

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' 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**

आयकर अपील सं./ITA No.: 836/Chny/2017
निर्धारण वर्ष / Assessment Year: 2012-13

Smt. Premalatha Ramu, The Income Tax Officer,
No. 33/2, Kalaivanar Colony, v. Non Corporate Ward -7(2),
2nd Street, Anna Nagar West Chennai.
Extension, Chennai – 600 101.

[PAN: AGFPR-4525-C]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. N. Arjun Raj, CA
प्रत्यर्थी की ओर से/Respondent by : Shri. P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 20.10.2022

घोषणा की तारीख/Date of Pronouncement : 02.11.2022

आदेश / O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-7, Chennai, dated 13.03.2017 and pertains to assessment year 2012-13.

2. The grounds raised by the assessee are as follows:

1. The order of The Commissioner of Income Tax (Appeals) 7, Chennai dated 13.03.2017 in I.T.A.No.28/CIT(A)-7/2015-16 for

the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in sustaining the addition of Rs.50 Lakhs representing the unsecured loan after rejecting the explanation offered in para 5.3.1 of the impugned order in the computation of taxable total income without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that the assessment of the unsecured loan based on the said reasons was wrong, erroneous, unjustified, incorrect and not sustainable in law.

4. The CIT (Appeals) failed to appreciate that the evidence filed in support were wrongly construed and further ought to have appreciated that the reasons given for rejection of explanation for the source were not justified.

5. The CIT (Appeals) erred in sustaining the addition of Rs.19,32,780/- as unexplained investment with regard to the transaction with the appellant's husband for the reasons stated in para 6.3 of the impugned order in the computation of taxable total income without assigning proper reasons and justification.

6. The CIT (Appeals) failed to appreciate that the assessment of such sum in the computation of taxable total income was wrong, erroneous, unjustified, incorrect and not sustainable in law.

7. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.

8. The Appellant craves leave to file additional grounds/arguments at the time of hearing."

3. The brief facts of the case are that, the assessee is a proprietor of M/s. Srinivasa Traders, which is engaged in the business of trading in building materials. The assessee had filed her return of income for the assessment year 2012-13 on 04.02.2013, declaring total income of Rs. 4,77,250/-. The case was selected for scrutiny and assessment has been completed u/s. 143(3) of the Income-tax Act, 1961

(hereinafter referred to as "the Act") on 12.03.2015 and determined total income of Rs. 74,10,030/-, after making additions towards unexplained cash credit for unsecured loan amounting to Rs. 50 lakhs and unexplained investments towards unsecured loans given to her husband amounting to Rs. 19,32,780/-. The assessee carried the matter in appeal before the first appellate authority and the Ld. CIT(A) for the reasons stated in their appellate order sustained additions made by the AO.

4. The first issue that came up for consideration from ground no. 2 to 4 of assessee appeal is addition of Rs. 50 lakhs representing the unsecured loan u/s. 68 of the Act. The assessee has shown unsecured loan of Rs. 50 lakhs without specifying any name. The AO called upon the assessee to furnish necessary details of unsecured loan to prove genuineness and creditworthiness. In response, the assessee submitted that unsecured loan shown in the balance sheet is her own capital introduced in the financial year 2007-08 amounting to Rs. 20 lakhs and in financial year 2008-09 amounting to Rs. 30 lakhs. However, by mistake the same has been shown as unsecured loan in the balance sheet. The

assessee claimed that since the transaction was not pertains to this financial year and also explained source out of own capital in the form of jewel loans etc taken and also sale of property, submitted that no addition can be made u/s. 68 of the Act. The AO, however was not convinced with the explanation furnished by the assessee, and according to AO, although the assessee claims to have wrongly shown her own capital as unsecured loan, but said claim is not proved. He, further observed that the assessee claims to have introduced capital in business out of sale proceeds of property. However, on perusal of balance sheet, it was noticed that the assessee has purchased another property out of sale proceeds of her property. Therefore, the claim of assessee that unsecured loan represents own capital and is out of sale of property is not accepted and thus, rejected arguments of the assessee and made addition u/s. 68 of the Act.

5. The Ld. Counsel for the assessee submitted that first of all addition u/s. 68 of the Act, towards unsecured loan received in earlier financial years cannot be made in the impugned assessment year. The Ld. Counsel further submitted that the assessee has explained the discrepancy in

balance sheet as per which unsecured loan represents her own capital introduced in the business and also the assessee has explained source for capital. The AO and CIT(A) without appreciating the facts simply sustained additions.

6. The Ld. Sr. DR for the revenue submitted that the AO has brought out facts to the effect that the assessee has not declared capital gain when the asset was sold. Further, though the loans have been received in earlier financial years, but the same has been unnoticed because the case was not selected for scrutiny and thus, the AO has rightly made additions and their orders should be upheld.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. As regards, the first legal argument of the assessee that for opening balance, additions cannot be made u/s. 68 of the Act, we find that the assessee has not taken this argument before the AO and before the Ld. CIT(A). Therefore, the legal argument taken by the assessee has been rejected. As regards, the claim of the assessee that unsecured loan shown in the balance sheet is her own capital, but due to inadvertent error the same has been shown as loan, we find that right

from the assessment, the assessee has taken a plea that unsecured loan shown in the balance sheet is her own capital. The assessee had also explained source for capital introduced into the business. The AO has rejected explanation furnished by the assessee by misunderstanding explanation furnished by the assessee and made additions. However, he had not denied the claim of the assessee towards source for capital introduced out of sale of her own property and jewel loan taken from banks etc. As regard, observation of the AO with regard to the purchase of another house property, on perusal of balance sheet filed by the assessee, we find that on the liability side the assessee shown unsecured loan and on the asset side, she had shown purchase of property. Therefore, the observation of the AO that she had utilized sale consideration of property for purchase of another property and thus, source is not available for explaining unsecured loan is a misunderstanding or misreading of balance sheet. Therefore, we are of the considered view that the issue needs to be re-examined by the AO, on the claim of the assessee that she had introduced capital into her business out of her own source. Hence, we set aside the issue and direct the AO to re-examine

the claim of the assessee after giving opportunity of hearing to the assessee.

8. The next issue that came for consideration from ground nos. 5 & 6 of assessee's appeal is addition towards unexplained investment with regard to the transaction with the assessee's husband amounting to Rs. 19,32,780/-. The AO has made addition towards unsecured loan claimed by the husband of the assessee Shri. Ramu amounting to Rs. 19,32,780/- on the ground that the amount is not appearing in the balance sheet of the assessee. It was explanation of the assessee before the AO as well as the Ld. CIT(A) that since, the transaction is between husband and wife, no addition can be made and further the assessee has debited loans given to husband in drawings account. Therefore, the same is not reflected in the asset side of the balance sheet.

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The AO has made additions towards unsecured loan given to her husband u/s. 69A of the Act as unexplained investment, on the ground that the assessee has not declared loan given to her husband in her books of accounts and also

could not explain source of loan given to her husband. We find that the assessee has claimed before the AO that the unsecured loan given to her husband is debited in her drawings account for two assessment years. We further noted that the assessee has claimed huge drawings in financial year relevant to assessment year 2012-13. However, the AO has not verified the claim of the assessee. Therefore, we are of the considered view that this issue also needs to go back to the AO for further verification. Hence, we set aside the issue and direct the Assessing Officer to re-examine the claim of the assessee and decide the issue in accordance with law.

10. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the court on 02nd November , 2022 at Chennai.

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)
न्यायिकसदस्य/Judicial Member

Sd/-
(जी. मंजुनाथ)
(G. MANJUNATHA)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 02nd November, 2022

JPV

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 |