

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री मंजूनाथा .जी, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.49 to 51/Chny/2021
निर्धारण वर्ष /Assessment Years: 2016-17 to 2018-19

M/s.Sri Periyapalayathamman-
Finance,
No.69A, Carpenter Street,
Nellithope,
Pondicherry-605 005.
[PAN: AAHFS 5929 H]
(अपीलार्थी/ Appellant)

v. The Dy. Commissioner-
of Income Tax,
Central Circle-1(3),
Chennai.
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.Kathir, Advocate
प्रत्यर्थी की ओर से /Respondent by : Mr.M.Rajan, CIT
सुनवाई की तारीख/Date of Hearing : 22.03.2023
घोषणा की तारीख /Date of Pronouncement : 24.03.2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

These three (3) appeals filed by the assessee are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals)-18, Chennai, dated 31.12.2020 and pertains to assessment years 2016-17 to 2018-19.

ITA No.49/Chny/2021 for the AY 2016-17:

2. Since both the parties agrees that the issue permeating in both the years are identical, therefore, both are disposed off together. Appeal of AY

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2016-17 is taken as the lead year and the result of which will apply *mutatis mutandis* to AY 2017-18.

3. The only ground raised by the assessee is against the action of the Ld.CIT(A) upholding the disallowance of the expenses to the tune of Rs.6,36,640/- in respect of its earning from the activity of chit. The brief facts of the case are that the assessee is a partnership Firm, engaged in the business of financing and running of chit for the last ten years. The assessee filed return of income for the AY 2016-17 on 21.11.2016 declaring income of Rs.71,690/- which has been processed on 09.12.2016 u/s.143(1) of the Income Tax Act, 1961 (hereinafter "the Act"). Thereafter, a search and seizure operation u/s.132 of the Act, was conducted on assessee's premise on 22.09.2017; and thereafter, the AO issued notice u/s.153A of the Act. Pursuant to which, the assessee filed the return of income admitting total income of Rs.1,10,050/-. The AO noted that the assessee was earning income on account of *foreman commission* on chits which according to him has not been declared by the assessee in the original return of income filed u/s.139(1) of the Act. When confronted with this issue, the assessee filed a letter dated 06.03.2018 which showed working of year wise foreman commission, wherein, it admitted an amount of Rs.6,75,000/- on account of foreman commission for the year under consideration, wherein, the assessee claimed expenditure of Rs.6,36,640/- and showed net amount of Rs.38,360/- as the earning from chit. The AO not being satisfied, issued show cause notice to the assessee '*as to why*'

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the expenditure of Rs.6,36,640/- should not be disallowed/brought to tax. The assessee replied that since *finance* was its primary business and from chit, assessee only earned foreman commission, it offered only the net amount (after expenses) under the head 'other income'. Therefore, according to the assessee, even though, the gross receipt of foreman commission was to the tune of Rs.6,75,000/- after deducting the expenses to the tune of Rs.6,36,640/-, the assessee has shown net commission amount of Rs.38,360/- on account of running chits and for buttressing this contention, referred to the *sworn-statement* given during the search proceedings that the income from chit was offered to tax, after meeting of overhead expenses including defaulted amount, etc. The AO was not satisfied with the reply of the assessee. According to him, during the search documents evidencing the receipt of foreman commission was found and seized; and based on which, the assessee was questioned about the quantum received in respect of foreman commission which details were given later by the assessee and it shows that the assessee received Rs.6,75,000/- as foreman commission. But, according to the AO, there was no evidence regarding expenditure claimed by the assessee either from any materials recovered during the search or after the search. Therefore, in the absence of any evidence to support the expenditure claimed by the assessee and taking note that the assessee had already filed the return of income on 21.11.2016 (i.e. before the search which took place on 22.09.2017), the AO presumed that the assessee might have booked the

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expenditure in respect of running of chits while filing the original return of income. Therefore, according to the AO, claim of additional expenditure regarding chit commission was made only with a purpose to retract the admission made during the search that it received foreman commission to the tune of Rs.6,75,000/-. Therefore, he disallowed the claim of expenditure of Rs.6,36,640/- and brought it to tax. This action of the AO was challenged by the assessee before the Ld.CIT(A) who was pleased to confirm the same by holding as under:

8. I have gone through the facts of the case of the appellant, materials available on records and the written submissions of the appellant. The appellant in his return of income u/s.139(1) had shown Rs.62,730 as miscellaneous income apart from the interest on loan of Rs.18,67,715. After deducting expenditure worked out his income as Rs.9,89,424.50. The appellant, as mentioned by the AO has admitted Rs.6,75,000 as his additional income on account of foreman commission. The appellant in his return of income u/s.153A, however, had shown miscellaneous income of Rs.6,75,000 [including Rs.62,730 shown earlier] and had claimed-chit division expenses of Rs.2,60,000 towards defaulters and Rs.3,13,910 towards salary and TA allowances. The Assessing Officer has added Rs.6,36,640 [Rs.2,60,000 plus Rs.3,13,910 plus Rs.62,730] on the ground that no evidence for the impugned expenses were recovered during the search and subsequently during the assessment proceedings. The onus is on the appellant to demonstrate the impugned expenditure has been incurred wholly and exclusively for the purpose of business both with reference to the quantum of expenditure and the purpose of having incurred the expenditure. As the appellant has failed to discharge his onus, the fresh claim of expenditure is disallowed and the appellant has not justified in not offering the entire Rs.6,75,000 over and above the earlier miscellaneous income of Rs.62,730. Therefore, I am of the view that there is no infirmity in the decision of the AO. Accordingly, the appellant's ground is dismissed.

4. Aggrieved, the assessee is before us.

5. We have heard both the parties and perused the records. The sole issue is regarding the disallowance of expenditure claimed by the assessee to the tune of Rs.6,36,640/- (Rs.2,60,000/- on account of defaulters, Rs.13,910/- towards salary and Travelling Allowances plus Rs.62,730/- shown by the assessee as miscellaneous income in the original assessment)

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on the ground that no evidences for the expenses claimed could neither be found/unearthed during search nor produced by the assessee during re-assessment proceedings u/s.153A of the Act. It is elementary that when expenditure is claimed, the assessee has to support the same with material/evidence that such an expenditure it incurred; and show that the expenditure has been incurred wholly and exclusively for the purpose of business. Having failed to produce any material/evidences to support the claim of expenditure, the action of the Ld.CIT(A) to confirm the action of the AO cannot be faulted. Even though, the Ld.AR asserted that the assessee's stand on this issue at the inception itself was that finance business was its primary business and it showed as miscellaneous income foreman commission from chits, wherein it reflected only the *net* income [*i.e, after deducting overhead expenses which included default money, salary, etc*]. According to the Ld.AR, the cash book was seized during the search, from which, it could be discerned that the expenditure claimed of Rs.6,63,640/- was incurred by the assessee for running of chits. Be that as it may, however, before us assessee has neither kept the copy of the cash book found/seized during the search in the form of Paper Book nor the assessee filed any materials/evidences to substantiate the expenditure claimed by the assessee to the tune of Rs.6,36,640/- other than the oral assertion as noted supra. In the absence of any relevant evidence or material to support the expenditure claimed by the assessee, the impugned

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action of the Ld.CIT(A)/AO cannot be held to be perverse and therefore, upheld.

6. In the result, appeal filed by the assessee in ITA No.49/Chny/2021 for the AY 2016-17 stands dismissed.

ITA No.50/Chny/2021 for the AY 2017-18:

7. Since, the facts permeating AY 2017-18 are identical except the expenses claimed to the tune of Rs.7,40,640/- regarding foreman commission, on similar reasoning, we confirm the action of the Ld.CIT(A) and dismiss the appeal filed by the assessee.

8. In the result, appeal filed by the assessee in ITA No.50/Chny/2021 for the AY 2017-18 stands dismissed.

ITA No.51/Chny/2021 for the AY 2018-19:

9. In this appeal, the assessee has raised grounds of appeal against the action of the Commissioner of Income Tax(Appeals)-18 dated 31.12.2020 for the AY 2018-19.

10. Ground No.2 is against the action of the Ld.CIT(A) confirming the disallowance of Rs.4,02,924/- as expenditure by giving only partial relief of Rs.7,96,896/- (Rs.11,99,820/- minus Rs.4,02,924/-). This assessment year i.e. AY 2018-19 is the searched assessment year, since search was conducted on 22.09.2017. The AO noted that the assessee had shown to have earned foreman commission as on the date of search Rs.9 lakhs and

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thereafter till 31.03.2018 it earned Rs.4,50,000/- (Total Rs.13,50,000/-). However, the assessee offered only income from chits to the tune of Rs.1,50,180/-. According to the AO, the expenditure to the tune of Rs.11,99,820/- is not proved by any evidences; and the AO also took note of certain facts *viz.*, that assessee in earlier year (AY 2017-18), earned interest on loan to the tune of Rs.19,46,735/-, whereas, during the current year, interest on loan offered was only to the tune of Rs.6,95,000/-, because, the loans outstanding at the end of the previous year was to the tune of Rs.70,52,000/-, whereas, loan outstanding at the end of the current year was to the tune of Rs.19,46,290/-; and also he took note of the expenditure of the earlier year i.e. AY 2017-18 and of this year and noted that assessee claimed excess expenditure of Rs.2,40,000/-. Taking all these facts in to consideration, the AO disallowed the expenditure of Rs.11,99,820/-.

10.1. Aggrieved the assessee preferred an appeal before the Ld.CIT(A), who gave partial relief to the assessee confirming only Rs.4,02,924/- [out of the AO's disallowance of Rs.11,99,820/-] and thus gave relief to the tune of Rs.7,96,896/-. Still not satisfied, the assessee is before us.

10.2. We have heard both the parties and perused the records. We find that the search took place on 27 September, 2017 and the assessee had not computed its income up to 31st March, 2018. Taking this fact into account, the Ld.CIT(A) has allowed the expenditure partly to the tune of

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Rs.7,96,896/- and thus, confirmed disallowance of only Rs.4,02,924/-. The dispute is regarding the expenditure claimed for running of chits and the Ld.CIT(A) have allowed Rs.7,96,896/- out of Rs.11,99,820/- claimed by the assessee for earning an income of Rs.1,50,180/-. Before us, the assessee has not brought any relevant evidence/material to support the expenditure claimed to have been made by the assessee. Since there is no material to support the claim of expenditure, we find the action of the Ld.CIT(A) to allow Rs.7,96,896/- as reasonable and so confirm the action of the Ld.CIT(A) and dismiss the Ground No.2 raised by the assessee.

11. Ground No.3 of the assessee is against the action of the Ld.CIT(A) upholding the addition of Rs.46,86,610/- as unexplained out of cash found during search of Rs.88,16,110/-. The AO on this issue noted that no books of accounts are maintained by the firm. The assessee when asked by the AO to explain source of cash found/seized from the premise explained source to the tune of Rs.46,86,610/- as given below:

| | | | |
|--------------|---------------------------------------|------------|------------------|
| 1 | Opening Balance | Rs. | 45,310 |
| 2 | Cash admitted as miscellaneous income | Rs. | 5,22,270 |
| 3 | Agricultural Income | Rs. | 2,94,030 |
| 4 | Chit commission | Rs. | 9,00,000 |
| 5 | Interest receipts | Rs. | 3,80,000 |
| 6 | Payments made to bidders of chits | Rs. | |
| Total | | Rs. | 25,45,000 |

11.1 The AO after verification of the supporting documents/evidences accepted the aforesaid source of cash, and balance was added as unexplained u/s.69A of the Act to the tune of Rs.41,29,500/-, and brought to tax as per sec.115BBE of the Act.

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11.2 Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who was pleased to confirm the same. Aggrieved, the assessee is before us.

11.3 We have heard both the parties and perused the records. We note that Rs.88,16,110/- was found from the premise of the assessee during search; and as per the AO, the assessee was able to explain only source of Rs.46,86,610/- (supra). Therefore, the balance amount of Rs.41,29,500/- was added as unexplained u/s.69A of the Act, which has been confirmed by the Ld.CIT(A). Before us, the Ld.AR of the assessee, drew our attention to Page No.42 of the Paper Book, which is the copy of the sworn statement of the assessee (*managing partner of assessee's firm recorded on 27.10.2017*), and took our attention to Q.No.4 regarding source of cash found at the time of search, the Managing Partner of assessee has answered as seen at Page No.44 & 45 of the Paper Book which reads as under:-

| | |
|---|--------------|
| (2) Loan recovered from 01.04.2017 to 10.09.2018 (as we are now reconciling the cash book, we will produce the cash book within a week) | Rs.74,49,000 |
|---|--------------|

According to the Ld.AR, this crucial fact/source has been missed by the AO and the Ld.CIT(A), even though, the statement was recorded immediately (within a month) from the date of search. The Ld.AR of the assessee pointed out that the AO/the Ld.CIT(A) ignored the vital/relevant statement and did not bother to give any reason as why they omitted to take into consideration this fact (*source of Rs.74,49,000/- as loan*

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recovered from debtors). In this regard, we note that the AO himself in the assessment order at Page No.2, Para No.2.1 has taken note of certain/relevant facts and observed as under:

"...During the earlier year, the assessee has offered interest on loan to the tune of Rs.,19,46,735/- whereas during the current year, the interest on loan offered is only Rs.6,95,000/-. The obvious reason for this is that the loans outstanding at the end of the previous year is Rs.70,52,000/- whereas the loans outstanding at the end of the current year is Rs.19,46,290/-. From this, it is seen that the business of the assessee has drastically come down during the year...".[Emphasis given by us]

11.4 From a perusal of the above facts as noted by the AO in the assessment order, we are of the view that the assessee's assertion that he had some loan received in his hands from 01.04.2017 to date of search, cannot be brushed aside, which fact need to be examined/verified. Since this fact has not been looked into by the AO/the Ld.CIT(A), the assessee has pleaded to restore this issue back to the file of the AO. Having taken note of the sworn statement of assessee about amount of loans returned back to it as well as AO's findings recorded (supra), we set aside the impugned order of the Ld.CIT(A) and restore the matter back to the file of the AO for examination/verification of this assertion made by the assessee that on the date of search it had in its hand, returned loan amount of Rs.74 lakhs which fact according to the assessee would explain for the balance amount of Rs.41,29,500/-. The AO to pass order on this issue after considering the discussion made (supra) in accordance to law after giving proper opportunity to the assessee.

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12. In the result, appeal filed by the assessee in ITA No.51/Chny/2021 for the AY 2018-19 is allowed for statistical purposes.

13. In the result, appeal filed by the assessee in ITA No.49/Chny/2021 for the AY 2016-17 and appeal filed by the assessee in ITA No.50/Chny/2021 for the AY 2017-18 stands dismissed and appeal filed by the assessee in ITA No.51/Chny/2021 for the AY 2018-19 is allowed for statistical purposes

Order pronounced on the 24th day of March, 2023, in Chennai.

Sd/-
(मंजूनाथा.जी)

(MANJUNATHA.G)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 24th March, 2023.

TLN

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF