

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. Nos.180/Chny/2019 & 604/Chny/2020
निर्धारण वर्ष/Assessment Years: 2015-16 & 2016-17

Shri Ashok Kumar,
No. 65, Nattu Pillaiyar Koil Street,
Chennai 600 001

Vs. The Assistant Commissioner of
Income Tax,
Non Corporate Circle 11(1),
Chennai 600 034.

[PAN:AAFPA9236P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri D. Anand, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri D. Hema Bhupal, JCIT
सुनवाई की तारीख/ Date of hearing : 09.02.2023
घोषणा की तारीख /Date of Pronouncement : 28.02.2023

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

Both the appeals filed by the assessee are directed against separate orders of the Id. Commissioner of Income Tax (Appeals) 13, Chennai dated 03.08.2018 and 19.02.2020 relevant to the assessment years 2015-16 and 2016-17 respectively.

2. The appeal filed by the assessee for the assessment year 2015-16 is delayed by 71 days in filing the appeal, for which, the assessee has filed a petition for condonation of the delay in the form of an affidavit, to

which; the Id. DR has not raised any serious objection. Consequently, since the assessee was prevented by sufficient cause, the delay of 71 days in filing of the appeal stands condoned and the appeal is admitted for adjudication.

3. Facts are, in brief, that the assessee is an individual, engaged in the business of pawn broking and filed his return of income on 28.02.2017 for the assessment year 2016-17 declaring a total income of ₹.19,85,850/-. The return filed by the assessee was processed under section 143(1) of the Income Tax Act, 1961 ["Act" in short] and thereafter the case of the assessee was taken up for scrutiny and notice under section 143(2) of the Act was issued to the assessee. After following due procedure, the assessment was completed under section 143(3) of the Act dated 28.12.2018.

4. In the assessment order, the Assessing Officer has noted that as per the ITS details, during the FY 2015-16, the assessee made cash deposit of ₹.2,15,17,800/- in his SB account with M/s. South Indian Bank Ltd., Kellys. On examination of bank pass book, the Assessing Officer found that the total of cash credits for the period from 20.06.2015 to 31.03.2016 was ₹.2,15,17,800/ -. Out of this, the bank has reversed four cash deposits of ₹.16,05,000/- made on 29.06.2015 for the reason that

these cash deposits had been made twice. Thus, the cash deposits in the assessee's SB account for the financial year 2015-16 comes to ₹.1,99,12,800/-. The Assessing Officer has further noted that the assessee also had another SB account with M/s. Catholic Syrian Bank Ltd., Purasawalkam Branch. On examination of this SB account, the Assessing Officer has noticed that there were cash deposits for an amount of ₹.99,63,691/- during the financial year 2015-16.

5. As the assessee has to explain the source for the said cash deposits, the Assessing Officer had issued a letter dated 17.12.2018 requesting the assessee to appear before him on 26.12.2018 and to explain the nature and source for the cash deposits appearing in the said SB accounts on 26.12.2018. The assessee filed his letter dated 22.12.2018 and the Assessing Officer, after considering the reply, he has noted that since the assessee failed to explain the nature and source for the above cash deposits with evidence, the cash deposits appearing in said SB account amounting to ₹.2,98,76,491/- were treated as the assessee's income from unexplained sources and added the same to the income admitted. The Assessing Officer has also noticed that for assessment year 2015-16, the cash deposits of ₹.76,06,639/- were added as unexplained. Since these cash deposits were treated as unexplained

in the assessee's hands, for the financial year 2014-15, these cash deposits should be telescoped against the cash deposits made during the financial year 2015-16. Accordingly, the cash deposits added in the financial year 2014-15 are treated as available to the assessee for making cash deposits in the financial year 2015-16 and the amount of cash deposits are reduced from the amount of cash deposits added in this year. After telescoping the cash deposits, the Assessing Officer has treated the net cash deposits as unexplained in the financial year 2015-16 which comes to ₹.2,22,69,852/- and this amount was added to the income admitted. The Assessing Officer has further noted that regarding the assessee's claim of cash availability in respect of rent receipts amounting to ₹.18,71,250/- it is to be stated that this cash was not available to the assessee at any particular point of time. The assessee did not substantiate that the cash representing rental receipt was indeed deposited into his bank account. Hence, the Assessing Officer has rejected the cash availability in respect of rent and the assessment was completed under section 143(3) of the Act dated 28.12.2018.

6. On appeal before the Id. CIT(A), the submissions of the assessee are reproduced as under:

“The appellant engaged in the business of pawn broking is also earning rental income from let out properties which was duly admitted in the return of income and had duly provided the bank statements, loan statements and the

pawn broking pledge and release book during the assessment proceedings and had accumulated cash from various sources during the relevant assessment year which was deposited in the bank account. The appellant's pledge business is majorly financed through banks, where the bank itself disbursed the loan amount in cash to the appellant which was subsequently handed over to his client. Even at the time of redemption the client gives cash to close the loan which is deposited in the bank account to close the ultimate loan with the bank. Thus there was substantial cash transactions during the year.

The appellant further averred that:

'The Ld. AO failed to appreciate the bank jewel loan book which had the complete record of the transactions with respect to pledge and redemption of jewels and that the appellant had duly offered the interest income earned from the pledge business to tax during the relevant assessment year, which was accepted. The ld. AR erred in taxing the pledge turnover of the appellant without understanding the fact that income tax can only levied on the net income and not the gross income. The Ld. AO also failed in appreciating the departmental survey report before completing the assessment for the relevant AY. During the survey proceedings the appellant tract duty stated about the mode of operations of his pawn braking business which was duly verified and accepted and that not acknowledging the cash rental income which was also a source for the cash accumulation during the relevant AY and arbitrarily rejected the same when the let out property was not disputed.'

The Id. CIT(A), by considering the explanation of the assessee, observed that the assessee has explained before the Assessing Officer as well as the Id. CIT(A) that he made general submission of nature of pawn broking business and how he carried the business and he has not explained the source of cash deposits and he has not been able to explain with supporting evidences towards cash deposits in bank account. Therefore, the Id. CIT(A) also considered the entire amount deposited in his bank account as unexplained investment and confirmed the order of the Assessing Officer.

7. On being aggrieved, the assessee is in appeal before the Tribunal for both the assessment years 2015-16 and 2016-17. The Id. Counsel for the assessee has filed details of bank transaction and also balance sheet, explaining the source of cash deposit into his bank account.

8. On the other hand, the Id. DR strongly supported the orders of authorities below and submitted that the assessee has not filed any details before the Assessing Officer or before the Id. CIT(A). The details filed before the Tribunal are only fresh material and therefore, the Id. DR has submitted that the same may not be considered at this stage.

9. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The issue involved in both the appeals is with regard to the cash deposits into SB account of the assessee. According to the assessee, the deposits are only business deposits relating to business and to substantiate his case, he filed bank statement, though these details are not filed before the authorities below. We find that these materials are very much necessary to decide the issue involved in this appeal. Thus, we considered the same and remit the matter back to the file of the Assessing Officer to consider the same. Thus, we direct the Assessing Officer to verify the details as may be filed by the assessee and to pass fresh assessment order in

accordance with law after affording reasonable opportunity of being heard to the assessee. In view of the above, we set aside the order of the Id. CIT(A) for both the assessment years 2015-16 and 2016-17. Thus, the ground raised by the assessee is allowed for statistical purposes.

10. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on 28th February, 2023 at Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 28.02.2023

Vm/-

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.