

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.1641, 1654 & 1655/Chny/2024
निर्धारणवर्ष/Assessment Years: 2018-19, 2015-16 & 2017-18

Mr. Subbiyan Rathinakumar, 95J, Sathy Road, Kurumbapalayam, Coimbatore-641 107.	v.	The ITO, NCW-3(2), Coimbatore.
[PAN: ACZPR 8099 R]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.S. Sridhar, Advocate (Erode)
प्रत्यर्थी की ओर से /Respondent by	:	Ms. Babitha, JCIT
सुनवाईकीतारीख/Date of Hearing	:	10.10.2024
घोषणाकीतारीख /Date of Pronouncement	:	06.12.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals), (hereinafter in short "the Ld.CIT(A)"), Chennai-20, dated 31.03.2024 for the Assessment Years (hereinafter in short "AY") 2015-16, 2017-18 & 2018-19.

ITA No.1654/Chny/2024 – for AY 2015-16:

2. Brief facts are that the assessee filed his return of income (RoI) for AY 2015-16 on 30.09.2015 declaring an income of Rs.6,72,300/-. Later, a



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survey action u/s.133A of the Income Tax Act, 1961 (hereinafter in short 'the Act') was carried out at assessee's premise on 16.11.2017 (AY 2018-19). The survey team found some discrepancies in the books as well as mismatch in the income of the assessee. And also found that the assessee failed to explain the source of capital of Rs.1,41,86,305/- and had failed to offer interest income of Rs.6 lakhs for AY 2015-16 which according to the AO was admitted as additional income by the assessee for AY 2015-16 and thereafter, the assessee filed fresh RoI on 11.01.2018 pursuant to notice u/s.148 of the Act disclosing income of Rs.41,33,482/- and thereafter, the AO made various additions and assessed income at Rs.1,53,96,202/-. Aggrieved, assessee preferred an appeal before Ld CIT(A), who gave part-relief to the assessee. Still not satisfied, assessee has preferred this appeal before this Tribunal.

3. The assessee has raised ground No.4 against the action of the Ld.CIT(A) confirming the addition of Rs.11 lakhs.

4. It is noted that the AO asked the assessee to explain the source of capital of Rs.11 lakhs, and he explained that the same was from his sale proceeds of land during the AY 2011-12 only which he received on 02.06.2010 (Rs.10.50 lakhs) which was deposited in the UBI as a Fixed Deposit and which got matured during the year. However, the AO noted that assessee couldn't furnish any evidences to substantiate



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Rs.10,50,000/- which he deposited in the UBI was out of the sale proceeds of the land as claimed by him because, he failed to furnish any Wealth Tax Return etc., therefore, he made an addition of Rs.11 lakhs which was confirmed by the Ld.CIT(A). Before us also, the Ld.AR couldn't file any material to show the *nature & source* of the investment of Rs.11 lakhs i.e. matured Fixed Deposit amount of Rs.10.50 lakhs, was from sale consideration of land in earlier year. Therefore, we fully concur with the reasoning given by the Ld.CIT(A) confirming the addition of Rs.11 lakhs and dismiss this ground of appeal.

5. Coming to the addition of Rs.31 lakhs, the Ld.AR drew our attention to the impugned order of the Ld.CIT(A) at Page No.12, wherein, the Ld.CIT(A) has discussed about this addition made by the AO to the tune of Rs.31 lakhs, wherein, he notes that the assessee claimed that an amount of Rs.31 lakhs was given as a gift by his wife Smt.R.Malithi which was disbelieved by the AO and made addition. Before the Ld.CIT(A), the assessee filed additional evidences in the form of affidavit of Smt. R. Malathi which has not been admitted by the Ld.CIT(A) which fact is discernable from perusal of Para No.7.3.3 (Page No.13 of the Ld.CIT(A) order). According to the Ld.AR, the affidavit of the **donor** who is none other than the assessee's wife needs to have been taken into consideration and rejection of it without assigning any valid reasons amounts to per-se violation of natural justice. According to the Ld.AR,



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the affidavit and relevant evidences/material to support the contents of the affidavit ought to have been admitted and if needed Remand Report from the AO ought to have been obtained/called for by the Ld.CIT(A) which omission on the part of the Ld.CIT(A) violates principles of natural justice and therefore, he prayed that the assessee be granted one more opportunity before the AO. We note that before the Ld.CIT(A), the assessee had filed additional evidences along with affidavit of his wife Smt. R. Malathi who has gifted Rs.31 lakhs to the assessee. The Ld.CIT(A) didn't entertain additional evidences since the assessee didn't file it before the AO. We don't countenance this action of the Ld.CIT(A) and is of the opinion that additional evidences filed by assessee need to be admitted or rejected by following Rule 46A of Income Tax Rules 1963 (herein after the Rules) and violation of it vitiates the impugned order. Therefore, for ends of justice and fair play, we set aside the impugned order of the Ld.CIT(A) and restore this issue back to the file of the AO for de novo assessment; and the Ld AR of the assessee undertakes to file the affidavit along with supporting documents before the AO and the AO to pass order on this issue afresh in accordance to law.

6. Coming to the next addition of Rs.5 lakhs, the Ld.AR drew our attention to Page No.15 of the Ld.CIT(A) order at Para No.7.6.1, wherein, the Ld.CIT(A) noted that the AO disallowed the claim of Rs.5 lakhs as agricultural income, since assessee failed to file evidences regarding



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ownership of agricultural land and evidences of actually carrying out agricultural operation by filing Chitta & Adangal Register etc. However, it was brought to our notice that during the appellate proceedings before the Ld.CIT(A), the assessee had filed copy of Adangal Register, Agricultural Income Certificate, etc., However, the Ld.CIT(A) didn't accept the same since they were filed for the first time during the appellate proceedings and the failure on the part of assessee to file any application for admission of additional evidences. We don't countenance such an action of the Ld.CIT(A) and are inclined to set aside this issue also back to the file of the AO for de novo assessment since assessee has produced relevant documents, which needs to be examined/verified by the AO and the assessee is at liberty to file all relevant documents to substantiate the agricultural income of Rs.5 lakhs and accordingly, the AO to pass order on this issue also after hearing the assessee.

7. In the result, appeal filed by the assessee in ITA No.1654/Chny/2024 for AY 2015-16 is partly allowed for statistical purposes.

ITA No.1655/Chny/2024 – for AY 2017-18:

8. The only grievance of the assessee is against the action of the Ld.CIT(A) confirming the addition of Rs.21 lakhs. Based on the survey conducted on 16.11.2017, the AO noted that assessee had shown to have



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advanced loan to the extent of Rs.21 lakhs to Firm @ 2% interest. The AO noted that even though during survey, assessee offered the same (Rs.21 lakhs) as additional income, but during assessment proceedings, he claimed to have received it as gift from relatives. But the AO expressing his dissatisfaction, made an addition of Rs.21 lakhs [unexplained cash credit]. The Ld.AR at the outset drew our attention to Page No.9 of the Ld.CIT(A) order and brought to our notice that the assessee had filed affidavit and Adangal Register of three parties/donors and their agricultural income computation, which could prove their source to give Rs.21 lakhs to assessee. The Ld AR pointed out that following donors gave gift to assessee (i) assessee's wife Smt. R. Malathi gave gift to the tune of Rs.5 lakhs, (ii) gift given of Rs.10 lakhs by his uncle Shri K. Somasundaram and (iii) gift from another uncle Shri Rangasamy to the tune of Rs.6 lakhs. However, according to the Ld.AR, the Ld.CIT(A) has not appreciated the contents of the affidavit which was supported by the relevant evidences/materials which has been ignored/over looked by the Ld.CIT(A) on the same reasoning that it was not filed before the AO and therefore, he rejected the evidences. We note that the assessee had filed before the Ld.CIT(A) various documents to substantiate the agricultural income earned by the three **donors** who claimed to have given gift of Rs.21 lakhs to the assessee. The assessee tried to convince the Ld.CIT(A) by adducing the evidences supra, to show that the donors who



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gifted Rs.21 lakhs were having sufficient credit worthiness and being relatives, they gave gift of Rs 21 Lakhs. But the Ld.CIT(A) didn't accept it since it was not produced before the AO and he was of the opinion that donors couldn't have had the agricultural income claimed by them considering the pattadar pass-book & adangal register. However, the main grievance of the assessee is that the Ld.CIT(A) has not confronted the assessee with the statistics on the basis of which he concluded that donors would not have earned the income. Be that as it may, for the ends of justice and fair play, we set aside the impugned order of the Ld.CIT(A) and restore this issue also back to the file of the AO for de novo assessment and the assessee to file all relevant documents before the AO to substantiate the source of Rs.21 lakhs given by the assessee to the partnership firm @2% interest.

9. In the result, appeal filed by the assessee in ITA No.1655/Chny/2024 for AY 2017-18 is allowed for statistical purposes.

ITA No.1641/24 - for AY 2018-19:

10. The only grievance of the assessee is against the action of the Ld.CIT(A) confirming Rs.35,50,000/-. Pursuant to the survey on 16.11.2017 [AY 2018-19], the AO noted that the assessee has filed RoI admitting an income of Rs.41,20,890/- for AY 2018-19. And that the assessee failed to explain the investment to the tune of Rs.50,90,000/- in



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the Firm named as M/s.Sai Granites & Tiles and about the undisclosed interest receipts of Rs.13,22,000/- from the firm. The assessee accepted the interest receipts of Rs.13,22,000/- and also his investment in the firm to the tune of Rs.50,90,000/- as additional capital. And when the AO asked the assessee to explain the source of investment, assessee submitted that he sold fixed assets and received consideration of Rs.14,50,000/-, which assertion has been accepted by the AO; and when the AO asked assessee to explain the balance amount of Rs.36,40,000/- [Rs.50,90,000-Rs.14,50,000], the assessee submitted that he had already shown Rs.25 lakhs as his '*income from other sources*' in his RoI and the balance amount of Rs.11,40,000/- to be sourced from his business income and thus, explained the total of investment of Rs.50,90,000/- [i.e. Rs.14.50 lakhs + Rs.25 lakhs + Rs.11.40 lakhs]. However, the AO didn't accept the aforesaid explanation of the assessee and made separate addition of Rs.35,50,000/- u/s.69 of the Act. On appeal, the Ld.CIT(A) upheld this action of the AO.

11. Aggrieved the assessee is in appeal before us.

12. We have heard both the parties and perused the material available on record. We note that the assessee has filed RoI admitting an income of Rs.41,20,890/- for AY 2018-19. The AO asked the assessee to explain the investment of Rs.50,90,000/- in the partnership Firm M/s.Sai Granites



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& Tiles. The assessee was able to explain the source of Rs.14,50,000/- which the AO accepted. For the balance amount of Rs.36,40,000/-, the assessee drew our attention to Page No.5 of the Paper Book wherein the computation of income is found placed from where it is revealed that the assessee has offered '*income from other sources*' to the tune of Rs.25 lakhs which assessee submitted to have been invested in the Firm [i.e. out of Rs.36,40,000/-, the amount of Rs.25,00,000/- was out of the ibid "*income from other sources*"]. But assessee's offer of Rs.25 lakhs in his RoI shown in computation of income as "*income from other sources*" has been rejected by the AO without assigning any reason and instead, the AO has computed the total income of assessee as under:

Income returned	Rs.41,20,890/-
Less: Income added under "Other sources other income"	Rs.25,00,000/-
	Rs. 16,20,890/-
Add: Unexplained investments - under sec.69 To be taxed under sec.115BBE	Rs.35,50,000/-
Assessed Income	Rs.51,70,890/-
Agricultural income	Rs. 1,20,000/-

13. We note that even though the assessee asserted before the AO that out of investment made of Rs.36,40,000/-, Rs.25 lakhs was sourced from his "*income from other sources*" the AO is noted to have rejected the same and reduced the returned income at Rs.16,20,890/- without assigning any reason or asking the assessee for explanation has arbitrarily while computing the total income has simply reduced Rs.25



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lakhs from the income returned of Rs.41,20,000/- and reduced the returned income at Rs.16,20,890/- and thereafter, added Rs.35,50,000/- u/s.69 of the Act as unexplained investment, which action can't be countenanced when the assessee has offered in his RoI Rs.41,20,890/- and in the computation of income has clearly shown Rs.25 lakhs as 'income from other sources'. The AO before rejecting the same ought to have called for explanation/details/proof the same i.e. the nature and source of it, which exercise has not been done/carried out by the AO which omission vitiates the action of the AO to have reduced the income shown by the assessee in his RoI as well as separate addition of Rs.35,50,000/- u/s.69 of the Act. And even the Ld.CIT(A) has not been able to appreciate the grievance of the assessee and has merely confirmed the action of the AO, which can't be countenanced. Therefore, considering the material placed on record including the ITR, computation of income and audited financials which has not been rejected by either AO/Ld CIT(A), we hold that the assessee has been able to explain Rs.25 lakhs out of Rs.36,40,000/-. Therefore, we restrict the addition u/s.69 of the Act to the balance amount i.e. Rs.11,40,000/- [Rs.36,40,000/- - Rs.25 lakhs].

14. In the result, appeal filed by the assessee in ITA No.1641/Chny/2024 for AY 2018-19 is partly allowed.



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15. In the result, appeal filed by the assessee in ITA No.1641/Chny/2024 for AY 2018-19 is partly allowed & appeal filed by the assessee in ITA No.1654/Chny/2024 for AY 2015-16 is partly allowed for statistical purposes & appeal filed by the assessee in ITA No.1655/Chny/2024 for AY 2017-18 is allowed for statistical purposes.

Order pronounced on the 06th day of December, 2024, in Chennai.

Sd/-

(जगदीश)

(JAGADISH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 06th December, 2024.

TLN, Sr.PS

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित /**Copy to:**

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