

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

माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकर अपील सं. ITA No.897/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2017-18)

Shri Rameshlal Kailash 1F, Rajaji Road, Salem-636 007.	बनम/ Vs.	ITO Ward -1(4) Salem.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AEKPK-0380-F		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./ ITA No.898/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2017-18)

Shri Fatichand Rameshlal 1F, Rajaji Road, Salem-636 007.	बनम/ Vs.	ITO Ward -1(4) Salem.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. ACFPR-4254-C		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri N. Arjunraj (CA) - Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri AR V Sreenivasan (Addl.CIT)-Ld. Sr. DR

सुनवाई की तारीख/Date of Hearing	:	01-05-2024
घोषणा की तारीख /Date of Pronouncement	:	03-06-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by two different assesseees for Assessment Year (AY) 2017-18 arises out of a common order of learned Commissioner of Income Tax (Appeals)-18, Chennai [CIT(A)] dated 04-08-2023 in the

matter of separate but identical assessments framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 30-12-2019. The sole issue that falls for our consideration is to determine the heads of income under which impugned additions would fall. First, we take up ITA No.898/Chny/2023.

Assessment Proceedings

2.1 In this case, the assessee admitted income of Rs.343.40 Lacs in the return of income. The case was scrutinized to verify the cash deposited by the assessee during demonetization period. The assessee supplied financial statement as called for by Ld. AO. It transpired that the assessee family was subjected to survey u/s 133A on 26-09-2016 wherein assessee admitted certain income which was also offered in the return of income as 'Business Income'. Due taxes were also paid on the same.

2.2 The assessee had deposited sum of Rs.104 Lacs in 4 bank accounts as tabulated on page no.2 of the assessment order. The assessee attributed the cash deposit to earlier income and cash balance available with him. During survey, the assessee offered additional income of Rs.190 Lacs which would be sufficient enough to cover the stated cash deposits.

2.3 During survey, the statement was recorded from the assessee's son wherein it was submitted that the assessee and his family members carried out money lending business. The assessee family was directed to furnish the details of outstanding debtors' balances. The list of outstanding balances as on 15.09.2016 was furnished by the assessee family which has been extracted in the assessment order. The same aggregated to Rs.1231 Lacs. It was submitted that the family was not

maintaining any books of accounts. However, the family members reflected sundry debtors balances of Rs.741 Lacs in their respective Income tax statements prepared for the period ending 31-03-2016. Therefore, the differential of the two viz. Rs.490 Lacs was outstanding on loans advanced to the parties from 01-04-2016 till the date of survey. The assessee family was directed to explain the source of the same. The assessee's son, in statement, stated that the finance business was handled by him and his father. The money was lent out of unexplained sources of income. The assessee's son offered additional income of Rs.190 Lacs whereas father offered additional income of Rs.300 Lacs since they were not maintaining any books of accounts.

2.4 The reply given by the assessee's son, against question no.11, during survey proceedings was as under: -

Reply.: The total finance business is managed by me and my father only. We both lent that amount out of our unexplained sources of income. Hereby I offer rupees Rs.3 Crores as additional income for the FY 2016-17 in my individual hands and Rs.1.90 Crores (Rupees one crore ninety lakhs) in my father's hands. We do not have any books of accounts or any other source to support the above said additional income. Once again, I affirm that the outstanding loan debtors as on the date is Rs.12,31,00,000/-. I am furnishing the list of such outstanding amount of Rs.12.31 Crores. In the absence of books of accounts, I could not furnish the breakup figures of loans which were outstanding as on 31st March 2016. However, I affirm that as on 31st March 2016, the loan outstanding was Rs.7.41 Crores. The balance amount of Rs.4.90 crores given in current financial year only.

2.5 In the respective returns of income, the said income was offered as 'business income'. The Ld. AO objected to the same and opined that the same was to be offered as 'income from other sources'. The assessee relied on various decisions to support the fact that excess stock and cash related to business would be taxable as 'business income' only. The assessee submitted that he was doing business for last more than

20 years and he did not derive any other income other than income from finance business.

2.6 However, rejecting assessee's submissions, Ld. AO observed that the assessee could not substantiate the fact that advances were out of money lending business. In the absence of any identifiable and verifiable sources, the income would be assessable as undisclosed investments u/s 69 which would be subjected to rate of tax as specified u/s 115BBE. Finally, business income was reduced to the extent of Rs.190 Lacs and the same was brought to tax as 'income from other sources'. Similar assessment was framed in the case of assessee's son Shri Rameshlal Kailash.

Appellate proceedings

3.1 During appellate proceedings, the assessee drew attention to the reply given by him to Question No.11 during survey proceedings and submitted that the income was offered as unaccounted income only and not as income from undisclosed sources. The assessee furnished list of debtors to whom the advances were made. The assessee confessed that the income received in earlier year was utilized for lending further money to debtors. It was clearly stated that excess debtors found during survey were out of income generated from money lending business itself. The assessee also furnished confirmation letters from the borrowers who repaid the advances during the years. The assessee also furnished Tax Audit Report u/s 44AB to prove the genuineness. The assessee, thus, submitted that the nature and source of such investments was explained as 'business income' only. It was judicially settled that excess stock or debtors found during the course of survey would be nothing but business income of the assessee. The promissory

notes found during the survey were nothing but stock-in-trade in the business of money lending business. The assessee quoted various case laws to support the submissions holding that where unexplained investment found during survey was part and parcel of stocks of regular business then income arising therefrom would be business income.

3.2 The Ld. CIT(A) noted that during survey, promissory notes relating to excess investment in current assets were found. The said advances were not recorded in the books of accounts. The difference in advances from the period from 31-03-2016 to 15-09-2016 for Rs.4.90 Crores was abnormal and the sources of the same remained unexplained by the assessee as to how it was generated from the business of this year and whether it was fresh investment made in this year. The assessee did not furnish any corroborative evidence to show that how this Rs.4.90 Crores were generated in the business of the assessee during this year. The investments are found in the form of money advances which was not recorded in the books of accounts. The assessee did not offer any explanation but accepted the difference in debtors. There was excess investment in stock-in-trade of the business of money lending. The submissions that excess advances did not have any separate physical identity and part of existing money lending business of the assessee could not be accepted since unaccounted promissory notes were identified and found during the survey. The assessee did not provide any evidence to prove the source of unexplained excess advances. No evidence was furnished to substantiate that the excess advances had been earned from regular business activity done during current financial year only. Finally, Ld. CIT(A) relied on the decision of Hon'ble High Court of Madras in the case of **SVS Oils Mills Ltd. vs. ACIT (113**

Taxmann.com 388) to confirm the action of Ld. AO. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

4. From the facts, it emerges that the assessee and his family is engaged in money lending business for past more than 20 years. This is the substantial source of income for the assessee family. The assessee family advanced loans against promissory notes which were found during the course of survey on the basis of which it transpired that there was change in debtors' balances as on 31-03-2016 and debtor's balances as on 15-09-2016. The promissory notes constitute current asset for assessee's money lending business. During the course of survey on 26-09-2016, the assessee furnished list of debtors to whom the advances were given and it was found that during this year, there was increase in advances to the extent of Rs.4.90 Crores. Since the assessee could not explain the same, it agreed to offer the same in his return of income to the extent of Rs.1.90 Crores whereas the balance sum of Rs.3 Crores was offered in the hands of the assessee's son. The assessee treated the same as interest income and offered the additional income as business income and paid due taxes thereon.

5. We are of the considered opinion that sundry debtors would keep on changing continuously in view of the fact that certain advances would be given and certain advances would be received back by the assessee at any given point of time. Nevertheless, the assessee family has already offered the differential of debtors between two dates as his undisclosed income. We also find that these debtors arise out of money lending business being carried by the assessee family. Any discrepancy in debtors, in such a case, would be part and parcel of assessee's money

lending business and it could very well be said that the discrepancy has arisen out of unaccounted income earned by the assessee from this business only and therefore, the same would be taxable as 'business income' only. There is nothing on record that the assessee family has any other sources of income. The assessee is stated to be doing same business for last more than 20 years. All these facts support the case of the assessee.

6. We also find that during the course of survey, a statement was recorded from the assessee's son. In reply to question no.3, it was stated that the family was not maintaining proper books of accounts for finance business and record the transactions on rough sheets. In reply to question no.10, it was stated that the balances would be updated on fortnightly basis. The complete list of outstanding balances was also furnished wherein outstanding amounts was shown as Rs.12.31 Crores. As on 31-03-2016, the assessee's family reflected debtors to the tune of Rs.7.41 Crores in their respective returns of income. In reply to question no.11, the assessee merely stated that differential in advances are out of undisclosed income. In our opinion, the same would arise out of business only since the assessee does not have any other substantial source of income. It could be said that difference in debtors was accumulated out of income from business and the undisclosed business income, if any, was ploughed back into business to lend more money. In such a case, the excess debtors could be said to have arisen out of normal business activity only and therefore, the same would be assessable as 'business income'. Our view is duly supported by the decision of Chennai Tribunal in **M/s Mookambika Impex vs. DCIT (ITA No.299/Chny/2023 dated 26-07-2023)**. Considering various decisions

including the decision of Hon'ble Rajasthan High Court in the case of **CIT vs Bajargan Traders (supra)** it was held by the bench as under: -

3. From the fact it emerges that the only source of assessee's income is 'Business income' arising out of sale of gold jewellery and silver articles. During survey proceedings, quantitative differences were found in the physical stock vis-à-vis book stock. The assessee brought the same into books of account by way of credit to partners' capital account with corresponding increase in book-stock. The excess stock was included in the stock register. Accordingly, the differential was separately offered to tax in the return of income as 'Business Income'. Naturally, the excess stock was acquired out of excess income regenerated from business activity only since the assessee do not have any other source of income since its inception. The entire stock was accumulated out of income from jewellery business. The undisclosed business income was ploughed back into business to acquire further stock. In such a case, the excess stock could be said to have arisen out of normal business activity only and therefore, the same would be assessable as 'business income' only in terms of decision of Hon'ble Rajasthan High Court in the case of **CIT vs Bajargan Traders (supra)** wherein it was held that with respect to such excess stock found during the survey, it could be said that the investment in procurement of such stock was clearly identifiable and related to regular business stock of the assessee. Therefore, the same should be considered as 'Business Income only. In the present case, the stock difference has arisen in the course of day-to-day business activity only and not otherwise. The entire stock was available as trading stock at the business premises and it was part and parcel of regular business stock. The decision of Hon'ble Supreme court in the case of **Lakshmidhand Baijnath vs CIT (supra)** also support the said conclusion. It was held by Hon'ble Court that when an amount is credited in the business books, it is not an unreasonable inference to draw that it is a receipt from business. Therefore, the impugned income, in our considered opinion, would be assessable as 'Business Income' only. Similar view has been taken in the decision of Chennai Tribunal in **M/s Overseas Leathers vs. DCIT (ITA No.962/Chny/22 dated 05.04.2023)**. We find that facts in that case are quite identical to the facts of the present appeal before us.

4. After going through the case law of Hon'ble High Court of Madras in the case of **M/s SVS Oil Mills vs. ACIT (supra)**, we find that said case is distinguishable on facts. In that case, though stock was added in the stock register but there was no corresponding credit in the books of accounts. It was thus held that stock could not come in from vacuum. Therefore, the excess stock was held to be unexplained investment. However, in the present case, there is corresponding credit to partners' capital account. Therefore, this case law is distinguishable on facts.

5. In the result, the appeal stand allowed in terms of our above order.

In this decision, the bench has also considered the decision of Hon'ble High Court of Madras in the case of **M/s SVS Oil Mills vs. ACIT (113 Taxmann.com 388)** and held the same to be distinguishable on facts.

7. Similar is the view of Chennai Tribunal in catena of decisions including the decision in **M/s Overseas Leathers vs DCIT (ITA No.962/Chny/22 dated 05-04-2023)**; the decision in **M/s Ethiraj Hotel Mart vs DCIT (ITA No.1096/Chny/2022 dated 29-12-2023)**; the decision in **M/s Santhilal Jain Vijay Kumar vs. ITO (ITA No.1103/Chny/2022 dated 30-08-2023)** as well as various other decisions, the copies of which have been placed on record.

8. Therefore, considering the facts of the case, we would hold that the assessee has correctly offered the additional income as 'Business Income' only. The provisions of Sec.69 r.w.s. 115BBE would have no application. The Ld. AO is directed to re-compute the income and demand payable by the assessee. The corresponding grounds stand allowed.

9. Admittedly, similar are the facts in ITA No.897/Chny/2023. Therefore, our adjudication as above would *mutatis-mutandis* apply to this appeal also. In this appeal, there is one more issue of addition u/s 56(2)(vii)(b) for Rs.4.31 Lacs. The same represent difference in stamp duty value and document value with respect to one property which have been purchased by the assessee during the year. The same has been tabulated in para-11 of the assessment order. The assessee has purchased the same for Rs.20 Lacs as against stamp duty value of Rs.44.31 Lacs. Accordingly, the differential was brought to tax u/s 56(2)(vii)(b). The assessee raised an additional ground during first appellate proceedings. The Ld. CIT(A) did not admit the additional ground against which the assessee is in further appeal before us. The Ld. AR has pleaded for adjudication on merits.

10. We are of the opinion that since all the facts were available before first appellate authority, this ground should not have been rejected on technical grounds. Nevertheless, we direct Ld. CIT(A) to adjudicate this issue on merits. The grounds thus raised stand allowed for statistical purposes.

11. Both the appeal stands allowed in terms of our above order.

Order pronounced on 3rd June, 2024

Sd/- (MANU KUMAR GIRI) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (MANOJ KUMAR AGGARWAL) लेखक सदस्य / ACCOUNTANT MEMBER
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चेन्नई Chennai; दिनांक Dated : 03-06-2024
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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