

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

मजनीय श्री महवीर सिंह, उपाध्यक्ष एवम्
मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.1235/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2012-13)

Shri Sarangabani Kirubakaran 17/6, First Pillayar Koil Street, Ekkatuthangal, Chennai-600 032.	बनम् / Vs.	DCIT Circle-1(2) Chennai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. BUMPK-0892-B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Ms.T.V.Muthu Abirami,(Advocate)-Ld.AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri Nilay Baran Som (CIT) -Ld. Sr.DR

सुनवाईकी तारीख/ Date of Hearing	:	25-07-2024
घोषणाकी तारीख / Date of Pronouncement	:	04-09-2024

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2012-13 arises out of the common order of learned Commissioner of Income Tax (Appeals)-18, Chennai, [CIT(A)] dated 13-09-2023 in the matter of an assessment framed by the Ld. AO u/s.153C r.w.s. 153A r.w.s. 143(3) of the Act on 30-03-2022. The only grievance of the assessee is confirmation of addition u/s 69 for Rs.6.50 Lacs.
2. The Ld. AR advanced arguments and submitted that impugned addition represents receipt of loan from a friend through banking channels which could not be added u/s 69. This addition does not satisfy

the ingredients of Sec.69 since it is applicable for unexplained investment only. The Ld. CIT-DR, on the other hand, filed written submission and submitted that the quoting of wrong section would not vitiate the addition made by Ld. AO as held in various judicial decisions. The copies of the same have been placed on record.

3. From perusal of para-4 of the assessment order, it could be seen that the assessee has maintained two bank accounts. The bank statements were obtained by Ld. AO from the banks. In para 7.1 of the order, it has been noted that the assessee received loan of Rs.6.50 Lacs from a friend which is stated to be returned on 01-10-2012. The Ld. AO held that since the assessee failed to identify the person to whom the loan was given and proof of loan was not submitted, the receipt of loan was assessed as unexplained investment u/s 69. The Ld. CIT(A) confirmed the same.

4. Quite clearly, Ld. AO has made addition of receipt of loan through banking channels on the ground that the assessee failed to identify the person to whom the loan was given and proof of loan was not submitted. The loan is stated to have been returned by the assessee on 01-10-2012. However, in this year, the assessee is the receiver of the loan and not the giver. In our considered opinion, the provisions of Sec.69 are applicable only where the assessee has made certain investments which are not recorded in the books of account and the assessee offers no explanation about the nature and source thereof. It is crystal clear that same is not the case here. The assessee is only a recipient of the loan.

5. The Ld. CIT-DR, in the written submissions, has referred to the decision of Hon'ble High Court of Madras in the case of **SVS Oil Mills vs. ACIT (113 Taxmann.com 388)**. In that case, the assessee was

subjected to survey u/s 133A and excess stock was found. The Ld. AO held that excess stock was to be added as undisclosed income of the assessee u/s 69C. It was observed by Hon'ble Court as under: -

7. However, before parting with, we may observe that there is a series of five provisions viz., Section 69-Unexplained investments, Section 69A-Unexplained money, etc., Section 69B-Amount of investments, etc., not fully disclosed in books of account 69C-Unexplained expenditure, etc. and 69D-Amount borrowed or repaid on hundi which have been enacted in the Income Tax Act, 1961 from time to time to bring to tax the undisclosed income either as undisclosed income or the same found during the course of investigation either during the Survey under section 133A or the search operation under Section 132 of the Act or otherwise, investigation or scrutiny during the Assessment proceedings and thus, the unexplained investment or expenses are brought to tax in the form of undisclosed income by making the additions to the extent of such undisclosed income or expenditure straightaway. There is no justification or question of giving the corresponding deduction to the extent of any purchase or source of incurring such expenditure or unexplained investments.

8. In our opinion, Section 69B providing for amounts of investments in Bullion, Jewellery or other valuable articles (including excess Stocks as well) would have been more appropriate Section to be indicated in the orders passed by the Authorities below rather than Section 69C-Unexplained Expenditure. Nonetheless, we are of the clear opinion that mentioning of wrong section would not upset the Additions made by the Assessing Authorities below in the present case. All these 5 provisions enumerated above have been enacted with a view to bring to tax the unexplained debit balances in the Balance Sheet of the Assessee either in the form of Unexplained Investments, Expenses or Stocks, etc., or unexplained Assets, Money, Bullion, Jewellery, etc., and therefore, such unexplained investments and expenses intended to be brought to tax as Undisclosed Income, these provisions are not only clearly worded but also indicated to plug the loopholes and check the menace of black money. Likewise, unexplained credits in the Balance Sheet are also brought to tax under Section 68 of the Act.

9. In the light of the above, the contention raised by the learned counsel for the Assessee has essentially emanated from a misconception that the Additions made under Section 69B/69C have to be reduced to some extent by giving leverage to the Assessee to claim some deductions from these Additions as well. If the contention of the learned counsel for the Assessee was to be accepted viz., by allowing the purchases corresponding to the alleged excess stock, the Assessee will have to now record verifiable purchases in his Books of Accounts and for that he will have valid purchase Invoices from genuine and existing Sellers which is not possible. When the excess stocks were found during the Survey, there is no question of allowing the Assessee to record any additional purchases because such purchases had already been recorded in the books of accounts of the Assessee. Therefore, the excess stock, per se, has to be naturally brought to tax as 'undisclosed income' by itself and there is no question of any corresponding deduction from that in such cases.

It has been held by Hon'ble Court that all the 5 provisions as enumerated have been enacted with a view to bring to tax the unexplained debit balances in the Balance Sheet of the Assessee either in the form of Unexplained Investments, Expenses or Stocks etc., or unexplained Assets, Money, Bullion, Jewellery, etc., and therefore, such unexplained investments and expenses are intended to be brought to tax as Undisclosed Income, these provisions are not only clearly worded but also indicated to plug the loopholes and check the menace of black money. Likewise, unexplained credits in the Balance Sheet are also brought to tax under Section 68 of the Act. The said observation, in fact supports the case of the assessee. In the present case, the assessee is a receiver and not the giver and there could be no occasion to held that the assessee has made any unexplained investment. The receipt of loan is nothing but a credit entry which could be taxed u/s 68 and not u/s 69.

6. Another decision as referred to by Ld. CIT-DR is the decision of Mumbai Tribunal in **Jignesh Chimanlal Jobanputra (URA No.4008/Mum/2023 dated 18-04-2024)**. In that case, the assessee failed to furnish the source of loan obtained by it. The Ld. AO held the same to be non-genuine and made addition u/s 69. It was in that context, the bench observed that the addition could not be deleted for the reason that the section under which the addition is made was mentioned erroneously. The same is not the case here. Here the additions have clearly been made on account of undisclosed investments. The findings of Ld. AO run contrary and there is, in fact, no investment made by the assessee but it is a transaction of receipt of loan by the assessee. It is not the case of mentioning of wrong section. Therefore, this case law also does not support the case of the revenue.

7. The decision of Delhi Tribunal in the case of **Smt. Gloria Eugenia Runjah (ITA No.3510/Del/2019 dated 16-08-2023)** has been rendered in the context of Sec.68. The assessee contended that it was not maintaining books and cash was found deposited in bank account. Therefore, the provisions of Sec.68 would not apply. The bench observed that the addition could not be deleted merely on technical ground that Ld. AO mentioned Sec.68 instead of Sec.69 of the Act. The present case before is not wrong quoting of Section rather it is a case of receipt of credit in the bank accounts and Ld. AO has gone wrong in appreciating the correct facts.

8. The decision of Hon'ble High Court of Jharkhand in **Rajmeet Singh (160 Taxmann.com 83)** is a case where the assessee deposited cash in the bank account which was added u/s 68. The Hon'ble Court held that not mentioning the correct provision would not vitiate the addition. The amount so deposited would come within the purview of investment. In the present case, the credit represents receipt of loan through banks.

9. Therefore, all these decisions do not render any assistance to the case of the revenue. These decisions are contextually distinguishable. In our considered opinion, invocation of wrong provision of law on incorrect assumption of facts would vitiate the impugned addition. Therefore, we would hold the opinion that the impugned addition is unsustainable in law. We order so. No other ground has been urged in the appeal.

10. The appeal stand allowed.

Order pronounced on 4th September, 2024

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / **VICE PRESIDENT**

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated :04-09-2024
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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