

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

मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
मजनीय 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.459/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2014-15)
&

आयकर अपील सं. ITA No.460/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2019-20)

Shri Anjappan Kandasamy #89/1, Dr. Radhakrishnan Salai Mylapore, Chennai-600 004.	बनम/ Vs.	DCIT Central Circle-1(3), Chennai-34.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AAQPK-2230-E		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri R. Venkat Raman & Shri V. Padmanaban (CAs) - Ld. ARs
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri Nilay Baran Som (CIT) - Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	18-06-2024
घोषणा की तारीख/ Date of Pronouncement	:	03-07-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AY) 2014-15 & 2019-20 arises out of separate orders of learned first appellate authority. First we take up appeal for AY 2014-15 wherein the sole grievance of the assessee is confirmation of addition of Rs.4.39 Lacs.

2. The assessee is stated to be engaged in hospitality business. The assessee was subjected to search action on 03-01-2019 and accordingly, an assessment was framed u/s 153A on 06-03-2022. In response to notice u/s 153A, the assessee admitted income of Rs.41.02 Lacs in its return of income filed on 17-03-2020 which was Rs.4.39 Lacs less than regular revised return filed by the assessee for this year on 31-03-2016. The same was on account of re-working of capital gains. The Ld. AO held the reduction of income to be not acceptable and accordingly, added the same to the income of the assessee.

3. During appellate proceedings, the assessee submitted that no opportunity of hearing was granted before making this addition. It was also submitted that return filed u/s 153A replaces the original return filed u/s 139. The Ld. CIT(A) noted that the regular revised return filed on 31-03-2016 was treated as invalid by CPC since the same was filed beyond due date of 31-07-2014. The Ld. CIT(A) held that proceedings u/s 153A could not be for the benefit of the assessee. Accordingly, the action of Ld. AO was confirmed. Aggrieved, the assessee is in further appeal before us.

4. It is quite clear the regular revised return of income was treated as invalid return by CPC. The differential of Rs.4.39 Lacs has arisen only due to re-working of capital gains. The Ld. AO has not pointed out any defect in the working of the assessee in return filed u/s 153A. The only reason adduced is that return u/s 153A could not be filed below the regular revised return filed by the assessee. However, regular revised return itself has been treated as invalid return. Therefore, the return filed by the assessee in response to notice issued u/s 153A has to be accepted. We order so. The appeal stand allowed accordingly.

Assessment Year 2019-20

5.1 The sole grievance of the assessee is confirmation of addition of Rs.11.63 Lacs on account of cash found during search and another addition of Rs.11.53 Lacs on account of unexplained investments u/s 69A for excess jewellery weighing approx. 380 grams.

5.2 During search on assessee, cash of Rs.13.63 Lacs was found. In response to notice u/s 142(1), the assessee submitted that the cash was well within the total income offered by the assessee and his family members. However, in subsequent notice, the assessee stated that cash belonged to firm M/s Anjappar Chettinad A/c Restaurant, Nungambakkam. The firm was stated to be engaged in running a food chain wherein the sales were in cash. It was stated that some cash would be retained for next day's operation which was kept at assessee-partner's residence. However, Ld. AO added the same to the income of the assessee as unexplained money u/s 69A.

5.3 During search, jewellery weighing approx. 880 grams was found. The assessee stated that the same related to his family members and the source for the same was well within the total income offered by the assessee and his family members to tax. The assessee relied on CBDT instruction No. 1916 dated 11-05-1994 seeking concession for each of the family members. However, Ld. AO valued the same at Rs.26.70 Lacs and added the same to the income of the assessee.

5.4 On the issue of cash, Ld. CIT(A) held that there was no genuineness in the cash balances of the firm as stated by the assessee. If the cash balances were genuine, the assessee would have shown the cash book during search proceedings. Considering the income shown by the assessee and his wife, concession to the extent of Rs.2 Lacs was

granted and the balance addition of Rs.11.63 Lacs was confirmed. The addition of jewellery was also confirmed on the ground that CBDT circular would apply only for seizure purpose as held by Hon'ble High Court of Madras in the case of V.G.P.Ravidas (51 Taxmann.com 16). However, Ld. CIT(A) also noted that the assessee had shown income of Rs.169.78 Lacs and his wife had shown income of Rs.62.47 Lacs from AYs 2013-14 to 2019-20 and there was possibility that some jewellery might have been received on the occasion of marriage and other functions. The assessee produced bills of 315 grams of jewellery. On these facts, it would be reasonable to hold that 500 grams of jewellery was explained and accordingly, addition of balance jewellery valuing approx. Rs.11.53 Lacs was confirmed. Aggrieved, the assessee is in further appeal before us.

5.5 We find that during the course of assessment proceedings, the assessee had produced cash book of the firm wherein the assessee is a partner. The cash balance reflected by the firm on close of 02-01-2019 was Rs.19.86 Lacs as is evident from extract of cash book as placed before us. The Ld. AO, without any cogent reason, has rejected the same. No finding has been rendered that such cash balance was not maintained by the firm. Another fact is that the assessee and his wife are regular income tax payee since past several years and therefore, the fact that there was accumulation of cash could also be accepted. Therefore, the addition of cash found as sustained by Ld. CIT(A) stand deleted. The corresponding grounds stand allowed.

5.6 So far as the addition of jewellery is concerned, we find that the case law of Hon'ble High Court of Madras in the case of V.G.P.Ravidas (51 Taxmann.com 16) deals with a case of wealth tax payee wherein it

was required of him to specifically show the source of jewellery found in excess of what was declared in the respective wealth tax returns. In fact, CBDT circular dated 11-05-1994 specifically contains para (ii) which prescribes that in the case of wealth tax assessee gold jewellery and ornaments found in excess of the gross weights declared in the wealth tax returns only need to be seized. Accordingly, the said case law would not apply as held by Mumbai Tribunal in **Shri Ashok Jain vs. ACIT (ITA No.6251/Mum/2016 dated 25-05-2018)**, a copy of which has been placed on record. The co-ordinate bench distinguished aforesaid case law and finally held that the relief has to be granted to the assessee in terms of aforesaid circular of CBDT. Respectfully following the same, we would hold that the assessee would be entitled for benefit in terms of aforesaid circular. Considering the composition of family of the assessee, aforesaid concession comes to 1200 grams of jewellery which is way more than jewellery found during the course of search, Therefore, we delete the impugned addition. The corresponding grounds as well as the appeal stand allowed.

Conclusion

6. Both the appeals stand allowed.

Order pronounced on 3rd July, 2024

Sd/-
(MANU KUMAR GIRI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 03-07-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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