

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, 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.: 2697/Chny/2017

निर्धारण वर्ष / Assessment Year: 2007-08

Estate of Late Smt. Jayanthi
Krishnamurthy,
Rep. by Divya Krishnasayee,
No. 12, Bhakthavachalam Colony,
Second Street, Vadapalani,
Chennai – 600 026.

ACIT,
v. Central Circle III(4),
Chennai – 600 034.

[PAN: ADXPJ-7329-P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. Y. Sridhar, FCA

प्रत्यर्थी की ओर से/Respondent by

: Dr. R. Mohan Reddy, CIT

सुनवाई की तारीख/Date of Hearing

: 23.08.2023

घोषणा की तारीख/Date of Pronouncement

: 31.08.2023

आदेश /ORDER

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income-tax (Appeals)-19, Chennai, dated 07.02.2017 and pertains to assessment year 2007-08.

2. At the outset, we find that there is a delay of 215 days in appeal filed by the assessee, for which, a petition for condonation of delay along with Affidavit explaining reasons for delay, has been filed. The Ld.Counsel for the assessee referring to petition filed by the assessee submits that the assessee is a daughter-in-law of Late Smt. Jayanthi Krishnamurthy. She passed away on 07.07.2015 leaving behind her son Late K. Thendral Kumar. Further, Mr. K. Thendral Kumar died on 18.03.2017 and present legal heir became heir to the assessee and she came to know about pending Income Tax proceedings through the Counsel representing the case before the authorities. She had taken steps to file appeal and in the process, there was a delay of 215 days, but such delay is neither intentional nor for want of any undue benefit but beyond the situation which arose because of death of the assessee and her son, and thus, requested to condone the delay in filing of the appeal.

3. The Ld. DR present for the Revenue fairly agreed that the delay in filing of the appeal may be condoned in the interest of justice.

4. We have heard and considered the relevant contents of petition filed by the assessee for condonation of delay and after considering relevant pleadings, we find that there is a reasonable cause for not filing the appeal within due date prescribed under the Act, and thus, in the interest of advancement of substantial justice, the delay in filing of the appeal is condoned and appeal filed by the assessee is admitted.

5. The brief facts of the case are that, on specific information received by the Department, the warrant of authorization was issued u/s. 132 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") in the name of Shri. S. Duraipandi and Shri. S. Thalavaipandian and the search and seizure operation was carried out on 15.05.2007 at the residential premises. During the search operations, it was noticed that Shri. S. Duraipandi and Shri. S. Thalavaipandian, are involved in money lending business, real estate business and brokerage. During the course of search, certain incriminating documents/papers were unearthed in the business premises of M/s. TexB Security Pvt Ltd., and it was found that there was a cash transaction with Smt. Jayanthi

Krishnamoorthy to the tune of Rs. 2 crores on 15.05.2007. On the basis of said information, a warrant for search in the residence of Smt. Jayanthi Krishnamoorthy was obtained and her residential premise was searched on 17.05.2007. A sworn statement was recorded from her on 17.05.2007. In the sworn statement recorded at the time of search, she had admitted to have received Rs. 2 crores from Shri. S. Duraipandi, on 15.05.2007 and also explained the utilization of said cash. She, further admitted another 50 lakhs income for assessment year 2007-08 in the statement recorded on 18.10.2007. During the course of assessment proceedings, the Assessing Officer noticed that, although the assessee has admitted undisclosed income at Rs. 50 lakhs, no disclosure was made in the return of income filed for the relevant assessment year. Therefore, by taking into account statement recorded from the assessee, made addition of Rs. 50 lakhs towards unaccounted money. The assessee carried the matter in appeal before the first appellate authority, but could not succeed. The Id. CIT(A), for the reasons stated in their appellate order dated 07.02.2017, rejected arguments of the assessee and sustained additions made towards unaccounted

money. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

6. The Ld. Counsel for the assessee, Shri. Y. Sridhar, FCA, submitted that the Id. CIT(A) erred in sustaining additions made towards unaccounted money of Rs. 50 lakhs, without appreciating the fact that the assessee has offered total on-money received at Rs. 2.5 crores for the assessment year 2008-09 and also furnished necessary evidences including Income-tax returns filed for assessment year 2008-09. The Ld. Counsel for the assessee, took us to copy of ITR filed for assessment year 2008-09 and statement of total income and explained that the assessee has offered a sum of Rs. 2.5 crores under the head income from other source towards on-money received which includes a sum of Rs. 2 crores cash received from Shri. S. Duraipandi on 15.05.2007, and balance amount of Rs. 50 lakhs towards undisclosed income admitted in the statement recorded on 18.10.2007. The Assessing Officer and CIT(A), without appreciating relevant facts made further addition of Rs. 50 lakhs, which amounts to double addition and needs to be deleted.

7. The Id. CIT-DR, Dr. R. Mohan Reddy, CIT, supporting the order of the Id. CIT(A) submitted that, the assessee could not explain how income offered for assessment year 2007-08 can be declared for assessment year 2008-09. Therefore, the Assessing Officer and CIT(A) has rightly taxed sum of Rs. 50 lakhs for assessment year 2007-08 and their order should be upheld.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The factual matrix of the impugned dispute are that, a search and seizure operation u/s. 132 of the Act, was carried out in the residential premises of the assessee on 17.05.2007. During the course of search, a sworn statement u/s. 132(4) of the Act was recorded, where the assessee has admitted to have received Rs. 2 crores from Shri. S. Duraipandi on 15.05.2007, which pertains to assessment year 2008-09. The assessee had also admitted a sum of Rs. 50 lakhs as undisclosed income towards on-money received in the statement recorded on 18.10.2007 for assessment year 2007-08. Although, the assessee has admitted a sum of Rs. 50 lakhs for assessment year 2007-08 and Rs. 2 crores for

assessment year 2008-09, while filing return of income for assessment year 2008-09, the assessee has offered a sum of Rs. 2.5 crores under the head income from other source towards on-money received, which includes Rs. 2 crores received from Shri. S. Duraipandi on 15.05.2007 and Rs. 50 lakhs in the statement recorded on 18.10.2007. From the above, it is clear that the assessee has offered total undisclosed income on account of on-money received amounting to Rs. 2.5 crores for assessment year 2008-09. No doubt, initially the assessee has admitted Rs. 50 lakhs for assessment year 2007-08, but after verification of relevant dates and events, she was of the opinion that the total amount of on-money received needs to be taxed for assessment year 2008-09 only and accordingly, declared a sum of Rs. 2.5 crores as undisclosed income for assessment year 2008-09 under the head income from other source. These are undisputed facts. In fact, the Assessing Officer and CIT(A) are not disputing these facts, but the Assessing Officer has made addition of Rs. 50 lakhs, only on the ground that the assessee has admitted a sum of Rs. 50 lakhs for assessment year 2007-08 only. In our considered view, when the assessee has admitted a sum of Rs. 50 lakhs for assessment year 2008-09,

after verifying dates and events, then the Assessing Officer ought not to have made further addition of Rs. 50 lakhs for assessment year 2007-08, because said addition amounts to double addition, which is not permissible under the law. Since, there is no dispute with regard to undisclosed income admitted by the assessee during the course of search and undisclosed income offered to taxation, we are of the considered view that when the assessee has offered said income for one assessment year, the Assessing Officer ought to have accepted the income declared by the assessee for assessment year 2008-09, because except statement recorded from the assessee on 18.10.2007, there is no evidence with the Assessing Officer to allege that said sum of Rs. 50 lakhs was received in the financial year 2006-07 relevant to assessment year 2007-08. Therefore, we are of the considered view, that the Assessing Officer and Id. CIT(A) are erred in making addition of Rs. 50 lakhs towards on-money received for assessment year 2007-08 and thus, we direct the Assessing Officer to delete addition made towards on-money for assessment year 2007-08.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the court on 31st August, 2023 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /**Vice President**

Sd/-
(मंजुनाथ. जी)
(MANJUNATHA. G)
लेखासदस्य /**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 31st August, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त/CIT

4. विभागीय प्रतिनिधि/DR 5. गार्ड फाईल/GF