

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri Manjunatha, G. Accountant Member

आयकर अपील सं./I.T.A. No.580/Chny/2021
निर्धारण वर्ष/Assessment Year: 2015-16

Shri Gouthamchand,
No. 83/81, Abdul Aziz Street ,
T. Nagar, Chennai 600 017.

Vs. The Assistant Commissioner of
Income Tax, Central Circle 2(1),
Chennai 600 034.

[PAN:AAJPG5459L]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri T. Vasudevan, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri AR V Sreenivasan, Addl. CIT
सुनवाई की तारीख/ Date of hearing : 20.07.2023
घोषणा की तारीख /Date of Pronouncement : 27.09.2023

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 18, Chennai dated 08.10.2021 relevant to the assessment year 2015-16.

2. Brief facts of the case are that the assessee is an individual deriving income from pawn broking business. The Assessing Officer has observed from assessment records prior to the assessment year under consideration that the assessee was having taxable income much above

the specified limit of taxability of income for all the assessment years. Further, in the instant case also a survey action was conducted in the financial year 2012-13. During the course of survey action, it was found that the assessee was habitually non-filer of income tax return since assessment year 2006-07 onwards. Thus, assessment for the AY 2006-07 to 2013-14 was reopened and completed. Since, the modus operandi for realization of assets against which money lent to the needy person was same for subsequent assessment year and the value of assets realized are more than the specified taxable limit for all these assessment years, notice under section 142(1) of the Income Tax Act, 1961 ["Act" in short] for the assessment year 2015-16 on 29.01.2016 and served. Since there was no response to any of the notices issued by the Assessing Officer, the Assessing Officer completed the best judgement assessment under section 144 of the Act dated 30.11.2017 by assessing total income of the assessee at ₹.1,76,54,365/- after making various additions/disallowances.

3. The assessee carried the matter in appeal before the Id. CIT(A). After considering the submissions of the assessee, while partly allowing the appeal of the assessee, the Id. CIT(A) confirmed the additions made towards disallowance of interest against unsecured loan of ₹.5,26,824/-,

unexplained cash deposit into bank account maintained with Catholic Syrian Bank of ₹.7,64,393/- and unexplained credit into bank account maintained with Federal Bank of ₹.1,03,67,696/-.

4. The first ground raised in the appeal of the assessee relates to confirmation of addition towards disallowance of interest against unsecured loan of ₹.5,26,824/- by observing as under:

During the survey assessment proceedings it was held that the assessee was charging interest @ 24% on loans & advances against the pledged assets whereas accounting on @12% for computing taxable income. Further, it was also noted that on certain unredeemed loan transactions, the assessee has noted offered any interest income though it is charging @ 24% per annum. This issue is recurring in nature for all the further assessment years. During AY 2014-15, for calculating unredeemed articles as on the financial year end, the following method was proposed:

- a. *In the pawn ledger wherever there is no redemption date they were taken as unredeemed.*
- b. *Articles redeemed after the last day of the financial year were taken as unredeemed.*

Based on the proposed method and after having a narrative discussions in earlier, the following additions were made on account of interest accrued on unredeemed article and difference in interest offered @ 12% and proposed @ 24%. Accordingly, the additions made for the previous assessment year viz., A.Y. 2014-15 applying average method for the A.Y: 2011-12 to 2013-14 amounting to ₹.59,95,422/- was added to total of income of the assessee. In current assessment year under consideration following the same method, the unaccounted & accounted interest of ₹.59,95,422/-. Penalty proceedings u/s. 271(1)(c) are initiated separately for concealment of income.

5. In the appellate order, the Id. CIT(A) has observed that in the assessment order, the Assessing officer has disallowed the interest against unsecured loan of ₹.5,26,824/- [in line with the addition made for

AYs 2006-07 to 2014-15] for the present AY also being deemed to have been debited to profit and loss account if the assessee would have filed his return of income. After considering the submissions of the assessee as well as by considering the decision for earlier years in assessee's own case, the Id. CIT(A) confirmed the disallowance made by the Assessing Officer.

6. Before us, the Id. Counsel for the assessee has submitted that the decision of the Tribunal in assessee's own case for earlier assessment years may be followed.

7. On the other hand, the Id. DR supported the order passed by the Id. CIT(A).

8. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including the decision of the Coordinate Benches of the Tribunal in assessee's own case for earlier assessment years 2006-07 to 2014-15 vide order dated 06.07.2022, wherein, the Tribunal has observed and held as under:

5.1 On the basis of documents, Ld. AO estimated the value of unredeemed articles at year-end as Rs.53.51 Lacs as against Rs.20.97 Lacs shown by the assessee. Accordingly, the differential i.e., Rs.32.54 Lacs was sought to be added as unexplained investment. The assessee submitted that the value was correct, however, the assessee could not file party wise details. Accordingly, the same was added to the income of the assessee along with estimated interest of Rs.7.80 Lacs (computed @24%).

5.2 During appellate proceedings, the assessee submitted that Ld. AO did not consider the entries wherein the pledged articles were redeemed and cases wherein pledged items for sold and appropriated against outstanding loans. However, rejecting the same, Ld. CIT(A) confirmed the additions as well as consequential interest against which the assessee is in further appeal before us. Similar additions have been made for AYs 2007-08 & 2008-09 for Rs.54.72 Lacs & Rs.67.23 Lacs respectively.

5.3 After hearing the arguments of Ld. AR and after going through written submissions, we are convinced with the alternative argument of Ld. AR that telescoping benefit of addition made in AY 2006-07 should have been granted in subsequent years. Accordingly, the addition as sustained by us for AY 2006-07 would be Rs.32,54,000/-. The addition sustained for AY 2007-08 would be Rs.5,29,405/- (Rs.37,83,405/- - Rs.32,54,000/-). The additions sustained for AY 2008-09 would be Rs.2,77,059/- (Rs.40,60,464/- - Rs.37,83,405/-). The interest would be computed @12% on net amounts only since there is no basis to presume rate of 24%. We order so. The corresponding grounds raised in these years stand partly allowed.

The Id. DR could not controvert the above findings of the Tribunal. Respectfully following the above decision of the Tribunal in earlier assessment years, we direct the Assessing Officer to compute the interest @ 12% on net amounts only since there was no basis to presume rate of 24%. Thus, the ground raised by the assessee is partly allowed.

9. The next ground raised in the appeal of the assessee relates to unexplained cash deposit into bank account maintained with Catholic Syrian Bank of ₹.7,64,393/- and unexplained credits into bank account maintained with Federal Bank of ₹.1,03,67,696/-. In the assessment order, while making the above additions, the Assessing Officer has observed as under:

The bank accounts details collected from the banks revealed that the assessee is maintaining bank accounts with Federal Bank, T Nagar and with Catholic Syrian Bank, Mount Road, Chennai. During the Financial year 2014-15, relevant to the assessment year under consideration, the assessee deposited cash to the tune of

Rs.7,64,393/- into account maintained with Catholic Syrian Bank. The assessee vide notice us. 142(1) dated 13.11.2017 and 23.11.2017 was requested to explain the source of cash deposits. As discussed in earlier paragraph, despite given several opportunities the assessee not at all turned up. Hence, the entire cash deposits amounting to Rs. 7,64,393/- is brought to tax as unexplained credits us. 68 of the IT Act. Similarly, the details collected from Federal Bank, T Nagar it shows that the total Credits in the bank account during the assessment year under consideration worked out to Rs. 1,03,67,696/- which is not explained by the assessee nor any documentary evidence available on record to prove the genuineness of the source of the credits. Hence, the entire credits of Rs. 1,03,67,696/- is brought to tax as unexplained cash credits”.

9.1 On appeal, the Id. CIT(A) confirmed the additions.

9.2 Before us, by filing statement of account, details of jewel loan kept an redeemed during the financial year 2014-15 as well as bank pass book, the Id. Counsel for the assessee has submitted that the cash deposits made into the bank account represents the cash realised by the assessee out of redemption proceeds received from his customer which is deposited into the bank account for the purpose of redeeming the repledged jewellery from the bank. It was further submission that at no stretch of imagination the entire cash deposits in the bank account will represent the income of the assessee. Thus, the Id. Counsel prayed for deleting the additions.

9.3 On the other hand, the Id. DR has submitted that the matter may be remitted back to the Assessing Officer to verify the details filed by the assessee.

9.4 We have heard the rival contentions and perused the details furnished by the assessee. While concluding the assessment under section 144 of the Act and in the absence of any documentary evidence available on record, the Assessing Officer brought to tax the entire credits as unexplained cash credits. Before the Id. CIT(A) also, the assessee has not furnished complete details for consideration. Since the assessee has filed various details before the Tribunal, we are of the considered opinion that the Assessing Officer shall examine the details as may be furnished by the assessee and decide the issue afresh in accordance with law. The assessee is also directed to co-operate with the Department and furnish complete details before the Assessing Officer for consideration.

10. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on 27th September, 2023 at Chennai.

Sd/-
(MANJUNATHA, G.)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 27.09.2023
Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.