आयकर अपीलीय अधिकरण, 'ए ' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' 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.: 1779/Chny/2017**
निर्धारण वर्ष / Assessment Year: 2013-14

The Deputy Commissioner of Income-tax, Central Circle-1, Aayakar Bhavan, 63, Race Course Road, Coimbatore – 641 018.	v.	Shri. N. Muthusamy, N. 75, Syrian Church Road, No.1, Coimbatore – 641 001. **[PAN: AHHPM-7025-M]**
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. R. Mohan Reddy, CIT
प्रत्यर्थी की ओर से/Respondent by : Shri. S. Sridhar, Advocate & Shri. N. Arjunraj, CA

सुनवाई की तारीख/Date of Hearing : 12.12.2022
घोषणा की तारीख/Date of Pronouncement : 04.01.2023

आदेश /O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-18, Chennai, dated 03.04.2017 and pertains to assessment year 2013-14.

2. The Revenue has raised the following grounds of appeal:

"1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law .

2. The ld. CIT(A) erred in deleting the addition of Rs. 1,11,88,324/- made by the AO u/s 69A of the IT Act, 1961, towards unexplained investment in gold and diamond jewellery in the assessment order passed u/s 143(3) of the IT Act, 1961 for AY 2013-14 in the assessee's case.

2.1 The Id. CIT(A) is not justified in allowing relief to the assessee on the ground that the AO has not proved that the money for investing in jewellery had flown from the assessee, when the said jewellery was found in the possession of the assessee, during the course of search action u/s 132 of the IT Act and no evidence, whatsoever was produced by the assessee to explain the sources of the acquisition and ownership of such inspite of ample of opportunity given to him by the AO.

2.2 Having held that if at all any assessment is to be made in respect of investment in jewellery, it should be in the hands of assessee's wife, daughter and daughter in law only, the ld.CIT(A) ought to have appreciated that the assessee could not furnish the details and evidence for acquisition of jewellery by the said family members and as such the Id. CIT(A) ought to have confirmed the assessment order passed u/s 143(3) of the IT Act, 1961 for AY 2013-14 in the assessee's case by the AO.

2.3 Having regard to the fact that the above addition has been made based on information gathered during the search action u/s 132 of the IT Act in this group and during post search operations and in the absence of explanation or material evidence furnished by the assessee, the ld.CIT(A) ought to have upheld the addition made by the AO u/s 69A of the IT Act in the assessment order passed u/s 143(3) of the IT Act, 1961 for AY 2013-14 in the assessee's case.

3. The Id. CIT(A) erred in deleting the addition of Rs. 1,24,40,000/- made by the AO u/s 69C of the IT Act, 1961, towards unexplained expenditure in the assessment order passed u/s 143(3) of the IT Act, 1961 for AY 2013-14 in the assessee's case.

3.1 The ld. CIT(A) is not justified in allowing relief to the assessee on the ground that the AO had accepted the receipt of loan but not the repayment, when no evidence, whatsoever was produced by the assessee to explain the sources for repayment of loan inspite of ample of opportunity given to him by the AO.

3.2 Having held that the amount received for the purpose of purchasing land from CSI Church which did not materialize and hence the assessee repaid the said loan, the ld. CIT(A) ought have appreciated that the completion of purchase of land from CSI chruch and Sri. Albert was confirmed by both the assessee and the sale deeds produced by the assessee and as such the repayment of loan is another transaction, the source for which is required to be explained separately.

3.3 Having regard to the fact that the addition has been made based on information gathered during the search action u/s 132 of the IT Act in this group and during post search operations and in the absence of explanation or material evidence furnished by the assessee, the ld.CIT(A) ought to have upheld the addition made by the AO u/s 69C of the IT Act in the assessment order passed u/s 143(3) of the IT Act, 1961 for AY 2013-14 in the assessee's case.

4. The Id. CIT(A) erred in deleting the addition of Rs.37,43,000/- made by the AO u/s 69B of the IT Act, 1961, towards unexplained expenditure in the assessment order passed u/s 143(3) of the IT Act, 1961 for AY 2013-14 in the assessee's case.

4.1 Having held that the AO has wrongly taken the consideration received for sale of lands at Maniyamkaliappa street and flower market at Rs.68 lakh and Rs.55 lakh instead of Rs.90 lakh and Rs.143 lakhs respectively and that if this is considered there will be an excess cash vailability to the tune of Rs.77,44,000/-, the ld.CIT(A) ought to have appreciated that sale consideration adopted by the AO were taken from the amounts admitted by the assessee, for the purpose of working out capital gains in his letter dated 24.03.2015 submitted during the course of assessment proceedings for A.Y 2013-14.

4.2 Having allowed relief to the assessee on the basis of the claim of the· assessee that if the higher consideration for

the sale of Maniyamkaliappa street and flower market properties is considered then there could be excess funds availability, the Id. CIT(A) ought to have specified the documents furnished by the assessee before him and since these documents were not available to the AO at the time of assessment proceedings, the ld.CIT(A) ought to have given an opportunity to the AO to verify the said documents as envisaged in Rule 46A of the IT Rules 1962.

5. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored."

3. The brief facts of the case are that the appellant, Shri. N. Muthusamy is a dealer in real estate and also engaged in liaison work of land disputes, approval etc. The appellant is also the managing director of M/s. Ishan Foundation Pvt Ltd, a company engaged in the business of property developer and design consultant. A search action u/s. 132 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was conducted in the case of the appellant and during the course of search, details of unaccounted income/unexplained investments were noticed. During the financial years relevant to assessment years 2012-13 & 2013-14, the appellant along with his son has purchased a property at Coimbatore for a consideration of Rs. 9.26 crores, which includes a sum of Rs. 4.7 crores on money

payment. The assessee was called upon to explain source for purchase of property and in response, the assessee has admitted undisclosed income towards on money payment for purchase of property and also disclosed undisclosed income and paid relevant taxes for assessment year 2013-14. Consequent to search, the assessment has been completed u/s. 143(3) of the Act on 31.03.2015, and determined total income of Rs. 5,61,29,680/-, by making additions towards unexplained investment in purchase of property, unexplained expenditure u/s. 69C of the Act towards repayment of loan, unexplained investment in jewellery u/s. 69A of the Act. The assessee carried the matter in appeal before the first appellant authority and the ld. CIT(A), for the reasons stated in their appellant order dated 03.04.2017, deleted additions made by the AO towards unexplained expenditure, unexplained investment etc. Aggrieved by the Ld. CIT(A) order, the revenue is in appeal before us.

4. The first issue that came up for our consideration from ground no. 2 to 2.3 of revenue appeal is deletion of addition towards unexplained jewellery amounting to Rs.1,11,88,324/-.

During the course of search 3235.620 grams of gold jewellery and 78.75 carats of Diamond were found. In the course of search proceeding, the appellant claimed that 1026.370 gms of gold jewellery and 24.78 carat of Diamonds belongs to his daughter-in-law, Smt. V. Alice, wife of M. Vasanthraj and she had received jewellery during her marriage. The appellant has explained that 1163.800 gms of jewellery and 22.70 carat of Diamonds belongs to his wife and also explained that she had received part of jewellery during her marriage in 1979 and also purchased remaining part of jewellery from past several years. The appellant had also explained 1045.450 gms of gold jewellery and 31.27 carat of Diamonds belongs to his daughter Smt. S. Muthulakshmi, who is working as a Scientific Officer in UK, and for remaining jewellery, the appellant had agreed to offer additional income of Rs. 35 lakhs and also declared a sum of Rs. 25 lakhs in the return of income and paid relevant tax and for balance amount of Rs. 10 lakhs, the AO had made addition during assessment proceeding and the appellant had accepted. The AO had made addition towards jewellery on the ground that, the assessee could not file necessary evidences including bills for purchase of jewellery and also wealth tax

returns of family members to prove that jewellery belongs to them.

5. The Ld. DR, submitted that the Ld. CIT(A) has erred in deleting addition towards jewellery found during the course of search u/s. 69A of the Act, without appreciating fact that the assessee could not prove the source of money for purchase of jewellery and also could not furnish necessary wealth tax returns of family members to justify his claim that jewellery found during the course of search belongs to his family members.

6. The Ld. Counsel for the assessee, on the other hand supporting the order of the CIT(A) submitted that, right from the date of search, the assessee claimed that jewellery belongs to his wife, daughter-in-law and daughter. Even during assessment proceedings, the assessee has admitted that jewellery belongs to his family members and the same was found in respective bed rooms and also separately inventorised. The family members have accepted before the AO that the jewellery belongs to them. Therefore, merely for

the reason that there are no bills for purchase of jewellery and the family members had not filed wealth tax returns, no addition can be made ignoring the fact that none of the family members are liable to file wealth tax returns because of taxable wealth below the prescribed limit.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that, the jewellery found during the course of search was separately inventorised, because the same was found in the premises of respective family members. It is also not in dispute that right from the date of search and till completion of assessment, the appellant had taken one stand that jewellery found during the course of search belongs to his family members. In fact, the family members have accepted the statement made by the appellant and also agreed that the jewellery is owned by them, but not the assessee. The appellant had also explained how the family members have acquired the jewellery. In most of the cases, he claimed that jewellery has been received on the occasion of their marriages and also part of jewellery was

purchased for many years. The AO never disputed these facts, but went on to make addition only for the simple reason that the assessee could not file any evidence to justify the purchase of jewellery by the family members including wealth tax returns filed for the relevant assessment years.

8. We find that once the appellant disowned jewellery found during the course of search, it does not belong to him and also the statement of the appellant has been accepted by the family members, then if at all the family members could not explain source for purchase of jewellery, the AO can make addition only in the hands of the family members, but not in the hands of the appellant. Further, when the family members explained the mode and method of acquiring jewellery, the AO cannot disbelieve the statement of the assessee merely for the reason that the assessee could not furnish necessary evidence, because it is customary in Indian society, during marriages ladies will get substantial amount of jewellery from their parents as marriage gift. Further, the family members had also claimed that they have purchased part of jewellery for many years. No doubt, the appellant could not furnish

necessary bills, but fact remains that when the appellant claims that jewellery was purchased for many years, the AO cannot insist bills for purchase of jewellery. Further, the family members claimed that they did not file wealth tax returns because taxable wealth in their hands for all these assessment years is below taxable limit. Therefore, merely for the reason that there is no wealth tax returns filed by the family members no adverse inference could be drawn against the assessee. Moreover, the appellant had admitted a sum of Rs. 35 lakhs towards unexplained jewellery. The Ld. CIT(A) after considering relevant facts has rightly deleted addition towards unexplained jewellery and thus, we are inclined to uphold the findings of the Ld. CIT(A) and reject the ground taken by the revenue.

9. The next issue that came up for our consideration from ground no 3 to 3.3 of revenue appeal is deletion of addition of Rs. 1,25,40,000/- as unexplained expenditure u/s. 69C of the Act. During the course of search, a loose sheet marked as page no. 19 & 20 of Annexure NM/ASD/LS/S-3 was seized and inventorised. During the course of search, those loose sheets

was confronted with the assessee and called upon to explain, for which the appellant stated that the jotting in loose sheets was loan borrowed from his friend Shri Shanmugasundaram of Mysore, amounting to Rs. 30 lakhs and Rs. 94,40,000/-, and the same has been repaid over a period of time. The AO made addition towards jotting found in loose sheet as unexplained expenditure on the ground that the assessee could not prove the source for repayment of loan.

10. The Ld. DR, submitted that the Ld. CIT(A) has erred in deleting addition made towards unexplained expenditure u/s. 69C of the Act amounting to Rs. 1,24,40,000/-, without appreciating fact that the assessee could not explain the source for repayment of loan inspite of ample opportunities given to him by the AO. The Ld. CIT(A) failed to appreciate the fact that the assessee claimed to have taken loan from his friend for purchase of property, but it did not materialized and hence, the same has been repaid to his friend. However, no source has been explained for repayment of loan.

11. The Ld. Counsel for the assessee, on the other hand submitted that when the AO has made addition towards unexplained investment in purchase of property without considering the loan as source, then the question of making addition towards source for repayment of loan does not arise. If the AO is intend to make addition towards repayment, then he ought to have considered loan taken by the assessee as source. If loan taken from Shri. Shanmugasundaram has been taken as source, then the assessee is having enough source to repay said loan and the question of making further addition does not arise.

12. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The AO has made addition towards unexplained expenditure on the basis of jotting of loose sheet found during the course of search. According to the Assessing Officer, jottings contained in loose sheets represent repayment of loan to Shri. Shanmugasundaram of Mysore, for which the assessee could not explain source of income. It was the explanation of the assessee before the AO that, he received loan from his

friend for purchase of land, which did not materialized and thus, the same has been repaid. If you consider the loan received from his friend as source, then the question of making addition towards repayment of said loan does not arise. We find that the AO has denied the explanation of the assessee with regard to the acceptance of loan from his friend Shri. Shanmugasundaram, whereas he has made addition towards repayment of very same loan on the ground that the appellant could not explain source for repayment. In our considered view, first of all addition cannot be made on the basis of jottings in loose sheet, unless other corroborative evidence to prove that whatever recorded in loose sheet are correct. Secondly, when the AO treated repayment of loan to his friend as unexplained, he ought to have accepted the explanation of the assessee that he had borrowed loan from his friend. He cannot reject loan borrowed from the friend and at the same time, cannot make addition towards source for repayment of loan. If there is no loan from the friend then the question of repayment of said loan does not arise. If you consider loan taken from his friend is true and correct, then the assessee is having source with him to explain repayment

of said loan to his friend. The Ld. CIT(A) after considering relevant facts had rightly held that the AO cannot ignore loan borrowed from his friend and make addition towards repayment of said loan. Therefore, we are of the considered view that there is no error in the reasons given by the CIT(A) to delete addition made towards unexplained expenditure towards repayment of loan to Shri Shanmugasundaram of Mysore and thus, we are inclined to uphold the findings of the Ld. CIT(A) and reject the ground taken by the revenue.

13. The next issue that came up for our consideration from ground no. 4 to 4.2 of revenue appeal is deletion of addition of Rs. 37,43,000/- towards unexplained investment u/s. 69B of the Act for purchase of property. The Ld. Counsel for the assessee and the ld. DR present for the revenue fairly agreed that, the assessee has settled the dispute with regard to addition on account of unexplained investment amounting to Rs. 37,43,000/- under the Direct Tax Vivad Se Vishwas Scheme, 2020 and paid relevant taxes and in this regard, he has filed Form no. 5 issued by the designated authority. Therefore, we are of the considered view that the ground

taken by the revenue on this issue becomes infructuous and thus, ground no. 4 to 4.2 of revenue appeal has been dismissed as infructuous.

14. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the court on 04th January, 2023 at Chennai.

Sd/-	**Sd/-**
(वी दुर्गा राव)	(जी. मंजुनाथ)
(V. DURGA RAO)	**(G. MANJUNATHA)**
न्यायिकसदस्य/**Judicial Member**	लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,
दिनांक/Dated: 04th January, 2023
JPV

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