

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

**माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI V. DURGA RAO, JM AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**आयकर अपील सं./ ITA No.147/Chny/2020**  
**(निर्धारण वर्ष / Assessment Year: 2008-09)**

<b>Shri Pandit Vettrivel</b> B-272, Ground floor, B-Block Rear Flat, Greater Kailash Part I, New Delhi-110 048.	<b>बनान</b> / Vs.	<b>ACIT</b> Central Circle-3(4) Chennai-34.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. <b>AJZPP-4861-G</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओर से/ <b>Appellant by</b>	:	Shri N.V. Balaji (Advocate)-Ld.AR
प्रत्यर्थी की ओर से/ <b>Respondent by</b>	:	Shri S. Senthil Kumaran (CIT)- Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	27-07-2023
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	22-09-2023

**आदेश / ORDER**

**PER BENCH:**

1. The captioned appeal of the assessee was heard along with other appeals filed by the assessee for Assessment Years (AY) 2006-07, 2007-08 and 2009-10. The appeals for AY 2006-07 and 2007-08 have separately been adjudicated by us vide ITA Nos.279/Chny/2020 & 146/Chny/2020. This appeal arises out of impugned order passed by learned Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] on 27-09-2019 in the matter of an assessment framed by learned Assessing Officer (AO) u/s 144 r.w.s. 254 of the Act on 30-12-2016. The elaborate

facts of the case and the circumstances in which the assessee had acquired certain parcels of land in AY 2006-07 and sold the same in AY 2007-08 have already been enumerated by us in our order for those years. In the present appeal, the assessee is aggrieved by confirmation of certain additions.

2. The Registry has noted delay of 35 days in the appeal, the condonation of which has been sought by Ld. AR on the strength of an affidavit of the assessee. It has been submitted that the delay has accrued due to adverse medical conditions being faced by the assessee. The Ld. CIT-DR has opposed the condonation of delay. However, keeping in view the period of delay and the contents of the affidavit, we condone the delay and admit the appeal for adjudication on merits.

3. The Ld. AR advanced argument to support the case of the assessee. The Ld. CIT-DR has controverted the arguments made by Ld. AR and supported the orders of lower authorities. The written submissions have also been filed by both the sides which have duly been considered by us while adjudicating the appeal. Having heard rival submissions and upon perusal of case records, the appeal is disposed-off as under.

#### **Proceedings before Ld. AO**

4.1 The assessee was subjected to search action on 23.08.2007. In the first round of assessment, the income was determined at Rs.191.58 Lacs. However, the assessment was set aside by Tribunal and Ld. AO was directed to make fresh assessment.

4.2 In the set aside proceedings, notice u/s 142(1) was issued directing the assessee to furnish requisite details. The assessee filed a letter

dated 12-12-2016 along with copy of ITR-4. However, the requisite details as directed by Ld. AO were not filed in full and Ld. AO reframed the assessment on the basis of material on record. The return of income filed by the assessee was treated as non-est return. However, the statement of income as furnished by the assessee along with return of income was taken into consideration while framing the assessment.

4.3 The additions made by Ld. AO were as under: -

(i) Cash found at the time of search

At the time of search, cash of Rs.6.90 Lacs was seized. During assessment proceedings, the assessee submitted that the cash was sourced from sale of agricultural land during FY 2006-07. However, rejecting the same, the cash was treated as unexplained money u/s 69A.

(ii) Jewellery found at the time of search

During search, jewellery weighing about 1390 grams of gold was found and the same was valued at Rs.1000/- per gram. The assessee submitted that the jewellery was purchased from income derived from agricultural activity and through professional income of astrology. However, in the absence of any corroborative evidences, the amount of Rs.13.90 Lacs was brought to tax u/s 69A.

(iii) Professional Income

The assessee reflected professional income of Rs.27.26 Lacs in preceding AY 2007-08. Since no income was reflected for this year, Ld. AO estimated equivalent professional income for this year and made addition of Rs.27.26 Lacs.

(iv) Rental Income

The assessee reflected rental income of Rs.0.90 Lacs against Mylapore property and reflected taxable income of Rs.0.63 Lacs. However, Ld. AO estimated the net rental income at Rs.3 Lacs per annum.

(v) Capital Gain

The assessee reflected Short Term Capital Gains of Rs.23.09 Lacs on sale of property situated at Adyar, Chennai. The assessee could not furnish copy of purchase and sale deed and details of cost of improvement for Rs.2.10 Lacs. Accordingly, Ld. AO treated the entire sale consideration of Rs.52.50 Lacs as unexplained credit u/s 68.

(vi) Purchase of Property at Muthukad, ECR

During search, a cope of sale deed between the assessee and one Shri P. Shanmugam (PS) was found and seized. It transpired that PS purchased a property located in Muthukad, Chennai on 12-01-2007 for Rs.26.22 Lacs as against market value determined by sub-registrar for Rs.49.64 Lacs. This property was subsequently purchased by the assessee and his wife Smt. Rajalakshmi Vetrivel on 18.05.2007 for Rs.39.80 Lacs as against market value of Rs.49.80 Lacs. The assessee had availed bank loan from PNB. However, it was noted that this property was purchased by PS out of funds provided by the assessee and his family. The bank account of PS was opened on 10-01-2007 and amount of Rs.30 Lacs was received from PNB. Thereafter, he issued a Cheuqe to assessee on 23.05.2007. Shri PS was stated to be man of meagre means. The assessee was directed to furnish the purchase deed of the property along with sources of funds. However, in the absence of any explanation forthcoming from the assessee, in this regard, it was

held by Ld. AO that the said land was purchased out of undisclosed sources and accordingly, the amount of Rs.49.80 Lacs was brought to tax u/s 69.

(vii) Agricultural income

The assessee claimed to have received net agricultural income of Rs.1.65 Lacs. However, in the absence of any evidences, the same was treated as income from undisclosed sources u/s 68.

(viii) Undisclosed Bank Accounts

During search proceedings, several credit entries were found in all the bank accounts which were allegedly not disclosed to the department. The assessee did not explain any of these. Accordingly, Ld. AO worked out peak credit balance and made addition of Rs.90.97 Lacs.

(ix) Deduction u/s 80C

The assessee claimed deduction u/s 80C for Rs.4.48 Lacs but restricted the same to Rs.1 Lacs. In the absence of any response from the assessee, the expenditure of Rs.4.48 Lacs as treated as unexplained expenditure and brought to tax u/s 69C.

Finally, the income of the assessee was determined at Rs.250.47 Lacs which was subject matter of challenge before Ld. CIT(A).

**Proceedings before Ld. CIT(A)**

5.1 On the issue of professional income, the assessee submitted that it incurred loss of Rs.3.08 Lacs which was evident by the financial statements. The assessee also submitted that it received monthly rent of Rs.7500/- only from Mylapore property and the addition was arbitrary. The source of cash seized was stated to be out of professional income. On the issue of jewellery, the assessee sought concession as provided

in CBDT Circular No.1916 dated 11-05-1994 and submitted that the amount of gold seized was less than prescribed limits. On the issue of Short Term Capital Gains, the assessee sought deduction of cost of acquisition and cost of improvement. The purchase of property at Muthukad was stated to be sourced out of Housing Loan and sale proceeds of agricultural land. The assessee also submitted that as against stamp duty value of Rs.49.80 Lacs, the property was purchased at Rs.35 Lacs since there was poor road facilities in accessing the land and due to recession in the real estate market prices. The agricultural income of Rs.1.65 Lacs was stated to be out of sale of produce from Land at Sengalipalayam. The source of deposit of Rs.90.97 Lacs was stated to be out of sale consideration as received during the AY 2007-08. The assessee also assailed the addition of unexplained expenditure of Rs.4.48 Lacs.

5.2 However, not convinced, Ld. CIT(A) confirmed the substantial assessment. Regarding Jewellery, Ld. AO was directed to treat jewellery of 200 grams in the hands of each member of the family as explained. The addition of professional income was reduced to the extent of what had been reported by the assessee. The Ld. AO was directed to allow deduction u/s 80C on the basis of evidences. Rest of the additions were confirmed against which the assessee is in further appeal before us.

### **Our findings and Adjudication**

6. Our adjudication, in the light of rival submissions, would be as under: -

(i) Cash found at the time of search

The Ld. AR has submitted that as per copy of Panchnama, cash of Rs.2 Lacs only was seized and the seizure of Rs.6.90 Lacs as noted by Ld. AO is factually incorrect. The Ld. AR also submitted that the same was sourced out of assessee's business income and the same was duly offered to tax. Considering the same, Ld. AO is directed to verify the factual aspect. The assessee is directed to substantiate the source of cash seized. The corresponding grounds stand allowed for statistical purpose.

(ii) Jewellery found at the time of search

We are of the opinion that concession as per CBDT Circular No. 1916 dated 11-05-1994 should have been granted to the assessee in full and not on an estimated basis of 200 grams per member. The Ld. AO is directed to grant the concession in full in terms of stated CBDT circular. The corresponding grounds stand allowed for statistical purpose.

(iii) Professional Income

The assessee has already been granted adequate relief in the impugned order.

(iv) Rental Income

We are of the opinion that estimation of higher rental income is without any basis. It is not the case of Ld. AO that the rental income was less than municipal rateable value. The Ld. CIT(A) has already deleted this addition.

(v) Capital Gain

The Ld. AR has drawn attention to the copy of purchase deed and encumbrance certificate towards the cost of acquisition. The Ld. AR also

submitted that the property was in joint ownership of assessee and his wife and therefore, entire addition could not be made in the hands of the assessee. Considering the same, this issue stand restored back to the file of Ld. AO for de novo adjudication with a direction to the assessee to provide the requisite details and substantiate its claim. The corresponding grounds stand allowed for statistical purpose.

(vi) Purchase of Property at Muthukad, ECR

The Ld. AR submitted that the property was purchased for Rs.39.48 Lacs out of which an amount of Rs.20 Lacs was funded through bank loan and the remaining amount was funded out of sale of agricultural land during AY 2007-08. Considering the same, this issue stand restored back to the file of Ld. AO for de novo adjudication with a direction to the assessee to file the requisite details and substantiate its claim. The corresponding grounds stand allowed for statistical purpose.

(vii) Agricultural income

The Ld. AR averred that this addition was not made in the first round and therefore, Ld. AO has exceeded the jurisdiction in travelling beyond the issues which were part of the grounds in the original appeal before the Tribunal. However, this legal argument as urged by Ld. AR is not to be accepted since the assessment, in the first round, was framed on best judgment basis and the assessee was in further appeal before Tribunal primarily on the ground of violation of natural justice. Accordingly, the assessment was set aside and Ld. AO was directed to frame de novo assessment. Therefore, this addition, in such a case, could very well be made by Ld. AO in the set aside proceedings. The legal grounds as urged by the Ld. AR stand dismissed. On merits, considering the fact

that the assessee was holding agricultural land and considering the quantum of income, we are of the opinion that this income could not be considered as income from undisclosed sources. Therefore, we direct Ld. AO to accept the same as agricultural income of the assessee. The corresponding grounds stand allowed to that extent.

(viii) Undisclosed Bank Accounts

The Ld. AR has submitted that peak balances have wrongly been worked out by Ld. AO. The Ld. AR further submitted that peak credit pertains to carry forward balances of AY 2007-08 and their source is attributable to consideration from sale of agricultural land during AY 2007-08. The Ld. AR also averred that the provisions u/s 68 could not be invoked for credit made in the bank account.

In our order for AY 2007-08, similar issue has been restored back by us to the file of Ld. AO for de novo adjudication with a direction to the assessee to substantiate its case by establishing the source of credit entries in the bank account. The same would have bearing on the issue in this year. Therefore, this issue stand restored back to Ld. AO on similar lines. The argument that the provisions of Sec.68 would not apply to bank credit entries stand rejected since the bank accounts form books of accounts and the assessee is under an obligation to explain each credit entry in the bank accounts. The corresponding grounds stand partly allowed for statistical purpose.

(ix) Deduction u/s 80C

We find that necessary directions have already been given by Ld. CIT(A) in the impugned order and the same need not be interfered with.

**Conclusion**

7. The appeal stands partly allowed to the extent as indicated in the order.

*Order pronounced on 22<sup>nd</sup> September, 2023*

**Sd/-**  
**(V. DURGA RAO)**  
**न्यायिक सदस्य/JUDICIAL MEMBER**

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
**लेखासदस्य / ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated :22-09-2023  
*DS*

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

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