rs.95,00,000/- as remuneration received during the subject assessment year.
9. For that the Learned Commission of Income Tax (Appeals) erred in treating 20% of agricultural income as income from other sources amounting to Rs.1,84,800/-.
10. For that the Learned Commission of Income Tax (Appeals) has erred in indirectly confirming the addition of interest u/s 234B of the Income Tax Act, 1961.
11. For that the Learned Commission of Income Tax (Appeals) has erred in indirectly confirming the addition of interest u/s 234C of the Income Tax Act, 1961.

Since the concise grounds have been filed on 22.01.2020, all the original grounds as well as additional grounds as filed earlier have become infructuous.

2. The Ld. AR advanced arguments supporting the case of the assessee and drew attention to the documents as placed on record. The Ld. Sr. Standing Counsel appearing for revenue controverted the arguments of Ld. AR and pleaded for dismissal of appeals. Having heard

rival submissions and after careful consideration of relevant material on record, our adjudication would be as under.

3. Assessment Proceedings : AY 2005-06

3.1 The assessee being resident individual is stated to be engaged as a film artist. The assessee was subjected to a search action u/s. 132 of the Act on 23.01.2007 at Chennai, Madurai, Pondicherry and Cuddalore. The assessee is a director in M/s Andal Alagar Kalyan Mandapam and M/s Captain Farms (P) Ltd. During the course of search, cash of Rs.1.99 Lacs and Jewellery weighing about 2295.700 grams was found. Certain incriminating documents were also seized which were marked as Ann/MM/LS/S containing pages 1 to 34.

3.2 The original return of income was filed by the assessee on 28.10.2005 declaring income of Rs.39.80 Lacs and agricultural income of Rs.9.24 Lacs. This return was processed u/s 143(1) on 19.01.2006.

3.3 Post search, notice u/s 153A was issued on 22.08.2007 and the assessee offered same return of income on 10.09.2007. A detailed questionnaire was issued on 23.11.2007 requiring assessee to file explanations / submissions. However, the assessee filed partial reply on 06.12.2007 which was termed as vague reply by Ld. AO. Accordingly, another notice was issued on 30.06.2008 to explain and file documents. The assessee's authorized representative was provided with copies of sworn statements on 12.11.2008 as well as seized material. A final reminder was issued to the assessee along with various documents on 11.12.2008 to substantiate its case. However, the authorized representative sought adjournment from time to time which was granted by Ld. AO.

3.4 In the meantime, the Hon'ble High Court of Madras restrained Ld. AO from proceedings with the assessment till disposal of assessee's writ petition. The petition was finally disposed-off on 24.03.2009. The directions given by Hon'ble Court were duly complied with by Ld. AO and various opportunities were given to the assessee to obtain copies of seized material as required by the assessee. However, despite being provided with sufficient opportunities, the assessee chose not to avail the same. In the above background, Ld. AO proceeded with framing of the assessment.

3.5 The assessee pleaded that the income of this year was already verified and therefore, there was no power to scrutinize the same again. However, the Ld. AO rejected the same by observing that the provisions of Sec. 153A of the Act empowers AO to assess and re-assess the total income of six preceding assessment years. Proceeding further, Ld. AO framed an assessment and determined income of Rs.307.07 Lacs after certain additions and disallowances. The issues which form subject matter of appeal are adjudicated as under.

4. Remuneration received from M/s Roja Combines

It transpired that the assessee received remuneration of Rs.95 Lacs for the film 'Perarasu' which was shown as advance from producers. The assessee pleaded that the same would be offered on mercantile basis as done in earlier years. In the sworn statement by Shri Kaja Mydeen, prop. of M/s Roja Combines, it was admitted that they paid a sum of Rs.95 Lacs to the assessee for the film 'Perarasu'. On the basis of the same, Ld. AO alleged that the receipt would constitute unexplained income for the assessee.

In the remand proceedings, cross-examination of Shri M.KajaMydeen was provided to the assessee. The statement was recorded from him on 09.11.2011. In reply to question no.6, he stated that the amount of Rs.95 Lacs was paid as remuneration to the assessee. The Ld. CIT(A), after perusal, held that the addition was in order. However, the assessee would be at liberty to approach AO and seek relief by establishing that the income was offered in subsequent year and it was the same income that was brought to tax in AY 2005-06. The Ld. AO was directed to allow the relief, if proved.

We find that it is the submission of the assessee that the money was received in advance and was offered to tax in subsequent years on mercantile basis. However, the payee confirmed that the money was paid as remuneration. Therefore, endorsing the views of Ld. CIT(A), we direct Ld. AO to verify whether this amount has been offered to tax in subsequent years. If so, this addition would stand deleted otherwise the addition would stand confirmed in this year. Ground No.8 stand allowed for statistical purposes.

5. Mandaram Expenses

These expenses relate to amount spent by assessee on fans association. No supporting documents were found for these expenses at the time of search which led Ld. AO to doubt the genuineness of the same. The assessee relied on the order of Tribunal order wherein the disallowance was restricted to the extent of 20%. However, Ld. AO held that the issue had not reached finality and accordingly, disallowed entire expenditure of Rs.16.35 Lacs and added the same to the income of the assessee.

The Ld. CIT(A), considering the decision of Hon'ble High Court of Madras in assessee's own case for AY 2004-05, restricted the disallowance to 20%. Still aggrieved, the assessee is in further appeal before us.

We find that the adjudication of Ld. CIT(A) is in accordance with the decision of Hon'ble High Court of Madras in assessee's own case. Therefore, we see no reason to interfere in the same. Ground No.3 stand dismissed.

6. Business Promotion Expenses

In the absence of cogent evidences forthcoming from the assessee, the business promotion expenses of Rs.1.38 Lacs as claimed by the assessee were disallowed.

The Ld. CIT(A) confirmed the addition except for Rs.0.25 Lacs as spent by the assessee for purchase of fish tank.

We find that no supporting evidences have been filed by the assessee and therefore, the adjudication in the impugned order could not be faulted with. Ground No.4 stand dismissed.

7. Disallowance of Expenses

To rule out the personal element and in the absence of supporting vouchers, Ld. AO estimated disallowance of 20% on various expenses aggregating to Rs.18.29 Lacs and added an amount of Rs.3.65 Lacs to the income of the assessee.

The Ld. CIT(A) while confirming the disallowance noted that the cost of air conditioner was included in the business expenses which was to be capitalized and the assessee was to be granted depreciation on the same.

We find that the estimation of 20% is on the higher side. Considering the factual matrix of the case, we direct Ld. AO to restrict the same to 10%. The assessee would be eligible for depreciation on Air conditioner. Ground No.6 stand partly allowed.

8. Interest disallowance

The assessee claimed interest expenses of Rs.17.86 Lacs which was disallowed on the ground that interest bearing funds were diverted to the sister concerns. The Ld. CIT(A) upheld the disallowance since the assessee could not prove that the moneys were advanced for the purpose of business.

We find that the assessee could be granted this deduction only if he was able to establish that the moneys were advanced for business purposes. Since that fact could not be established before lower authorities, no relief could be granted to the assessee on this count. Ground No.5 stand dismissed.

9. Income from House Property

The assessee did not offer any income from House Property situated at Moola Street, Madurai. The Ld. AO, adopting the value for AY 2004-05, computed income of Rs.0.62 Lacs from the same and added the same under the head Income from House Property.

During appellate proceedings, it was the claim of the assessee that the premises was used by the assessee for profession as well as use by staff. However, this fact could not be demonstrated. Therefore, the additions were sustained.

Concurring with the reasoning of Ld. CIT(A), in the impugned order, we dismiss this ground raised by the assessee. The estimation made by Ld. AO is very reasonable. Ground No.7 stand dismissed.

10. Agricultural Income

The assessee claimed to have earned agricultural income. However, no evidence for sale of coconuts was furnished. Accordingly, agricultural income of Rs.9.24 Lacs was treated as income from other sources.

The Ld. CIT(A) noted that the assessee owned 103.19 acres of land at three places which were cultivated with coconut, paddy and mango. The assessee furnished the names of the person to whom agricultural produce were sold. Such income was regularly shown and accepted. Considering all these facts, Ld. CIT(A) held that the assessee could not be deprived of a legitimate claim based on suspicion. Therefore, 20% of the income was to be held as income from other sources.

We find that the estimation of 20% is without any basis. Having accepted the factum of agricultural operations, full claim is to be accepted. We direct Ld. AO to accept the agricultural income as reflected by the assessee. Ground No.9 stand allowed.

11. In ground nos.10 &11, the assessee seeks correct computation of interest u/s 234B and 234C. The Ld. AO is directed to charge interest in accordance with law. These grounds stand allowed for statistical purposes.

12. Ground Nos. 1 to 2 are legal grounds. In ground no.2, the assessee has alleged that the seized documents were not furnished to the assessee. However, upon perusal of assessment order, we find that sufficient opportunities were granted to the assessee to obtain the copies of seized material, however, the assessee chose not to avail the same. In ground no.1, the assessee assails the validity of addition on the ground of finality of assessment. However, we find that cash, jewellery and incriminating documents were found during the course of search

operations. In fact, in ground no. 2, the assessee has pleaded that the copies of seized documents were not furnished to the assessee. Accordingly, finding no substance in these grounds, we dismiss the same. The appeal stands partly allowed to the extent indicated in the order.

Assessment Year 2006-07

13. It is admitted fact that issues are pari-materia the same in this year and our adjudication as for AY 2005-06, shall have equal application in this year. Accordingly, taking the same view, the legal grounds urged by the assessee in ground nos. 1 to 2 stand dismissed. In ground No.3, the assessee is aggrieved by 20% disallowance of Mandaram expenses. In ground No.5, the assessee is aggrieved by disallowance of business promotion expenses. In ground no.6, the assessee is aggrieved by interest disallowance. In ground nos. 7 and 8, the assessee is aggrieved by disallowance of business expenses and estimation of income from property situated at Moola Street, Madurai. These grounds stand dismissed as in AY 2005-06 except for disallowance of business expenses which stand restricted to 10%.

In ground nos. 4, the assessee is aggrieved by addition of lease rent received from M/s Rajan Rice Mills, Madurai and Rukmani Rice Mills, Madurai. We find that this addition has been accepted by assessee in earlier years and the assessee failed to substantiate its case. No replies were submitted to lower authorities. Those parties paid rent to the assessee which was not offered by the assessee to tax. Therefore, this ground stand dismissed.

In ground nos. 15 & 16, the assessee seeks correct computation of interest u/s 234B and 234C. The Ld. AO is directed to compute interest in accordance with law.

In ground no.14, the assessee is aggrieved by treatment of 20% of agricultural income as income from other sources. This ground stand allowed. The Ld. AO is directed to accept the agricultural income reflected by the assessee.

14. In ground No.9, the assessee is aggrieved by disallowance of Manadu expenses for Rs.63.58 Lacs. These expenses were incurred by the assessee in connection with organizing conferences for launching a political party. The assessee submitted that the expenses were supported by vouchers and the expenses were incurred before launching the political party. However, Ld. AO held that the assessee could not establish that the expenses fulfilled the test of Sec.37(1).

During appellate proceedings, the assessee pleaded that these expenses were akin to Mandaram expenses and therefore, the estimation as upheld by Hon'ble High Court of Madras would apply. However, Ld. CIT(A) held that these expenses were not connected with assessee's profession and incurred prior to launching of political party.

We find that these expenses are akin to Mandaram expenses and therefore, the estimation as upheld by Hon'ble High Court of Madras qua Mandaram expenses would be applicable. Therefore, we direct Ld. AO to restrict the disallowance to 20%. This ground stand partly allowed.

15. In ground Nos.10 to 12, the assessee is aggrieved by computation under capital gains. The assessee reflected long term capital loss on sale of land for Rs.32.61 Lacs. The assessee had sold a property situated at Natesan Nagar which was in the name of the assessee and

four other joint names. The assessee claimed substantial cost of improvement which could not be substantiated. The improvement was stated to have been done by the assessee during 1988-89 and 1989-90. It was stated by the assessee that improvements were funded out of amount of Rs.30 Lacs considered in earlier assessment consequent to previous search. It was further submitted that certain amount was offered under VDIS 1997 which could be considered as source of the investment. However, no documentary evidences could be submitted by the assessee. Further, in reply to question no.42 of sworn statement, the assessee admitted that the property was his acquisition only and the other co-owners were former employees. To avoid the provisions of Land Ceiling Act, the land was purchased in joint names. Accepting the same, Ld. AO denied cost of improvement and re-computed Long-Term Capital Gain of Rs.193.20 Lacs.

The Ld. CIT(A) adjudicated the issue of ownership as well as computation of capital gains. The assessee was confronted with the fact that the assessee had returned entire property as his own building in the wealth tax appellate proceedings. The fact that the co-owners were employees of the assessee and had no source to purchase the property, was also confronted. However, the replies remained evasive. Consequently, the assessee was held to be the sole owner of the property.

The improvement in the property was shown by the assessee to be Rs.40 Lacs which was stated to be funded out of Rs.36.06 Lacs declared under VDIS 1997 and another Rs.30 Lacs disclosed by the assessee during the course of earlier search on 09.08.1988. However, in the absence of any such valid link established by the assessee between

aforesaid declaration and cost of improvement, the explanation was not to be accepted. Further total expenditure on improvement worked out to be around 2 Crores and the share of assessee therein was Rs.40 Lacs. In the absence of any proof, Ld. CIT(A) held that only 10% of the expenditure on improvement could be allowed to the assessee considering the fact that without some improvement, the property could not have been sold by the assessee. Aggrieved, the assessee is in further appeal before us.

So far as the question of ownership is concerned, we find that surrounding circumstances show that the assessee is the sole owner of the property and other owners are namesake owners to avoid the provisions of Land Ceiling Act. In fact, in wealth tax proceedings, this property has been shown by the assessee as sole owner. Therefore, the findings to that extent, could not be faulted with.

So far as the cost of improvement is concerned, we find that the expenditure was incurred as way back in 1988-89 and 1989-90 and the assessee may not be in possession of the documentary evidences. Considering the same, we direct Ld. AO to treat 20% of aggregate cost as cost of improvement. These grounds stand partly allowed.

16. In ground no.13, the assessee is aggrieved by disallowance of repair expenses for Rs.1.47 Lacs. The seized documents showed that the assessee incurred expenses on maintenance and repair of a vehicle stated to be used for his profession. However, the expenditure was treated as unexplained expenditure.

During appellate proceedings, the assessee submitted that it was propaganda Van and was a gifted vehicle. The expenses were met by the donor. Further, the seized documents showed payment of only Rs.1

Lacs which may be taken as the expenditure. However, Ld. CIT(A), going by the presumption of Sec.132, upheld the addition of unexplained expenditure.

From the factual matrix, it is clear that the document has been found from the possession of the assessee's premises. The same reveal payment on account of repair of vehicle which is in the possession of the assessee. The onus was on assessee to negate the allegation of revenue. However, no such onus was discharged. Accordingly, no infirmity could be found in the impugned order on this issue. In the result, this ground stand dismissed. The appeal stands partly allowed to the extent indicated in the order.

Assessment Year 2007-08

17. The facts as well as issues are substantially the same in this year also. Accordingly, taking the same view, the legal grounds urged by the assessee in ground nos. 1 to 2 stand dismissed. In ground No.3, the assessee is aggrieved by 20% disallowance of Mandaram expenses. In ground No.4, the assessee is aggrieved by disallowance of business promotion expenses. In ground no.5, the assessee is aggrieved by interest disallowance. In ground No.6, the assessee is aggrieved by disallowance of business expenses. In ground no. 7, the assessee is aggrieved by estimation of income from property situated at Moola Street, Madurai. In ground nos. 9 to 11, the assessee is aggrieved by addition of rental income as received from Rajan Rice Mills and Rukmani Rice Mills. These grounds stand dismissed as in AYs 2005-06 & 2006-07 except for disallowance of business expenses which stand restricted to 10%.

In ground no.8, the assessee is aggrieved by treatment of 20% of agricultural income as income from other sources. This ground stand allowed. The Ld. AO is directed to accept the agricultural income reflected by the assessee.

In ground nos.12 & 13, the assessee seeks correct computation of interest u/s 234B and 234C. The Ld. AO is directed to compute interest in accordance with law. This ground stand allowed for statistical purposes. In the result, the appeal stands partly allowed.

Conclusion

18. All the appeals stand partly allowed to the extent indicated in the order.

Order pronounced on 05th August, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

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

चेन्नई/ Chennai; दिनांक/ Dated : 05-08-2022

EDN

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR6. गार्डफाईल/GF