

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

**माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER**

**आयकरअपील सं./ ITA Nos.2084, 2085, 2086, 2087 &
2088/Chny/2024
(निर्धारणवर्ष / Assessment Years: 2015-16, 2016-17, 2017-18,
2017-2018 & 2018-2019)**

Varadarajan Baskaran,
Prop:- Shrinidhi Gold Bullion,
1080, 1st floor, SRP Complex,
Big Bazaar Street,
Coimbatore 641 026.

Vs. The Deputy Commissioner of
Income Tax,
Central Circle-2,
Coimbatore

[PAN: AFYPB 6208A]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri S. Sridhar, Advocate (Erode)
: Shri Nilay Baran Som, IRS, CIT.

सुनवाई की तारीख/Date of Hearing

: 05.11.2024

घोषणा की तारीख /Date of Pronouncement

: 21.11.2024

आदेश / ORDER

PER BENCH:-

Captioned appeals are filed by the assessee. The appeals in ITA Nos.2084, 2085, 2087 & 2088 are arising out of the separate orders of the Commissioner of Income Tax (Appeals)-20, Chennai [In short 'CIT(A)'] dated 25.05.2024 and 24.05.2024. The assessment were framed u/s.153C of the Income Tax Act, 1961 (in short "the Act") by the Assistant Commissioner of Income Tax, Central Circle 2,

Coimbatore for assessment years 2015-16, 2016-17, 2017-18 and 2018-2019 vide orders dated 30.09.2021 and for assessment year 2017-2018 the assessment was framed by the Income Tax Officer, Non Corporate Ward 1(5), Coimbatore u/s.144 of the Act vide order dated 15.11.2019. Since the additions in all the four appeals in ITA Nos.2084, 2085, 2087 & 2088 are identical in nature except in ITA No.2086/Chny/2024 for assessment year 2017-2018, we dispose of the ITA Nos.2084, 2085, 2087 & 2088 in one common order.

2. First we take up ITA No.2084/Chny/2024 for assessment year 2015-2016 as lead case for adjudication wherein main issue is with regard to the lower authorities has not properly considered the specific objection of the assessee while invoking the Section 115BBE of the Act. Our decision on this issue will equally apply to other appeals being ITA Nos. 2085, 2087 and 2088/CHNY/2024 also.

3. Facts apropos are that the assessee is an individual and engaged in trading in Gold Bullion under Proprietary concern M/s Srinithi Gold Bullion. He filed return of income u/s 139(4) of the Act for A.Y 2015-16 on 31.10.2015 declaring income of Rs. 12,83,060/-. A search u/s 132 of the Act was carried out on 14.03.2018 at his residence. During the course of search operation, some incriminating documents which that showed that he was involved in unaccounted money lending business and assessee had undisclosed Income spread for various A.Ys from 2015- 16 to 2019-20 w.r.t that business. During course of search some six note books were

found and seized vide ANN/SM/VBV/B&D/S-1 to 6. Further blank cheque leaves, promissory notes, RC Books etc taken from debtors by assessee were seized vide ANN/SM/VB/LS/S Seized books Contained details of Borrowers/ debtors with respect to 'unaccounted finance business run by him. The amount invested in unaccounted finance business as per details available in seized books is as under:-

| Financial Year | Amount in Rs. |
|----------------|---------------|
| 2012-2013 | 50,000/- |
| 2013-2014 | 0 |
| 2014-2015 | 11,00,000/- |
| 2015-2016 | 5,37,000/- |
| 2016-2017 | 3,00,000/- |
| 2017-2018 | 98,50,000/- |
| Total | 1,18,37,000/- |

The assessee while replying vide sworn statement recorded on 14.03.2018 has admitted unaccounted investment in Finance Business to the tune of Rs. 1,18,37,000/-. The Appellant explained sources for unaccounted investment as unaccounted Income generated from 'Goldsmith Tools Business' and from 'trading in gold bullion' under the name M/s Srinithi Gold Bullion and interest received from unaccounted Finance business. Notice u/s 153C of the Act dated 24.02.2021 was issued, in response to the notice the assessee had filed his Return of Income u/s 139(4) of the Act on 17.09.2021 admitting total income of Rs. 12,83,060/-. However, AO noticed that assessee failed to admit undisclosed investment in money lending business to the extent of Rs.11,00,000/-. Therefore AO finalised assessment u/s.69 of the Act by making addition towards undisclosed investment in

unaccounted money lending business of Rs. 11,00,000/-. Aggrieved, assessee preferred an appeal before the Id. Commissioner of Income Tax (Appeals).

4. Before the Id. CIT(A), assessee has raised only one ground of appeal with regard to addition of Rs.11,00,000/-. During appeal proceedings the appellant has raised one additional ground with respect to validity of proceedings u/s 153C of the Act. During appeal proceedings, the appellant raised contention vide additional ground of appeal that since search is conducted in his case, provisions of section 153C do not apply. Hence assessment made u/s 143(3) rws 153C is invalid. Since this ground questions validity of assessment itself, it is adjudicated first. However, the Id. CIT(A) noted that in this case search is initiated in case of Mathew K Cherian and M/s Kosamattam Finance Ltd as a part of which appellant's residence is also covered u/s 132. Provisions of section 153A are applicable to only those persons in whose case 'search is initiated'. It can be seen from provisions of section 153A, consciously words 'in case of a person where a search is initiated' has been used. In Section 153C, it is mentioned that section 153C is applicable to those persons other than those covered u/s 153A. Therefore, section 153C is applicable to persons whose premises are covered during search though search is not initiated in their case and books/documents pertaining to them are seized. In the present case, as stated above, as a part of search initiated in case of M/s Kosamattam group, appellant's residential premises was also searched, six note books pertaining to unaccounted finance business of appellant were found and seized vide ANN/SM/VBV/B&D/S-1 to 6. Hence provisions of section 153C are applicable to the

present case. Consequently, the Id. CIT(A) dismissed the additional ground raised by the assessee.

5. Vide original Ground, the appellant has challenged applicability of tax rate u/s 115BBE to addition made by AO towards unaccounted investment u/s 69 in undisclosed finance business of Rs 11,00,000/-. Further, the Id. CIT(A) noted that that appellant is carrying money lending business has come to the notice of department only during search conducted in his residence based on 6 books containing entries regarding finance business are seized. Further, according to the Id. CIT(A) the appellant has not admitted income on account of unaccounted investment in undisclosed Finance business in return filed u/s 153C. The AO has finalized assessment making addition towards unaccounted investment u/s 69. The assessee submitted before the Id. CIT(A) that the undisclosed income from money lending business has arisen from disclosed source of money lending business only. Ld. CIT(A) observed that Section 69 of the Act covers the instances where the assessee has made investments in the financial year immediately preceding the assessment year and such investments are not recorded in the books of account. The assessee offered no explanation about the nature and source of the investments Hence, the Id. CIT(A) confirmed the action of the Id. Assessing Officer. Aggrieved, assessee preferred an appeal before the Tribunal.

6. Before us, the Id.Counsel pleaded that the Id. AO proceeded hurriedly during Covid-19 situation hence the assessee was not able to prosecute effectively the

case before him. Even before the Id.CIT(A), assessee could not laid evidence regarding the source for undisclosed income on account of proper opportunity. Per contra, the Id.DR, Mr. Nilay Baran Som, CIT relied upon the orders of the lower authorities and pleaded for the dismissal of the appeal.

7. We have heard the rival submissions and perused the appeal papers. We find that the assessment order dated 30.09.2021 u/s 153C was passed during Covid-19 pandemic and assessee was not able to participate in assessment proceedings. We also note that the assessment order was passed hurriedly within two days after issuance of notice u/s 143(2) dated 28.09.2021. We further find that before the Id.CIT(A) also assessee was not given chance to address the issues properly. Accordingly, the impugned order is set aside and the appeal is restored back to the file of Ld. AO for denovo assessment after affording proper opportunity of hearing to the assessee. The assessee is directed to substantiate its case forthwith without any fail, failing which Ld.AO shall be at liberty to proceed with the assessment.

ITA No.2086/Chny/2024 for assessment year 2017-2018.

8. Brief facts of the case are that it was found by the Id. Assessing Officer that there were cash deposits made in specified banking notes to the tune of Rs. 10,73,500/- and other cash deposits to the tune of 12,61,251/- during the period from 1-04-2016 to 31-03-2017 in following bank accounts.

| Sl.No | Account Number(Bank) | Cash deposited during demonetization period | Other credits from 01-04-2016 to 31-03-2017 | Total |
|-------|----------------------|---|---|-----------|
| 1 | 059100050037314(TMB) | 242000/- | 5408/- | 247408/- |
| 2 | 059150050800047(TMB) | 603000/- | 615316/- | 1218316/- |
| 3 | 059150050300682(TMB) | 228500/- | 100784/- | 329284/- |
| 4 | 059201650102164(TMB) | | 75000/- | 75000/- |
| 5 | 059201650101505(TMB) | | 464743/- | 464743/- |

The AO issued notice u/s 142(1) of the Act calling for return of income for the year. The Appellant failed to file any return of income. The case was picked up for scrutiny. Show cause notice was issued to appellant to explain source deposits made in bank account along with relevant evidences. The AO after noticing that appellant has failed to respond to show cause notice issued proceeded to make addition of cash deposits made in SPBs Rs 10,73,500/- u/s 69A exparte u/s 144 of the Act. Similarly AO also added remaining cash deposits whose sources of income are not explained as unexplained money u/s 69A Rs.12,61,251/-. Aggrieved, assessee preferred an appeal before the Id. CIT(A).

9. The Id. CIT(A) partly allowed the appeal though the assessee contended that assessee had sufficient cash balance in cash book to support cash deposits on various dates in bank account as he is involved in trading business of gold bullion for past thirty five years. According to the Id. CIT(A) since the appellant has not

furnished any details of cash balance available or copy of cash book to establish that sufficient cash balance was available with appellant on dates of cash deposit in bank account and all those transactions are duly recorded in cash book, he dismissed the first ground of appeal raised by the assessee.

10. In the next ground of appeal, the appellant claimed that AO has added entire credits in bank account without verifying nature of receipt. It is stated that amount added by AO includes dividend, LIC Maturity benefits, gas subsidy received, SB interest which are not taxable. The appellant also furnished copies of bank statements, analysis of credits in bank account in the form of table to show that amount added by AO includes deposits made in bank accounts on account of dividend, LIC Maturity benefits, gas subsidy received, SB Interest etc. However, the Id. CIT(A) noted that as far as deposits made in specified banking notes during demonetization period of Rs 10,73,500/- is concerned, the appellant has neither disputed the amount nor offered any explanation for source during appeal proceedings. The Appellant has requested to telescope the amount assessed for assessment years 2015-16 to 2017-18 on account of unaccounted investment in money lending business by AO which totaled to Rs 1,06,87,000/- to cash deposits of Rs 10,73,500/- made in Specified banking notes. During the course of assessment proceedings, the Appellant admitted unaccounted investment in Finance Business to the tune of Rs 1,87,37,000/-. The Appellant explained sources for unaccounted investment as:

- 1. Unaccounted income generated from Goldsmith Tools Business',*
- 2. Unaccounted income from trading in gold bullion and*
- 3. Interest received from unaccounted Finance business.*

According to the Id. CIT(A) in the returns filed u/s 153C, the appellant has not admitted unaccounted Investment to the tune of Rs 1,87,37,000/- as admitted vide sworn statement. The AO has added respective amounts for relevant assessment years. Now the assessee has requested for telescoping the cash and other deposits in bank accounts for the year with unaccounted investment assessed in his hands for above years. According to the Id. CIT(A) telescoping is available only in such cases, where an earlier addition could be available for a later investment. As per the Id. CIT(A) usually if unexplained income precedes unaccounted investment such income can be considered for telescoping in Unaccounted investment in subsequent year. But in the present case, the appellant is seeking telescoping of previous year's unaccounted investment in subsequent year's unexplained deposit. The amount already invested in business in a particular year obviously will not be available for cash deposits/other deposits made in subsequent year. As per own explanation of appellant undisclosed income generated in the form of interest from unaccounted money lending business is again infused as capital for money lending business. If it true, then undisclosed Income generated for assessment years 2015-16, 2016-17 and during the year 2017-18 won't be available for making cash deposits in subsequent year/later half of year. It is settled law that onus is on assessee to establish that income sought to be taxed by AO is already subjected to tax in order to claim telescoping. However, in the present case, though appellant claimed that

unaccounted investment of previous years formed source for cash deposits, no evidence has been filed to show that how amount already invested in money lending business is available for making deposits in bank account. It was contention of appellant that entire interest income received from money lending activity was infused in that business alone, hence interest income is not separately not taxed in hands of appellant. Only Investment in money lending business is taxed. If it is contention of appellant that part of interest income was not introduced back in money lending activity but used for cash deposits, it means that portion of income is not taxed in hands of appellant as part of unaccounted investment. Hence the Id. CIT(A) rejected the telescoping requested by the assessee. Aggrieved, assessee preferred an appeal before the Tribunal.

11. Before us, the Id.Counsel pleaded that the Id. AO proceeded ex parte during assessment hence the assessee was not able to prosecute effectively the case before him. The Id. Counsel further argued that the information collected u/s 133(6) has not been provided to the assessee. Even before the Id.CIT(A), assessee could not laid evidence to explain the credits on account of lack of proper opportunity. Per contra, the Id.DR, Mr. Nilay Baran Som, CIT relied upon the orders of the lower authorities and pleaded for the dismissal of the appeal.

12. We have heard the rival submissions and perused the record. We find that the assessment order dated 15.11.2019 u/s 144 was passed ex parte. We find that

before the Id.CIT(A) also assessee was not given fair chance to file documents address and address the issues properly. Accordingly, the impugned order is set aside and the appeal is restored back to the file of Ld. AO for denovo assessment after affording proper opportunity of hearing to the assessee.

13. All the assessment years would be heard denovo by the Id. Assessing Officer subject to consolidated cost of Rs.10,000/- which shall be deposited by the assessee within 30 days from the receipt of this order to "Tamil Nadu Stage Legal Services Authority" at Hon'ble High Court of Madras. The proof of the same will be furnished by the assessee before the Id. Assessing Officer. The assessee is directed to substantiate its case forthwith without any fail, failing which Ld.AO shall be at liberty to proceed with the assessment.

14. In the result, appeals filed by the assessee are allowed for statistical purpose.

Order pronounced in the open court on 21st day of November, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai:

दिनांक Dated :21-11-2024

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER