

आयकरअपीलीयअधिकरण, 'बी' न्यायपीठ,चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्रीमहावीर सिंह, उपाध्यक्ष एवंश्री मनोज कुमार अग्रवाल, लेखा सदस्यके समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENTAND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.: **868 & 869/CHNY/2022**

निर्धारण वर्ष/Assessment Years:2013-14 & 2014-15

Shri Thalavaipandian Sudalaikannu,
No.26, HIG II Phase II,
Second Cross Street,
Mugappair West Garden,
Nolambur,
Chennai – 600 095.

PAN: AWMPS 0356F

(अपीलार्थी/Appellant)

The DCIT,
Vs. Central Circle-3(4),
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by
प्रत्यर्थीकीओरसे/Respondent by

: Shri Shrenik Chordia, CA
: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 06.07.2023

घोषणा की तारीख/Date of Pronouncement : 09.08.2023

आदेश /ORDER

These appeals filed by the assessee are arising out of orders of the Commissioner of Income Tax (Appeals)-18, Chennai in ITA No.945/2021-12 CIT(A)-18,Chennai/10155/2012-13 & ITA No.945/2021-22 CIT(A)-19,Chennai/10413/2013-14 dated 09.09.2022. The assessments were framed by the DCIT, Central Circle 3(4), Chennai for the assessment years 2013-14 & 2014-15

u/s.147 r.w.s 263 of the Income Tax Act, 1961 (hereinafter 'the Act')
vide orders of even date 24.09.2021.

2. The only common issue in these two appeals of assessee is as regards to the orders of CIT(A) in confirming the actions of the A.O in making addition of cash deposits amounting to Rs. 64.60 Lakhs in A.Y 2013-14 and an amount of Rs. 2 Lakhs in A.Y 2014-15.

3. The facts and circumstances are exactly identical in both the assessment years and hence, we will take A.Y 2013-14 and grounds of appeal also. The relevant grounds of appeal read as under:

"2. For that the learned Commissioner of Income Tax (Appeals) erred in upholding the order passed u/s 147 was 263 of the Income Tax Act without appreciating the fact that the earlier assessment u/s 143(3) u/s 147 was neither erroneous nor prejudicial to the interests of revenue to attract the provisions of Section 263 of the Act.

3. For that the Learned Commissioner of Income Tax (Appeals) erred in confirming the sum of Rs.64,60,000/- as 'Unexplained cash deposits' without due consideration of the submissions made by the appellant."

4. The brief facts are that the assessee, Shri S. Thalavaipandian, is one of the members in M/s. S. Duraipandi & S. Thalavaipandian (AOP) having 30% shares of profits in AOP and was engaged in the business of money lending along with his another brother Late Mr. S. Duraipandi. The A.O on perusal of the bank statements of the assessee maintained with ING Vysya Bank, Anna Nagar Branch noted that the assessee has deposited cash on various dates and

occasions aggregating to Rs. 64.60 Lakhs in Financial Year 2012-13 and a sum of Rs. 2 Lakhs in Financial Year 2013-14 relevant to A.Ys 2013-14 & 2014-15. When the A.O required the assessee to explain the cash deposits in the bank account, the assessee explained that the assessee's AOP got dissolved on 16.05.2007 and to the extent of his 30% share for a sum of Rs. 1,99,06,563/- was received towards a share in AOP in cash and out of that a sum of Rs. 64.60 Lakhs was kept to meet further income tax liabilities. The assessee explained that he has involved in the business of real estate and money lending. The A.O has not considered the explanation of the assessee as reasonable and noted that it is very much understood that the withdrawal of cash was for a specific purpose, if the purpose is not met with then the assessee should have deposited cash in bank account. The A.O has not accepted the alleged dissolution of AOP on 16.05.2007 or the cash kept with the assessee till Financial Year 2012-13. Hence, he treated the cash deposit as unexplained u/s. 69A of the Act amounting to Rs. 64.60 Lakhs in A.Y 2013-14. Aggrieved, the assessee preferred an appeal before CIT(A).

5. Before CIT(A), the assessee reiterated the same submissions, which are reproduced in the order of CIT(A) and are being again reproduced for the sake of clarity as under:

10. The appellant was engaged in the business of real estate; the commission income earned therefrom was further utilised in the business of money lending. As such, the appellant's share of Rs.

1,99, 06, 563/-received from the AOP on dissolution of the AOP in FY 2007-08 was not kept idle, but, was utilised in his money-lending business as well. Since the appellant was advised on his share of the tax dues to be paid by him with respect to that of the AOP, he had had the funds ready to pay the demand as and when the need arises.

11. Accordingly, to meet his share of the AOP's tax dues, he had deposited the cash in his bank account during the relevant previous year as and when required and had remitted the tax dues thus. The appellant's bank statement evidencing such transactions and the due explanation had been furnished by the appellant during the assessment proceedings.

12. It is submitted that the funds received from the AOP as the appellant's share on its dissolution was never kept idle and was rotated in his money-lending business. A part of the same was always maintained in a liquidated form so as to be utilised to remit the appellant's share of the AOP's tax dues as and when required and was thus deposited in the appellant's bank account during the relevant previous year. As such, the cash deposits were thus sourced from the funds from AOP employed in the appellant's business during the intervening period."

6. The CIT(A) has not accepted the above explanation by observing that no person should keep such huge cash without depositing the same in the bank account and the period of length of delay in keeping cash in hand is almost six to seven years. He also confirmed the action of A.O. Aggrieved the assessee is in appeal before us. Before us also, the assessee reiterated the same submissions.

7. On the other hand, the Ld. Sr. D.R relied on the assessment order and that of the CIT(A).

8. We have heard the rival contentions and gone through the facts and circumstances of the case. The assessee's claim before us is that this AOP was dissolved on 16.05.2017 and the last A.Y is

2008-09. Admittedly, the assessee's AOP was partitioned as admitted by assessee from the beginning i.e., even during assessment stage. The assessee claimed that on partition he has received a sum of Rs. 1,99,06,563/-. Let us raise this issue at this stage that the assessee might have received Rs. 1,99,06,563/-. The assessee's claim before A.O as well as CIT(A) is that this cash received at dissolution of AOP in Financial Year 2007-08 was utilized further in his money lending business and as advised by his counsels for payments to his share of taxes and for that he kept this share in cash. He explained that his share of taxes of AOP, he had deposited cash in his bank account during the previous year 2012-13 relevant to this A.Y 2013-14 and remitted the taxes due thereon.

9. In view of the above factual position, we note that the assessee being member of AOP, which got dissolved w.e.f 16.05.2007 and a sum of Rs. 1,99,06,563/- being assessee's share pertaining to A.Ys 2003-04 to 2008-09, the assessee got the same in cash and utilized in the business of money lending. This cash deposit of Rs. 64.60 lakhs in this year as explained by assessee is out of the above cash received on dissolution of AOP can be considered, but now the question arises how much. Hence, we estimate the availability of funds to the extent of 50% of the cash deposit and hence, treat the above 50% of the cash deposit of Rs. 64.60 lakhs i.e., Rs. 32.30 lakhs as explained and balance of Rs. 32.30 lakhs as

unexplained cash deposit and sustain the addition partially. Accordingly, we allow assessee's appeal for A.Y 2013-14 partly.

10. As regards the appeal for AY 2014-15 in ITA No.869/Chny/2022, the cash deposit addition made by A.O is Rs. 2 Lakhs as unexplained. This was confirmed by CIT(A) also. As we have treated the cash deposit of Rs. 32.30 lakhs as explained in A.Y 2013-14, the alleged claim of assessee of withdrawals of cash made during financial year 2012-13 and 2013-14, which is more than Rs. 2 lakhs, considering the same, we treat the cash deposit of Rs. 2 lakhs as explained and delete the addition. This appeal of assessee is allowed.

11. In the result, appeals filed by the assessee in ITA No.868/Chny/2022 is partly allowed and in ITA No.869/Chny/2022 is allowed.

Order pronounced on 09th August, 2023 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 09th August, 2023

EDN

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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