

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

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं  
श्री मंजूनाथा.जी, माननीय लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND**  
**SHRI MANJUNATHA.G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.672/Chny/2022  
निर्धारण वर्ष /Assessment Year: 2012-13

Mr.K.K.Sakkariya (Late)  
Represented by Legal Heirs-  
Mr.K.S.Simil (Son),  
Ms.K.S.Simi (Daughter) &  
Mrs.P.A.Sajeena (Wife),  
Karotheukudy House, Kandanthara,  
Kennathunad Taluk, Vengola Village,  
Allapra Post,  
Ernakulam District-683 556.  
[PAN: AYPPS 6328 C]  
(अपीलार्थी/Appellant)

v. The Dy. Commissioner-  
of Income Tax,  
Central Circle-IV,  
Coimbatore.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.S.Sridhar, Adv. &  
Mr.Senthil Kumar, Adv.  
प्रत्यर्थी की ओर से /Respondent by : Mr.AR.V.Sreenivasan,  
Addl.CIT  
सुनवाई की तारीख/Date of Hearing : 10.05.2023  
घोषणा की तारीख /Date of Pronouncement : 19.05.2023

**आदेश / ORDER**

**PER MANJUNATHA.G, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is directed against the order of the  
Commissioner of Income Tax (Appeals)-18, Chennai, dated 16.06.2022,  
and pertains to assessment year 2012-13.

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**2. The assessee has raised the following grounds of appeal:**

*1) The order of the Learned CIT(A) in sustaining the additions made by the Assessing Officer is bad and erroneous in law and against the principles of natural justice.*

*2) The Learned CIT(A) erred in not considering the written submissions and grounds of appeal in proper perspective.*

*3) The action of the CIT(A) is erroneous, for sustaining the addition of Rs.1,83,94,184/-, which is purely based on conjecture and surmises and without any proper basis.*

*4) The Learned CIT(A) failed to consider the fact that when the confessions made by the appellant was not based on any credible evidence and later retracted while filing returns of income, such confession do not serve any useful purpose.*

*5) Findings of the Learned CIT(A) in Paras-6 & 8, Page-5 of the order u/s.250 dt. 16/06/2022 is totally erroneous and unsustainable, for what was admitted, as per the instructions of the appellant and his heirs, was conditional to the extent that of giving the benefit of giving telescoping effect to the additions of cash seizure and 1.5% of income from the timber business. [letter dt. 07/07/2022 for certified copy of the order sheet entry has been sent by RPAD, which was served on 08/07/2022 and the certified copy obtained from CIT(A)-18 dt.15/07/2022 are attached]*

*And for the other reasons that may be adduced at the time of hearing, the appellant prays that this appeal be admitted, considered and justice rendered.*

**3. The brief facts of the case are that a search and seizure operation u/s.132A of the Income Tax Act, 1961 (in short "the Act") was conducted on 23.12.2011 in the case of Mr.K.K.Sakkariya. Simultaneously, a survey u/s.133A of the Act, was conducted in the business premises of the assessee, on 02.01.2013. The circumstances lead to search and survey was that the police officials of B-14 Police Station, Kuniyamuthur, Coimbatore, seized an amount of Rs.98,52,100/- on 23.12.2011, from a lorry, bearing Registration No.TN 38 BB 5389 and found that Mr.Rajasekaran, who was in the said lorry, had possession of cash. During the enquiry, it was noticed that Mr.Rajasekaran, an employee of Mr.K.K.Sakkariya. The Police has passed on information to the Investigation Wing of Income Tax Department and handed over cash seized. The Income Tax Department conducted enquiry u/s.131A of the Act, with**

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Mr.S.Tamilakaran who is also an employee of the assessee travelling with Mr.Rajasekaran and during the course of investigation, they admitted that cash belongs to Mr.K.K.Sakkariya. Summons were issued u/s.131(1A) of the Act, and statements were recorded on oath from the assessee on 28.12.2011. In response, he agreed to furnish details of cash seized within two days. Thereafter, one more statement was recorded from the assessee on 16.05.2012, where he had admitted entire amount is unexplained income.

**4.** The case was selected for scrutiny and during the course of assessment proceedings, it was noticed that the information gathered during the course of search, reveal that the assessee is into the business of trading in timber. Further, survey conducted u/s.133A of the Act, also reveals that there was cash transaction of Rs.61,31,39,468/- between 01.04.2011 & 31.03.2012. The AO after considering relevant details and also taken note of submissions made by the assessee, treated transactions recorded in impounded material, as business turnover of the assessee and estimated 3% profit on total turnover and determined business profit at Rs.1,83,94,184/-. The AO had also made additions towards cash seized during the course of search amounting to Rs.98,52,100/- as unexplained income assessable u/s.69A of the Act.

**5.** Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee challenged the additions made by the AO towards estimated profit on turnover on the

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basis of impounded materials. The assessee had also made an alternative submissions and requested for estimation of 1.5% commission on ply wood trading as his income and further, requested for telescoping of cash seized during the course of search and addition made u/s.69A of the Act, to income estimated from his business. The Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of certain judicial precedents, sustained additions made towards cash seized during the course of search u/s.132A of the Act, as unexplained money of the assessee assessable u/s.69A of the Act, on the ground that the assessee has agreed for addition of cash seized during the course of search. In so far as income assessed under the head 'income from business', the Ld.CIT(A) after considering relevant facts, and also taken note of industry average profit in line of this business, sustained addition made towards estimated profit on total business turnover. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

**6.** The Ld.Counsel for the assessee referring to Ld.CIT(A)'s order submitted that the assessee has argued for estimation of 1.5% commission on total turnover from ply wood trading business and also telescoping of additions made towards cash seized during the course of search to income estimated from his business. The Ld.CIT(A) disregarding evidences filed by the assessee, sustained estimation of profit from ply wood business and also sustained addition made towards cash seizure. Therefore, he submitted that a reasonable amount of income may be estimated from the

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unaccounted turnover from ply wood business and also telescoping may be given to cash seized during the course of search, and addition made u/s.69A of the Act.

**7.** The Ld.Sr.DR, Mr. AR.V.Sreenivasan, Addl.CIT, supporting the order of the Ld.CIT(A), submitted that the assessee has agreed for additions towards cash seizure. Before the Ld.CIT(A), the assessee had also failed to submit any evidences how 3% profit estimated by the AO is incorrect by bringing on record some comparable cases of similar in nature. Therefore, the Ld.CIT(A) has rightly upheld the additions made by the AO and their orders should be upheld.

**8.** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. In so far as addition made towards cash seizure, during the course of search u/s.132A of the Act, we find that the assessee had agreed for addition towards cash seizure as unexplained money assessable u/s.69A of the Act, before the AO as well as the Ld.CIT(A). Further, the assessee could not explain nature and source for cash seized during the course of search. Therefore, we are of the considered view that there is no error in the reasons given by the Ld.CIT(A) to sustain additions made by the AO towards cash seizure u/s.69A of the Act, and thus, we reject the arguments of the assessee.

**9.** As regards estimation of profit from timber business, it is an admitted fact that during the course of survey proceedings u/s.133A of the Act,

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certain books of accounts were seized, as per which, the assessee is having unaccounted turnover from his timber business, and same was not disclosed for taxation. In fact, the assessee is not disputing quantum of turnover computed by the AO. The only dispute is with regard to percentage of profit adopted by the AO for estimation of income from business. The AO has adopted 3% net profit on total turnover on the ground that the average profit margin in line of this business is between 7% - 12%. The assessee claims that 3% net profit margin adopted by the AO is on higher side. We find that although, the AO has adopted 3% net profit margin for estimation of income, but no evidence has been brought on record, including some comparable cases of similar in nature to justify 3% profit rate. Further, the assessee also could not file any evidences, including some comparable cases of similar nature to prove that profit estimated by the AO @3% on total turnover is at higher side. Since both the parties failed to justify their case, to resolve dispute between the parties, we are of the considered view that 2% net profit on total unaccounted turnover would suffice to meet end of justice. Therefore, considering the facts & circumstances of the case and also considering reasons given by the AO and arguments advanced by the Ld.Counsel for the assessee, we direct the AO to estimate 2% net profit on total turnover determine on the basis of seized books of accounts and determined income of the assessee. In so far as the arguments of the assessee for telescoping of additions made u/s.69A of the Act, to income estimated on the basis of

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turn over, we find that the assessee could not establish link between cash seized during the course of search and income generated from his business activity. Unless, the assessee establishes with necessary evidences, cash seized during the course of search, is earned out of his business activity, the benefit of telescoping cannot be given. Therefore, we reject the arguments of the assessee for telescoping benefit.

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

Order pronounced on the 19<sup>th</sup> day of May, 2023, in Chennai.

**Sd/-**  
(महावीर सिंह)  
(MAHAVIR SINGH)  
उपाध्यक्ष /VICE PRESIDENT

**Sd/-**  
(मंजूनाथा.जी)  
(MANJUNATHA.G)  
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,  
दिनांक/Dated: 19<sup>th</sup> May, 2023.  
**TLN**

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

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|----------------------------|---------------------------|--------------------|
| 1. अपीलार्थी / Appellant   | 3. आयकर आयुक्त / CIT      | 5. गार्ड फाईल / GF |
| 2. प्रत्यर्थी / Respondent | 4. विभागीय प्रतिनिधि / DR |                    |