

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

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.547/Chny/2021
निर्धारण वर्ष /Assessment Year: 2016-17

Shri J.K.Ramesh Gandhi,
190, Annai Indira Gandhi Salai,
Panruti-607 108.

v. The Dy. Commissioner-
of Income Tax,
Cuddalore Circle,
Income Tax Office,
Soorappa Naicken Chavadi,
Cuddalore-607 002.

[PAN: AMMPR 0026 K]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Mr.Philip George, Adv.
: Mr. AR.V.Sreenivasan,
Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 13.12.2022

घोषणा की तारीख /Date of Pronouncement

: 21.12.2022

आदेश / ORDER

PER G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Puducherry, dated 16.03.2020 and pertains to assessment year 2016-17.

2. At the outset, we find that there is a delay of 486 days in appeal filed by the assessee. During the course of hearing, when defect was brought to the notice of the learned AR present, he has submitted that delay in filing of appeal is mainly due to lockdown imposed by the Govt. on account of

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spread of Covid-19 infections and which needs to be excluded for computing limitation in view of judgment of the Hon'ble Supreme Court in Miscellaneous Petition No.21 of 2022 in **Suo Motu** Writ Petition (C) No.3 of 2020, if the period of delay is covered within the period specified in the order of the Apex Court, then same needs to be condoned in view of specific problem faced by the public on account of Covid-19 pandemic.

2.1 The learned DR, on the other hand, fairly agreed that delay may be condoned in the interest of justice.

2.2 Having heard both sides and considered reasons given by the learned AR, we find that the Hon'ble Supreme Court in Miscellaneous Petition No.21 of 2022 in **Suo Motu** Writ Petition (C) No.3 of 2020, has extended limitation applicable to all proceedings in respect of Courts and Tribunals across the country on account of spread of Covid-19 infections w.e.f. 15.03.2020, till further orders and said general exemption has been extended from time to time. We further noted that delay noticed by the Registry pertains to the period of general exemption provided by the Hon'ble Supreme Court extending limitation period applicable for all proceedings before Courts and Tribunals and thus, considering facts and circumstances of the case and also in the interest of natural justice, we condone delay in filing appeal filed by the assessee.

3. The brief facts of the case are that the assessee is a Proprietor of M/s.JKR Tex. The assessee's wife Smt.S.Deepalakshmi, is a Proprietor of

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M/s.JKR Readymades. Both stores are run in the same business premises. From 01.04.2017, the assessee has converted his proprietorship firm into partnership firm consisting of himself and his wife Smt. S.Deepalakshmi, as partners. The assessee had filed his return of income for the AY 2016-17 on 17.10.2016 declaring total income of Rs.19,83,000/-. A survey u/s.133A of the Act, was conducted in the business premise of the assessee on 04.10.2017. Consequent to survey, the assessment has been re-opened u/s.147 of the Act. In response to the notice u/s.148 of the Act, the assessee has filed return of income for the AY 2015-16 on 18.04.2018 and declared total income of Rs.55,40,190/-, which includes additional income offered on account of unaccounted sales noticed during the course of survey. The case has been taken up for scrutiny and during the course of assessment proceedings, the AO noticed that the assessee has made unaccounted purchases to the tune of Rs.75,67,705/-. The assessee was called upon to explain source for unaccounted purchases, for which, the assessee submitted that income earned on unaccounted sales have been plugged back into the business which is in the form of unaccounted purchases. The assessee has already admitted gross profit on unaccounted sales, and thus, once again, no addition can be made on unaccounted purchases. The AO, however, was not convinced with the explanation furnished by the assessee and according to the AO, the assessee could not submit any evidences to support his claim that unaccounted purchases were made from the income earned through

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unaccounted sales. Therefore, rejected arguments of the assessee and made addition of Rs.75,67,705/- towards unaccounted purchases. The assessee carried the matter in appeal before the First Appellate Authority, but could not succeeded. The Ld.CIT(A) for the reasons stated in their appellate order dated 16.03.2020, sustained the additions made by the AO. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

4. The Ld.AR for the assessee submitted that the Ld.CIT(A) is erred in appreciating the fact that when the assessee has already offered additional income on the basis of gross profit earned on unaccounted sales, once again, no addition can be made towards purchases, because the unaccounted income earned on unaccounted sales, has been plugged back into the business, which is in the form of unaccounted purchases.

5. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that the assessee could not file any evidences to prove that income earned out of unaccounted sales, has been plugged back into the business and thus, the AO has rightly made addition and their orders should be upheld.

6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. A survey u/s.133A of the Act, was conducted in the business premise of the assessee. During the course of survey, unaccounted purchases & unaccounted sales were

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noticed. The assessee had admitted unaccounted purchases & unaccounted sales and also offered gross profit on unaccounted sales as income for the AYs 2015-16 to 2017-18 and filed revised return and also paid taxes. The AO, once again, made addition towards unaccounted purchases on the ground that source was not explained. We do not agree with the reasons given by the AO for the simple reason that when survey team was noticed unaccounted purchases & unaccounted sales and also difference has been treated as unaccounted income of the assessee, then question of making further additions towards unaccounted purchases does not arise. Moreover, it is only net result of unaccounted purchases & unaccounted sales, needs to be taxed. Since, the Department had already taxed profit earned out of unaccounted transactions, the question of making further additions towards unaccounted purchases does not arise. In this case, the facts remain that the assessee has offered additional income of Rs.38,37,921/- for two assessment years towards unaccounted sales, whereas the total unaccounted purchases for the impugned assessment year is Rs.75,67,705/-. Therefore, it is difficult to accept the arguments of the assessee that income earned out of unaccounted sales is plugged back into the business and which is source for unaccounted purchases, because, unaccounted purchases noticed by the Department is more than the amount of additional income offered by the assessee. Therefore, we are of the considered view that the assessee could not able to explain source for unaccounted purchases over and above what was

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disclosed during the course of survey. Hence, to cover up the deficit in source for unaccounted purchases, we direct the AO to estimate 25% of gross profit on unaccounted purchases amounting to Rs.75,67,705/- and delete the balance additions made towards unaccounted purchases.

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

Order pronounced on the 21st day of December, 2022, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 21st December, 2022.

TLN

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

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