

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री मंजुनाथ. जी, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष
BEFORE SHRI MANJUNATHA. G, ACCOUNTANT MEMBER AND
SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं./ITA No.584/Chny/2021
निर्धारण वर्ष /Assessment Year: 2012-13

Gopal Padmavathi,
17, Thilagar Street,
Pollachi, Coimbatore – 642 001.
[PAN: BRWPP-0101-R]

The Income Tax Officer,
Vs. Ward-2,
Pollachi.

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by : Shri A. Arjun Raj, C.A
प्रत्यर्थी की ओर से /Respondent by : Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 03.01.2024
घोषणा की तारीख /Date of Pronouncement : 19.01.2024

आदेश / ORDER

PER MANOMOHAN DAS, J.M:

This appeal by the assessee is directed against the order of the Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre, Delhi [CIT(A)] dated 27-10-2021 and pertains to the Assessment Year [AY] 2012-13. The grounds of the assessee are as under:

1. *The assessment made is against law and is to be annulled for the following reasons*
 - a. *The issue of Notice u/s 148 dtd. 13.03.2019 is not in*

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- accordance with the provisions of the Act.*
- b. Reasons for issue of notice u/s 148 was not supplied to the assessee till date.*
 - c. Notice u/s 148 was not properly issued within the limitation period of 6 years.*
 - d. Notice u/s 148 for verification of source of deposits is not correct.*
 - e. When the officer has treated the return filed on 29.08.2019 as invalid, issuing notice u/s 143(2) for the same return is not valid, and the consequent assessment is not valid.*
- 2. The officer is erred in treating Rs. 42,90,000/- as deemed income u/s 69A and CIT(A) is erred in upholding the same.*
 - 3. The officer is erred in levying interest of Rs. 11,14,848/- and Rs.12,34,296/- u/s 234 and 234B*
 - 4. without any direction in the assessment order.*
 - 4. The appellants reserve the right to adduce any additional or alternate grounds.*
 - 5. In the circumstances it is prayed to set aside the assessment order or delete the addition of Rs. 42,90,000/and delete the interest levied u/s 234 and render justice.”*

2. The brief facts of the case are that as per information received from AIR, the assessee made substantial cash deposits into her bank account during the relevant previous year, however, no return of income was filed. As the income chargeable to tax has escaped assessment, the case was reopened u/s 147 of the Act by issue of notice u/s 148 of the Act dated 13-03-2019 after obtaining statutory approval from the Pr. Commissioner of Income Tax-2, Coimbatore. The notice was returned by the postal authorities. However, the new address of the assessee was traced out and notice duly served. Notice u/s 143(2) of the Act dated 04-12-2019 was issued and duly served

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upon the assessee and in response, the assessee filed her return of income on 29-08-2019 declaring total income of Rs.2,57,480/- under the head "Income from Capital Gains". The assessee also submitted that one residential property was sold during the relevant previous year. The Id. AO during the assessment proceedings observed that the assessee had made cash deposits amounting to Rs. 42,90,000/- on various dates during the period from 29-09-2011 to 01-12-2011 in her SB account bearing No. 31965558865 maintained with the State bank of India, Pollachi Branch. The cash deposits made by the assessee in her bank account are as under:

<i>Post Date</i>	<i>Value Date</i>	<i>Details</i>	<i>Amount Credited</i>
29-09-11	29-09-11	Cash dep 00899 Pollachi Cash deposit self	50000.00
29-09-11	29-09-11	Cash dep 00899 Pollach Cash deposit self	400000.00
17-11-11	17-11-11	Cash deep 00899 Cash deposit self	500000.00
01-12-11	01-12-11	Cash deep 00899 Pollachi Cash deposit self	3340000.00
<i>Total Cash Deposited</i>			<i>4290000.00</i>

3. The assessee during the assessment proceedings furnished a cash flow statement showing flow of cash from 01-04-1995 to 01-04-2011. The assessee also claimed that main source of cash is income from Milk Business and out of the cash accumulated, hand loans were given to various persons. However, the cash flow statement is signed neither by the assessee nor by anybody else. It is also the claim of the

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assessee that the hand loans given were received back in 2011. No evidence regarding sale of house property as well as sale of jewellery also furnished. Thus, due to lack of the supporting evidences the Id. AO rejected the claim of the assessee and treated the entire sum of the cash deposits of Rs. 42,90,000/- as unexplained u/s 69A of the Act and added to the total income of the assessee.

4. Being aggrieved, the assessee filed appeal before the 1st appellate authority, CIT(A). The Id. CIT(A) vide order dated 27-10-2021 dismissed the appeal of the assessee.

5. Being aggrieved, the assessee filed the present appeal before the Tribunal.

6. Heard the representatives of both the parties and perused the materials on record. The Ld. AR submitted that the Id. AO had issued notice to the assessee mentioning the wrong address of the assessee. The Ld. AR also submitted that the Id. AO as well as the Id. CIT(A) did not consider the selling of the house property, jewellery and affidavits executed by the borrower. Per contra, the Ld. DR submitted that no notice was sent to the assessee mentioning the wrong address of the assessee. The address which was mentioned in the notice is the same

as is stated in form No. 36 by the assessee. The Ld. DR supported the orders of the lower authorities.

7. As the submission of the Ld. AR is found not tenable by us, we rejected the objection of the Ld. AR that notice was sent by the Id. AO mentioning the wrong address thereon. Now, we adjudicate the appeal of the assessee on merits.

8. We carefully considered the submissions of the parties. We observe that the Id. CIT(A) has upheld the addition made by the Id. AO citing the reasons that the assessee failed to discharge the onus during the assessment proceedings as mentioned in the assessment order and the assessee has not submitted any convincing argument during the appellate proceedings.

9. We observe that the assessee claimed during the assessment proceedings that she made advances to various persons interest free loans and that borrowers repaid the loan amounts and the same were deposited in the bank account of the assessee. As a proof of the repayment of the interest free loans, the borrowers executed affidavits and the same were furnished during the assessment proceedings. Secondly, it was also the claim of the assessee that she sold house property for a consideration of Rs. 18,00,000/- as well as jewellery for

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Rs. 5,25,000/- and the proceeds of the such sales deposited in the bank account. The assessee furnished copy of the sale deed before the Id. CIT(A). But no proof of selling of jewellery was furnished before the lower authorities.

10. We observe that the affidavits executed by the borrowers as a proof of repayment of the interest free loans to the assessee is highly doubtful. It is also highly doubtful that the assessee had advanced interest free loans to various persons. Except the affidavits of the borrowers, no other evidence regarding the loan given to various persons were submitted by the assessee. These affidavits are executed on 02-01-2020. In our view, when a person gives loans to other persons and the amounts are high whether it is interest free or with interest, the creditor certainly keeps records when the loans were given. But here, no such evidences were furnished by the assessee. No acknowledgment regarding the receipt of loans by the borrowers were obtained by the assessee when loans were given to various persons. It is after the initiation of assessment proceedings affidavits from the borrowers are furnished during the assessment proceedings. Therefore, the claim of the assessee that she had given interest free loans to various persons and they have repaid that loan amounts are not tenable. Accordingly, the observations of the Id. AO and of the Id.

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CIT(A) on the issue of repayment of the interest free loans ought to be upheld and we decide this issue of recovery of interest free loans to the assessee is against the assessee.

11. We observe that, the assessee sold a house property on vide deed executed on 30-11-2011 in favour of one P. Balaji for a consideration of Rs. 18,00,000/- . It is our considered opinion that the Id. CIT(A) ought to accept the claim of the assessee that the assessee sold a house property for a consideration of Rs. 18,00,000/- vide registered instrument and there is reasonable possibility that the said sale consideration amount may had deposited in the bank account by the assessee. Therefore, we are of the considered opinion that as there is credible evidence that the assessee sold a house property for a consideration of Rs. 18,00,000/- under a registered sale deed, the assessee has proved her claim that Rs. 18,00,000/- was deposited in the bank account by the assessee. Accordingly, we delete the addition of Rs. 18,00,000/- to the total income of the assessee.

12. Regarding the claim of the assessee that she sold jewellery for Rs. 5,25,000/- and that amount was also deposited in the bank account is not tenable as no evidence regarding the selling of jewellery was furnished before the lower authorities. No claim without any supporting evidence thereon can be accepted. Accordingly, we reject

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the claim of the assessee that she sold jeweler for an amount of Rs. 5,00,000/- and deposited that amount by her into her bank account. Thus, we decide this issue of selling of jewellery against the assessee.

13. To sum up, out of addition of Rs. 42,90,000/- the assessee succeeded in proving cash deposit of Rs. 18,00,000/- to her bank account from the selling of her house property. Accordingly, we delete addition of Rs. 18,00,000/-. However, the remaining amount of cash deposits (Rs.42,90,000/- - Rs.18,00,000/- = Rs. 24,90,000/-), the assessee failed to furnish acceptable evidence. Hence, we uphold the addition of Rs. 24,90,000/- to the total income of the assessee.

14. In the result, the appeal of the assessee is partly allowed.

Order pronounced on 19th January, 2024.

Sd/-
(मंजुनाथ. जी)
(Manjunatha. G)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 19th January, 2024.

EDN/-

Sd/-
(मनोमोहन दास)
(Manomohan Das)

न्यायिक सदस्य/Judicial Member

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आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF