

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.1022/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2013-14)

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आयकर अपील सं. ITA No.1023/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2014-15)

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आयकर अपील सं. ITA No.1024/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2015-16)

Shri Duraisamy Parameswaran No.205, Krishna Nagar, Alagapuran, Kattur, Salem-636 016.	बनाम / Vs.	ACIT Central Circle-2(4), Chennai
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AJLPP-1999-D		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी/ Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri V. Padmanabhan (CA) & Shri R. Venkat Raman (CA) – Ld.AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri S. Senthil Kumaran (CIT)- Ld. DR

सुनवाईकी तारीख/ Date of Hearing	:	03-08-2023
घोषणाकी तारीख/ Date of Pronouncement	:	09-08-2023

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AY) 2013-14 to 2015-16 arises out of common appellate order passed by learned Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] on 19-09-2022 in the matter of separate assessments framed by Ld. Assessing

Officer u/s 143(3) r.w.s. 153C on 16.08.2021. In all the appeals, the assessee is aggrieved by the direction of Ld. CIT(A) that the agricultural income earned by HUF entity was to be considered in the hands of the assessee.

2. The Ld. AR, at the outset, drew our attention to additional ground of appeal no.2 filed in all the captioned years and submitted that in the absence of any incriminating material, no additions could have been made by Ld. AO for unabated years in terms of the recent decision of Hon'ble Supreme Court in the case of **DCIT vs. U.K. Paints (Overseas) Ltd. (150 Taxmann.com 108)**. The copy of the judgment has been placed on record. The additional ground raised for AY 2013-14 read as under: -

2. Without prejudice to the above, that the addition of Rs.5,25,000/- made u/s 68 of the Act is without reference to any incriminating material found during the course of search, hence the same is not valid and liable to be deleted.

Similar grounds have been raised in other two years. The Ld. CIT-DR, on the other hand, opposed admission of additional ground and pleaded for confirmation of impugned order. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

3. So far as the admission of legal ground is concerned, we rely on the decision of Hon'ble Supreme Court in the case of **National Thermal Power Co. Ltd. (97 Taxman 358)** and admit the aforesaid additional ground. Since the legal ground goes to the root of the matter and the same is stated to be covered by the decision of Hon'ble Apex Court, the same is adjudicated first. The assessee being resident individual is stated to be engaged in road transportation business.

Proceedings before lower authorities

4.1 From case records of AY 2013-14, it emerges that a search and seizure operation u/s.132 of the Act was conducted in the case of Shri Danda Brahmanandam and Shri Javvaji Ramanjaneyulu on 21-02-2019. During those proceedings, the assessee was also subjected to search proceedings and consequently, an assessment was framed u/s. 143(3) r.w.s 153C of the Act.

4.2 During the course of search, certain incriminating materials were seized vide Annexure ANN/KAR/PAR/LS/S dated 21-02-2019 which contained details of alleged unexplained investment of Rs.2 Crores by the assessee for purchase of property during Financial Year 2015-16. Accordingly, notices u/s.153C was issued to assessee for various years. In response, the assessee offered income of Rs.2.51 Lacs and filed requisite details as called for by Ld. AO. It transpired that the assessee claimed agricultural income of Rs.10.25 Lacs in hands of HUF entity. The assessee, in his receipts and payments account, claimed agricultural income of Rs.5.25 Lacs and submitted that agricultural income belonged to HUF only. However, in the absence of cogent evidences forthcoming from the assessee, in this regard, Ld. AO held that there was no HUF. The claim of Rs.5.25 Lacs as made by the assessee in individual capacity was not acceptable. Accordingly, this income was treated as unaccounted income u/s 68 and added to the income of the assessee.

4.3 In AY 2014-15, Ld. AO made similar addition u/s 68 for Rs.10.25 Lacs. In this year, Ld. AO made another addition of Rs.2.65 Lacs which represent alleged unaccounted commission earned by the assessee.

However, this addition is not subject matter of appeal before us. In AY 2015-16, Ld. AO made sole addition of agricultural income for Rs.15 Lacs in similar manner.

4.4 Upon further appeal, Ld. CIT(A), by way of common order, held that the assessee obtained agricultural land only through settlement deed. Once the settlement deed is executed, the assessee becomes individual owner of the property and therefore, the income arising therefrom has to be assessed in the status of individual only. Accordingly, impugned addition made u/s 68 was to be deleted. The Ld. AO was directed to treat the agricultural income in the individual capacity of the assessee rather than in the hands of HUF and consider the same in computing the tax. Accordingly, the appeals were partly allowed. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

5. From the facts, it emerges that the impugned addition is not based on any incriminating material as found by the department during the course of search proceedings. Admittedly, on the date of search, no assessment proceedings were pending in any of the captioned years and the assessment had attained finality. In such a case, no addition could have been made by revenue in terms of the cited decision of Hon'ble Apex Court in **DCIT vs. U.K. Paints (Overseas) Ltd. (150 Taxmann.com 108)**. In this decision, Hon'ble Court followed its earlier decision rendered in **Pr. CIT vs. Abhisar Buildwell Pvt. Ltd. (149 Taxmann.com 399)** and held that where no incriminating material was found in case of any of assessee either from assessee or from third party, High Court rightly set aside assessment order passed under

section 153C. In the present case, the facts are similar. There is nothing on record which would show that any incriminating material was found during search operation which would show that the agricultural income belonged to the assessee instead of HUF. Therefore, respectfully following the binding judicial precedent, we would hold that the aforesaid agricultural income is not to be considered in the hands of the assessee. The additional ground no.2 stand allowed in all the years which render delving into other grounds mere academic in nature.

6. All the appeals stand allowed in terms of our above order.

Order pronounced on 09th August, 2023.

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

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 09-08-2023
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1.अपीलार्थी/Appellant 2.प्रत्यर्थी/Respondent 3.आयकरआयुक्त/CIT 4.विभागीयप्रतिनिधि/DR
5.गार्डफाईल/GF