

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

1. आयकर अपील सं. ITA No.461/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2014-15)
&
2. आयकर अपील सं. ITA No.462/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2018-19)
&
3. आयकर अपील सं. ITA No.463/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2019-20)

Shri Anjappan Maruthapandian No.7/2, JP Towers Nungambakkam High Road Chennai-600 034	बनम/ Vs.	DCIT Central Circle-1(3), Chennai-34.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AJSPM-1309-F		
(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 captioned Assessment Years (AY) arise 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.3.92 Lacs. Having heard rival submissions, the appeal is disposed-off as under.

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.41.81 Lacs in return of income filed on 17-03-2020 which was Rs.3.92 Lacs less than regular return filed by the assessee for this year on 20-07-2015. The same was on account of re-working of capital gains. The Ld. AO held the reduction in income to be not acceptable and accordingly, added the same to the income of the assessee.

3. During appellate proceedings, the assessee submitted that return filed u/s 153A replaces the original return submitted u/s 139. The Ld. CIT(A) noted that the regular return filed by the assessee 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 that the regular return of income was treated as invalid return by CPC. The differential of Rs.3.92 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 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 2018-19

5.1 The sole grievance of the assessee is confirmation of penalty u/s 270A for Rs.1.60 Lacs. In an assessment framed u/s 153A on 06-03-2022, the returned income of Rs.39.67 Lacs as filed in response to notice u/s 153A was accepted by Ld. AO. However, the assessee had admitted income of Rs.37.07 Lacs in regular return of income filed u/s 139. Accordingly, Ld. AO levied penalty u/s 270A for Rs.1.60 Lacs for under-reporting of income. The Ld. CIT(A) wrongly noted that the penalty was levied for Rs.2.59 Lacs. It was also held that higher income was declared due to search operation only. Therefore, the penalty was confirmed against which the assessee is in further appeal before us.

5.2 From the facts, it is quite clear that returned income as filed by the assessee has finally been accepted by Ld.AO. The only reason to levy penalty is that such income is more than income previously reported by the assessee in original return of income. Nevertheless, in our considered opinion, the under-reporting of income has to be in the return of income filed by the assessee which fact is absent in the present case. The assessed income is nothing but returned income. Therefore, no case of under-reporting of income could be made out against the assessee. By deleting the impugned penalty, we allow the appeal of the assessee.

Assessment Year 2019-20

6.1 The sole grievance of the assessee is confirmation of addition of Rs.20 Lacs u/s 69. During the course of search on assessee, some agreement was seized vide ANN/KVK/AM/B&D/S-36 & 37. The

assessee admitted that amount of Rs.20 Lacs was paid in cash for purchase of property at Ponnamaravathi. The assessee admitted the same as undisclosed income and accordingly, Ld. AO proceeded to make addition u/s 69.

6.2 During the course of assessment proceedings, the assessee made retraction and submitted that it was only an unsigned agreement. It was signed only by the other party. Neither the assessee nor his authorized representative had signed the document. This document was merely draft unsigned document which do not have any validity. The assessee made an attempt / enquiry to purchase property. The other party to the contract demanded cash and prepared the document, signed it and sent it to the assessee for his consent. Since the assessee could not make arrangement for the amount demanded, the agreement was not signed and unsigned document was left at his residence. The contract was not executed till date. However, rejecting the aforesaid submissions, Ld. AO added the same to the income of the assessee. The Ld. CIT(A), holding that the retraction was much later, confirmed the addition against which the assessee is in further appeal before us.

6.3 The translated version of impugned sale agreement has been placed on record at Page Nos.36 of the paper-book. The original sale agreement (in Tamil) has been placed on page nos. 34-35 of the paper-book. Upon perusal of the same, it could be seen that it is not a valid agreement since it is not signed by all the parties to the agreement. The relevant clause says that *the purchaser shall pay an advance of Rs.20,00,000/- (Twenty lakhs only) to the vendor on or before 16.09.2018*. Therefore, this document do not evidence actual flow of cash from the assessee to the vendor. Except for admission of the

assessee, there is no material with Ld. AO to prove the payment of Rs.20 Lacs in cash. It is another fact that the contract has never fructified. It could very well be said that this document was merely draft unsigned document which do not have any validity. The assessee has made retraction whereas Ld. AO could not establish payment of impugned sum with any evidence. No enquiry, whatsoever, has been made from the sellers of the property to substantiate the allegation. Therefore, this addition is not sustainable. We order so. The appeal stand allowed.

Conclusion

7. All 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
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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