

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री महावीर सिंह, उपाध्यक्ष, एवं
डॉ। दीपक पी. रिपोटे, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.2711-2713/Chny/2019
निर्धारण वर्ष/Assessment Years: 2011-12 to 2013-14

Mr.M.P.M.Sathyanarayanan,
108, Big Bazaar Street,
Thuraiyur, Trichy District.

v. The Income Tax Officer,
Ward-1(1), Trichy.

[PAN:AAWPS 7574 F]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.154-157/Chny/2022
निर्धारण वर्ष/Assessment Years: 2011-12 to 2014-15

Mr.M.P.M.Sathyanarayanan (HUF),
108, Big Bazaar Street,
Thuraiyur, Trichy District.

v. The Income Tax Officer,
Ward-1(1), Trichy.

[PAN:AAAHM 4540 B]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.C.Maruthappan, CA
प्रत्यर्थी की ओर से /Respondent by : Mr.Sajit Kumar, JCIT
सुनवाई की तारीख/Date of Hearing : 23.08.2022
घोषणा की तारीख /Date of Pronouncement : 26.08.2022

आदेश / ORDER

PER BENCH:

These appeals filed by the assessee Mr.M.P.M.Sathyanarayanan are directed against the consolidated order of the Commissioner of Income Tax (Appeals)-1, Trichy, dated 23.07.2019 pertaining to assessment

:: 2 ::

years 2011-12 to 2013-14, emanating from the assessment orders dated 30.12.2016, passed u/s.143(3) r.w.s.147 of the Income Tax Act, 1961.

2. The assessee has raised the following grounds of appeal in ITA No.2711/Chny/2019 for the AY 2011-12:

1. The learned AO had erred in his order u/s 143(3) in adding the Income from KRISHNA JEWELLERY owned by M.P.M.SATHYANARAYAN - HUF additions are made on adhoc basis by rejecting explanations and documentary evidences given by the appellatant.

2. In the case of addition of Income of KRISHNA JEWELLERY wholly owned by the M.P.M.SATHYANARAYANAN -HUF, by merely rejecting the explanation and evidences given by the Appellant at the time of Assessment proceedings and also in the course of Appeal proceedings.

3. The appellatant had produced the details of income of HUF, which includes the Net Profit arrived from the family business carried in the name of "SRI KRISHNA JEWELLERY", during the course of assessment proceedings of his individual case.

4. Once income of a joint family is assessed as income of a Hindu Undivided Family, it will continue to be assessed as such until once ore more coparceners claim partition i.e., division of property;

5. Sce.171 has no application only to a case of a Hindu Family which has never been assessed before as a Joint family. CIT VsKantilal Ambalal (HUF) (1991)59Taxman 232 (Guj);

6. The income of M/S KRISHNA JEWELLERY, prop.;

M.P.M.SATHYA NARAYANAN - as kartha, in the earlier years before the current survey proceedings i.e., in the Financial year 2000-2001 (AY 2001 -02) itself and the learned AO had failed to consider the following concrete evidences produced before making the assessment:

a. Acknowledgement of return of income filed for HUF for AY 2001-02; b. Computation of total income of HUF with income from M/s.KRISLTNA JEWELLERY, as proprietor in the capacity of karta, by the appellatant, in the above said year;

c. Income tax Assessment Order issued u/s 154 by the then Income Tax Officer, Ward I, for the same Assessment year 2001 -0.2;

7. While disposing the Appeal preferred by the SATHYANARAYANAN - HUF, the learned CIT(A), Tiruchirapalli, had accepted the profit from the business of KRISHNA JEWELLERY, i.e., the inclusion of such business income in the hands of HUF.

:: 3 ::

8. The learned CIT(A) had failed to consider the Letter issued by the bankers of KRISHNA JEWELLERY regarding the "Ownership status" of the business concern as per the KYC records maintained by them.

9. For these grounds of appeal and additional grounds of appeal that may be adduced at the time of hearing, the order of the learned AO, Ward 1(1), for addition on account "Business income from KRISHNA JEWELLERY" to the tune of Rs.12,17,425/- by rejecting the explanation produced for the Status of the business concern "KRISHNA JEWELLERY", for the AY 2011-12 lacks proper application/computation which prima facie on the grounds of facts available, has to be set aside/negated fully.

3. Brief facts: A survey u/s.133A was carried out on 13.01.2016 in the business premise of Sri Krishna Jewellery, Old No.127, New No.255, Big Bazaar, Thuriayur, Trichy District. During the survey, statement of the assessee was recorded. It is admitted by the assessee that no return of income was filed for the AYs 2011-12 to 2013-14. Even after the survey, the assessee had not filed any return of income. Therefore, the AO issued notice u/s.148 of the Act, after obtaining approval from the Addl.Commissioner of Income Tax. In response to the notice u/s.148 of the Act, the assessee filed his return of income on 22.03.2016. The details of return filed by the assessee are as under:

Assessment Year	Individual AAWPS 7574 F	
	Income returned	Date of filing
2011-12	Rs.12,94,835/-	22.03.2016
2012-13	Rs.12,35,747/-	12.05.2016
2013-14	Rs.12,48,311/-	17.05.2016
2014-15	Rs.5,13,140/-	22.03.2016

4. During the course of assessment proceedings, it was observed that the assessee had not shown profit from Sri Krishna Jewellery. During the survey, as per P & L A/c, there was net profit of Rs.15,03,467/- for Sri Krishna Jewellery. During the survey, in the statement, assessee

:: 4 ::

admitted that he was the Proprietor of the said Sri Krishna Jewellery. However, said income was not shown in the return of income filed by the assessee in response to Notice u/s.148 of the Act. On enquiry by the AO, the assessee explained that the jewellery business belongs to his family HUF and HUF had filed return of income on 21.03.2016. The AO examined the return of income filed by the HUF and found that the net profit of Sri Krishna Jewellery was not shown in the return of income of the HUF also. The AO observed that return of income for HUF was never filed prior to the survey. The so-called return of income of HUF was filed after issue of Notice u/s.148 of the Act, to the assessee. The AO based on the findings of the survey and statement recorded during the course of survey concluded that the net profit of Rs.15,03,467/- of Sri Krishna Jewellery needs to be taxed in the hands of the assessee. Thus, the AO made addition of Rs.15,03,467/-.

5. Aggrieved by the order of the AO, the assessee filed appeals before the Ld.CIT(A)-1, Trichy. The Ld.CIT(A) observed that the assessee had never filed return of income. The Ld.CIT(A) gave the findings that the assessee failed to substantiate his claim that Sri Krishna Jewellery belongs to HUF. Therefore, after discussing the facts, the Ld.CIT(A) upheld the assessment order.

6. Aggrieved by the order of the Ld.CIT(A), the assessee filed these appeals before the Tribunal.

:: 5 ::

The Ld.AR stated that the Ld.CIT(A) has erred in not considering the submissions of the assessee. The Ld.AR specifically said that the assessee was having HUF for many years. The Ld.AR filed a copy of PAN of the HUF. The Ld.AR claimed that the jewellery business was carried by HUF of the assessee and the assessee always acted as Karta of the HUF. The Ld.AR filed a copy of return of income claimed to be filed by the HUF for the AY 2001-02 showing PAN **AAAHM 4540 B**. Therefore, the Ld.AR strongly pleaded that Sri Krishna Jewellery was the business of HUF. The Ld.AR also pleaded that HUF had shown this income in the return of income, which was filed after the survey.

7. On the contrary, the Ld.DR vehemently relied on the orders of the lower authorities. The Ld.DR specifically stated that though the assessee has claimed that the HUF filed return of income for the AY 2001-02 but, after that there is no return of income filed either by the so-called HUF or the assessee. The Ld.DR brought to our notice that the P&L a/c enclosed with the return of income for AY 2001-02, which is a part of paper book filed by the assessee shows Mr.M.P.M. Sathyanarayanan as Proprietor of Sri Krishna Jewellery. Even in the return of income for the AY 2001-02 the assessee was shown as Proprietor of Sri Krishna Jewellery. The Ld.DR categorically stated that the assessee has never filed any return of income.

:: 6 ::

8. FINDINGS :

We have heard both the parties and perused the records. It is an admitted fact that the assessee had never filed return of income for the AYs 2011-12 to 2013-14. It is also a fact that in the statement recorded during the course of survey, the assessee stated that he was the Proprietor of Sri Krishna Jewellery. We specifically asked the Ld.AR to show us the registration done as per Municipal Act and whether the said registration is in the name of individual or HUF. The Ld.AR could not explain whether the business of Sri Krishna Jewellery is registered as Proprietor concern or HUF in the records of the Municipal Authorities. Similar query was raised by the Bench regarding Sales Tax Return. The Ld.AR could not explain us whether any Sales Tax Return has been filed or not and whether Sales Tax registration taken before the Sales Tax Department shows Sri Krishna Jewellery as proprietary concern or HUF ? The Ld.AR could not answer these questions. Thus, not a single document has been filed before us to demonstrate that Sri Krishna Jewellery is a business of HUF. The HUF may be having a PAN but mere having PAN does not mean that the business of Sri Krishna Jewellery is run by the HUF.

8.1. It is important to mention here that the assessee had admitted in his statement recorded during the survey, that the assessee is the Proprietor of Sri Krishna Jewellery. The assessee has not retracted this

:: 7 ::

statement. It means, it is an admitted position by the assessee that the assessee is a Proprietor of Sri Krishna Jewellery. Therefore, on the facts and circumstances of the case, we are of the opinion that the AO has rightly held that the income of Sri Krishna Jewellery shall be taxed in the hands of the assessee as Proprietor of Sri Krishna Jewellery. As per the bank account opening form submitted to Lakshmi Vilas Bank, the assessee Mr.M.P.M.Sathyanarayanan is shown as Proprietor of Sri Krishna Jewellery. As per the bank records, the assessee is the Proprietor of Sri Krishna Jewellery. Similarly, savings bank account in Oriental Bank of Commerce is in the name of individuals and not in HUF. Therefore, on the facts and circumstances of this case, we hold that the assessee Mr.M.P.M.Sathyanarayanan is the Proprietor of Sri Krishna Jewellery. Accordingly, the grounds of appeal filed by the assessee are dismissed for the AY 2011-12.

9. The facts for AY 2011-12 are identical to the facts of AYs 2012-13 to 2013-14. Therefore, our decision for AY 2011-12 mentioned in the earlier paragraphs will apply mutatis mutandis to ITA Nos.2712-2713/Chny/2019 for AYs 2012-13 to 2013-14. Accordingly, appeals in ITA Nos.2712-2713/Chny/2019 for AYs 2012-13 to 2013-14 are dismissed.

10. In the result, the appeals filed by the assessee in ITA Nos.2711-2713/Chny/2019 are dismissed.

:: 8 ::

**ITA Nos.154-157/Chny/2022 for the AYs 2011-12 to 2014-15 -
M.P.M.Sathyanarayanan (HUF)**

11. These appeals filed by the assessee M.P.M.Sathyanarayanan (HUF) are directed against the consolidated orders of the Commissioner of Income Tax (Appeals)-1, Trichy, dated 21.08.2019 and pertains to assessment years 2011-12 to 2014-15, emanating from the assessment orders dated 06.12.2017 passed u/s143(3) r.w.s.147 of the Income Tax Act, 1961.

12. The assessee has raised the following grounds of appeal in ITA No.154/Chny/2022 for the AY 2011-12:

A survey u/s 133A was conducted in the business premises of M/s SHRI KRISHNA JEWELLARY located at Thuraiyur which is a semi urban area in Trichy District. As the appellant did not disclose the existence of HUF at the time of survey, income from Jewellery business is assessed in the hands of Mr MPM SATHYANARAYAN in his individual capacity by the same AO. Subsequently, the learned AO had assessed the income from Jewellery business in the hands of HUF as income figure Rs.12,17,425/- taken from the Financial statements furnished at the time of survey instead of income returned by the appellant as Rs.790652/- and the assessment is completed accordingly without accepting explanations put forth by the appellant.

The appellant is a Hindu AND also a senior citizen aged more than 83 years DOB 15.10.1938 He is living and running Jewellery business at semi urban area called Thuraiyur at Trichy District. During the course of survey proceedings, he gave a statement and stating he is the proprietor of M s SRI KRISHNA JEWELLERY without having any intention to reduce his tax burden on the followings grounds: 1. The appellant is a Hindu and kartha of his family since no partition has taken place since 1984 i e the year of commencement of business 2 Income generated in the Jewellery business of the family the earlier years were returned in the Status of HUF only. The appellant enclosed copy of return of income as proof 3 The appellant could not produce evidence for existence of HUF due to his age and poor health condition. The AO had failed to appreciate the fact that the PAN of HUF was obtained many years before the date of survey and the date of formation of HUF is 01.01.0001 as per the ITD records. So the learned A O is right in treating and assessing income from Jewellery business conducted in the name of M/s SRI KRISHNA JEWELLERY as income-of MPM SATHYANARAYANAN - HUF The appellant's main issue is treating of total income as per Profit and loss account furnished during the survey instead of income as per the return of income filed by the assessee in respect of Jewellery business conducted in the

:: 9 ::

name of M/s SRI KRISHNA JEWELLERY. The exclusive reason for differences in profits mentioned Financial statements seized at the time of survey and actual Profit and loss account submitted in the return of income submitted is adoption of Market value for the purpose of valuation of Closing stock by the Karta and adoption of actual cost as per generally accepted accounting principles for the purpose of computation of income. The appellant's representative explained the reason to the learned AO but in vain. The learned CIT(A) was also not considered the genuine explanation and proof of existence of HUF, as per the IT Department records, in his appellate order. The true view is that while the Assessing Officer is not bound to accept as true any Possible explanations which the assessee may put forth he cannot also arbitrarily reject the assessee's explanations. Vide CIT Vs. Madhavnagar Cotton Mills Ltd 1976 104 ITR 493 Bom For the above and other grounds to be adduced at the time of hearing the additions on account of HUF's income treated as NOT EXPLAINED in the capacity of karta may be deleted and justice rendered.

13. The assessee filed an affidavit with a request to condone the delay.

We find that the delay was mainly due to ill-health of the Karta of (HUF).

Hence, delay in filing of the appeal is condoned.

14. There was a survey in the business of Sri Krishna Jewellery. As per the statement of Mr.M.P.M.Sathyanarayanan, he is the Proprietor of Sri Krishna Jewellery. During the course of assessment proceedings, the assessee claimed that Sri Krishna Jewellery belongs to HUF and filed return of income for HUF. The AO observed that the return of income filed by the HUF had not fully disclosed the income. During the survey, P&L A/c of Sri Krishna Jewellery was found. The HUF had not disclosed the entire profit which was observed during the survey. The difference is as under:

Assessment Year	Income admitted in the return of income	Income as per the P & L A/c furnished during the course of survey
2011-12	790652	1217425
2012-13	773574	1503467
2013-14	671958	1477394
2014-15	513140	715610

:: 10 ::

15. The AO had primarily observed that Sri Krishna Jewellery is proprietary concern of Mr.M.P.M.Sathyanarayanan. The assessee claimed that Sri Krishna Jewellery was a business of HUF. The AO added the amounts on protective basis in the hands of HUF and substantive basis in the hands of the individual M.P.M Sathyanarayanan.

16. The Ld.CIT(A) confirmed the additions in the hands of individual and deleted the additions made on protective basis. Thus, the Ld.CIT(A) has allowed all the appeals of HUF.

17. The Ld.AR and the Ld.DR admitted that the appeals filed by M.P.M.Sathyanarayanan (HUF) before the Ld.CIT(A) had been allowed by the Ld.CIT(A).Therefore, there is no reason for M.P.M.Sathyanarayanan (HUF) to file these appeals before the Tribunal. As per section.253 of the Act, any assessee aggrieved by the orders of Ld.CIT(A) may file the appeals before the Tribunal. In this case, the Ld.CIT(A) deleted the protective assessment. Therefore, there is no reason for the assessee HUF to become aggrieved. Thus, these appeals are not maintainable. Accordingly, the appeal filed by the assessee (HUF) is dismissed for the AY 2011-12. In the earlier para we have already hold that the individual Mr.M P M Sathyanarayanan is the proprietor of the business.

18. The facts for AY 2011-12 are identical to the facts of AYs 2012-13 to 2014-15. Therefore, our decision for AY 2011-12 mentioned in the

:: 11 ::

earlier paragraphs will apply mutatis mutandis to ITA Nos.155-157/Chny/2022 for AYs 2012-13 to 2014-15. Accordingly, appeals in ITA Nos.155-157/Chny/2022 for AYs 2012-13 to 2014-15 are dismissed.

19. In the result, the appeals filed by the assessee in ITA Nos.2711-2713/Chny/2019 & appeals filed by the assessee (HUF) in ITA Nos.154-157/Chny/2022 are dismissed.

Order pronounced on the 26th day of August, 2022, in Chennai.

Sd/-
(महावीर सिंह)
(**MAHAVIR SINGH**)
उपाध्यक्ष/**VICE PRESIDENT**

Sd/-
(डॉ। दीपक पी.रिपोटे)
(**DR. DIPAK P. RIPOTE**)
लेखासदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 26th August, 2022.
TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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