

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

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय 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.1252/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2017-18)

Shri Tharanipathy Rajkumar 2-Feb TSA Nilayam, Thathur, Pollachi-642 104.	बनस/ Vs.	ACIT Central Circle-1, Coimbatore.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. ADCPR-2405-F		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri R. Venkata Raman (CA) - Ld.AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri R. Clement Ramesh Kumar (CIT) -Ld. DR

सुनवाईकी तारीख/ Date of Hearing	:	18-09-2024
घोषणाकी तारीख / Date of Pronouncement	:	10-12-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2017-18 arises out of the order of learned Commissioner of Income Tax (Appeals), Chennai-20, [CIT(A)] dated 28-02-2024 in the matter of an assessment framed by the Ld. AO u/s 143(3) of the Act on 23-12-2019.

The assessee has raised the following grounds: -

1. That the Learned Commissioner of Income Tax (Appeals) -20, Chennai ["Ld. CIT(A)] failed to appreciate that the assessment order dated 23.12.2019 passed by the Assistant Commissioner of Income Tax, Central Circle-1, Coimbatore ["Assessing Officer"] u/s.143(3) of the Income-tax Act, 1961 ["Act"] is without jurisdiction, bad in law, barred by limitation and consequently erred in upholding the assessment.

2. That the Ld.CIT(A) is not justified in confirming the substantive addition of Rs.6,10,00,000/- made by the Assessing Officer u/s.69A of the Act in respect of M/s. Sri Sakthi Sai Enterprises.
3. That the Ld. CIT(A) is not justified in confirming the substantive addition of Rs.4,42,00,000/- made by the Assessing Officer u/s.69A of the Act in respect of M/s. Infant Jesus Foundation.
4. That the Ld. CIT(A) erred in sustaining the addition to the extent of Rs.10,96,30,000/- as against the amount of Rs.10,52,00,000/- made by the Assessing Officer.
5. That the Ld. CIT(A) is not justified in confirming the protective addition of Rs.4,65,00,000/- made by the Assessing Officer u/s.69A of the Act in respect of M/s. Sri Sakthi Sai Enterprises.
6. That the Ld. CIT(A) is not justified in confirming the protective addition of Rs.83,00,000/- made by the Assessing Officer u/s.69A of the Act in respect of M/s. Infant Jesus Foundation.
7. That the Ld. CIT(A) is not justified in confirming the protective addition of Rs.78,30,000/- made by the Assessing Officer u/s.69A of the Act in respect of M/s. Chennai Raj Chit Private Limited.
8. That the Ld. CIT(A) failed to appreciate that the provisions of section 69A of the Act are not applicable to the facts and circumstances of the case of the appellant and consequently erred in sustaining the additions made by the Assessing Officer u/s.69A of the Act.
9. That the Ld. CIT(A) in confirming the additions made by the Assessing Officer erred in not considering the sums declared by the respective concerns under PMGKY scheme.

As is evident, the sole grievance of the assessee is confirmation of certain addition u/s 69A against various parties viz. M/s. Sri Sakthi Sai Enterprises ('Sri Sakthi' in short), M/s Infant Jesus Foundation (IJF) and M/s Chennai Raj Chit Private Limited (CRCPL). The registry has noted delay of one day in the appeal which stands condoned.

2. The Ld. AR advanced arguments by taking support of various documents as placed on record. The Ld. CIT-DR also advanced arguments and supported the orders of lower authorities. Having heard rival submissions and upon perusal of case records, the appeal is disposed-off as under.

Assessment Proceedings

3.1 The assessee being resident individual is stated to be associated with various concerns. Pursuant to search action in the case of M/s

Sakthi Finance Ltd. on 23-03-2017 to enquire into deposits during demonetization period by companies which were being controlled by the assessee, the case of the assessee was subjected to scrutiny. The assessee admitted Long-Term Capital Gains on sale of property. Notice u/s 143(2) was issued on 24-09-2018 wherein the assessee was directed to file various details and documents.

3.2 It was alleged by Ld. AO that the assessee played key role in managing, controlling, arranging, instructing, organizing and syndicating the cash transfer and deposits of specified bank notes (SBNs) in various concerns. The subject matter of dispute before us is addition made by Ld. AO against deposits made in three concerns viz. M/s. Sri Sakthi Sai Enterprises ('Sri Sakthi' in short) M/s Infant Jesus Foundation (IJF) and M/s. Chennai Raj Chit Private Limited (CRCPL).

3.3 M/s Sri Sakthi deposited sum of Rs.14.50 Crores and another sum of Rs.0.50 Crores was received by Shri V. Ramesh, partner of that entity. Out of total sum, M/s Sri Sakthi transferred sum of Rs.9.35 Crores to various concerns as detailed below: -

No.	Particulars	Amount (Rs. Crores)
1.	ABT Madras P. Ltd.	4.25
2.	Padam Sugars Co.	2.05
3.	Hapline Commodities P. Ltd.	3.55
4.	Topflow Suppliers P. Ltd.	0.25
5.	Shri Magesh	0.15
6.	KS Jaishankar	0.10
	Total	10.35

M/s Sri Sakthi retained with it the remaining sum of Rs.4.65 Crores. Shri VM Vishunath (a close associate of the assessee), in response to summons issued u/s 131(1A), deposed that the assessee gave cash to M/s Sri Sakthi which was deposited by them in their bank account and

transferred to various concerns as per the instructions of the assessee after deducting commission / fees etc. M/s ABT Madras P. Ltd. who received sum of Rs.4.25 Crores opted for PMGKY Scheme.

3.4 The assessee, in sworn statement, deposed that on his instructions only, the demonetized specified bank notes deposits were made through partners of M/s Sri Sakthi in bank account of M/s Sri Sakthi. The assessee furnished a statement about disclosures made by various concerns with respect to the stated amount of Rs.15 Crores as under: -

No.	Particulars	Amount (Rs. Crores)	Remarks	Reference
1.	ABT Madras P. Ltd.	4.25	Declared under PMGKY Scheme	Declared by ABT Madras P. Ltd.
2.	Padam Sugars Co.	2.05	Declared under PMGKY Scheme	Declared by Arumuga Holdings P. Ltd.
3.	Hapline Commodities P. Ltd,	3.55	Declared under PMGKY Scheme	Declared by Arumuga Holdings P. Ltd.
4.	Topflow Suppliers P. Ltd.	0.25	Declared under PMGKY Scheme	Declared by Arumuga Holdings P. Ltd.
5.	Magesh	0.15	No Payments Received by me	Direct Payment by the concern to the payee
6.	KS Jaishankar	0.10	No Payments Received by me	Direct Payment by the concern to the payee
7.	Shri Sakthi Sai Enterprises	4.65	Retained by the same concern	Respective Concerns name
	Total	15.00		

The Ld. AO held that M/s Sri Sakthi facilitated channelization of funds and it got benefitted to the extent of Rs.4.65 Crores and accordingly, the same was added on substantive basis in the hands of that entity and protectively in the hands of the assessee. The amount declared by M/s ABT Madras P. Ltd. was assessed in the hands of that entity. The declaration made by Arumuga Holdings Ltd. with respect to entities listed at serial nos. 2 to 4 was not accepted on the ground that the assessee did not explain the nexus between these concerns and M/s Arumuga Holdings P. Ltd. In respect of transactions of Shri Magesh and Shri KS

Jaishankar, the same were stated to be only application and the source was from assessee only. Accordingly, this claim was rejected. Finally, the amount of Rs.6.10 Crores was added substantively in the hands of the assessee. The additions were made invoking the provisions of Sec.69A.

3.5 Another entity was Infant Jesus Foundation (IJF) who made deposit of Rs.11.75 Crores. The explanation furnished by the assessee was as under: -

No.	Particulars	Amount (Rs. Crores)	Remarks	Reference
1.	Maheshwari Brothers Coal	0.58	Declared under PMGKY Scheme	Declared by Arumuga Holdings P. Ltd.
2.	Arumuga Holdings P. Ltd.	6.50	Declared under PMGKY Scheme	Declared by Arumuga Holdings P. Ltd.
3.	Infant Jesus Foundation	0.83	Retained by the same concerns	Respective concern's income
4.	Maheshwari Brothers Coal	2.87**	No payments received by me	Direct payment by the concern to the payee
5.	Magesh	0.15***	No Payments Received by me	Direct Payment by the concern to the payee
	Total	11.78*		

* There is totaling difference of Rs.0.85 Crores. The actual total comes to Rs.10.93 Crores

** This correct amount for this entity is Rs.3.87 Crores

***There is no transfer to this individual

The amount of Rs.0.83 Lacs as retained by IJF was added protectively in the hands of the assessee. The declaration made by Arumuga Holdings Pvt. Ltd. against Maheshwari Brothers Coal was not accepted. The explanation for parties listed at Sl. No.4 & 5 was also not accepted and substantive addition of Rs.4.42 Crores was made in the hands of the assessee.

3.6 Another concern viz. Chennai Raj Chits P. Ltd. (CRCPL) retained commission of Rs.78.30 Lacs which was assessed protectively in the hands of the assessee.

3.7 The Ld. AO made various other protective additions, however, the same are not the subject matter of dispute before us since these additions have already been deleted by Ld. CIT(A).

Appellate Proceedings

4.1 The assessee assailed the impugned additions by way of elaborate written submissions which have already been extracted in the impugned order. The assessee submitted that the declaration made by Arumuga Holdings P. Ltd. (in which he acted as a director) was to be considered. The assessee also assailed invocation of the provisions of Sec.69A on the ground that these provisions could be invoked only when the assessee was in possession of money which was not recorded in the books of accounts and the assessee offers no explanation thereof. The same was not the case since Ld. AO did not render any findings that the assessee possessed any money, bullion, jewellery etc., which are not recorded in the books of accounts. The amount substantively assessed was lying with other parties as enumerated above in the tables. The same should be duly recorded in their books of account, if the same is not recorded in their books of account, addition under Sec.69A should be made substantively in their hands as they were in possession of money without recording the same in the books of account to trigger Sec.69A applicability. The assessee also assailed addition on protective basis. It was stated that the assessee admitted sum of Rs.12.39 Crores in the name of M/s Arumuga Holdings P. Ltd. in which he was a director to avoid further litigation. The Ld. AO himself added Rs 4.65 Crores as income of M/s Sri Sakthi. By applying same logic of diversion of income by overriding title, Rs 0.15 Crores and Rs 0.10 Crores should have been added substantively in hands of Mr. Magesh and Jaishankar. These

payments were out of amount of Rs.4.90 Crores paid to M/s Sri Sakthi. Therefore, it was application by M/s Sri Sakthi and not by the assessee. In the present case, amount deposited in SBNs had been recorded by respective group companies in their respective books of accounts and therefore, the provisions of section 69A could not be invoked against the assessee to make the impugned additions. Further, the amount of Rs.3.87 Crores as retained by M/s Maheswari Brothers Coal represents commission payment by the assessee and therefore, the same could not be added in the hands of the assessee. The Ld. AO ought to have treated the payment on par with payment of Rs 4.90 Crores paid to M/s Sri Sakthi. The assessee also advanced various other arguments to assail the impugned additions.

4.2 The Ld. CIT(A) noted that the main argument of the assessee was that the amount declared by Arumuga Holdings Ltd. under PMGKY was again added in the hands of the assessee. Secondly, the commission paid to different concerns for allowing use of their bank accounts constitutes income in the hands of respective concerns only and therefore, the same could not be taxed again in the hands of the assessee.

4.3 The Ld. CIT(A) noted that the following amount aggregating to Rs.6.43 Crores were claimed to be declared by Arumuga Holdings P. Ltd.: -

No.	Particulars	Amount (Rs. Crores)	Remarks	Reference
1.	Padam Sugars Co.	2.05	Declared under PMGKY Scheme	Declared by Arumuga Holdings P. Ltd.
2.	Hapline Commodities P. Ltd,	3.55	Declared under PMGKY Scheme	Declared by Arumuga Holdings P. Ltd.
3.	Topflow Suppliers P. Ltd.	0.25	Declared under PMGKY Scheme	Declared by Arumuga Holdings P. Ltd.
	Total	5.85		

4.	Maheshwari Coal Brothers	0.58	Declared under PMGKY Scheme	Declared by Arumuga Holdings P. Ltd.
	Total	6.43		

The amount of Rs.5.85 Crores as deposited in the bank account of M/s Sri Sakthi was transferred by them to M/s Padam Sugar Co., M/s Hapline Commodities Pvt. Ltd and Topflow Suppliers P. Ltd. The amount of Rs.0.58 Crores was transferred from the account of IJF. The question was to see whether there was any link between declaration made under PMGKY in the hands of Arumuga Holdings P. Ltd. and unaccounted cash transferred to bank account of above four entities. The Ld. CIT(A) noted that the declaration was made by M/s Arumuga Holdings P. Ltd on 10-04-2017. Total amount declared in their hand was for Rs.15.84 Crores with respect to deposits in four current accounts of that entity as on 31-03-2017. The CBDT Circular No. 9/2017 dated 14-03-2017 clarified that as far as declaration with respect to deposits made in bank accounts are concerned, such deposits should exist on date of making payment of tax. Therefore, whatever declaration made by M/s Arumuga Holdings Ltd as on 31-03-2017 was with respect to deposits existing in its current accounts on that day. If it is the argument of the assessee that deposits in current accounts of M/s Arumuga Holdings Ltd as on 31-03-2017 totaling to Rs 15.84 Crores which is declared under PMGKY includes unaccounted income deposited in bank accounts of above four entities, the question is whether assessee is able to establish the fact that amount declared under PMGKY to the extent of Rs 6.43 Crores represents the amount either withdrawn from bank accounts of above four entities and re-deposited into current accounts of M/s Arumuga Holdings P. Ltd. under declaration or filed any evidence to show that

amounts from bank accounts of above four entities have been directly transferred to current accounts of M/s Arumuga Holdings P. Ltd. under declaration since as far as provisions of PMGKY scheme, 2016 is concerned, only existing deposits in bank accounts of assessee could be declared. The assessee failed to file any such evidence linking the unaccounted cash deposited in bank accounts of above four entities and deposits in current accounts declared by M/s Arumuga Holdings P. Ltd. Thus the argument raised by the assessee was rejected. Aggrieved, the assessee is in further appeal before us.

4.4 On the issue of commission, the assessee claimed that the following amounts would be taxable in the hands of payee entities only: -

No.	Particulars	Amt. Retained in Bank Account (in Crores)	Additions made by AO in the hands of concern (in Crores)	Addition made by AO in the hands of the assessee (in Crores)
1.	Sri Sakthi Sai Enterprises	4.65	Substantial addition of Rs.4.65 Crores	Protective Addition
2.	Magesh	0.15	---	Substantial addition of Rs.0.15 Crores
3.	K.S.Jaishankar	0.10	---	Substantial addition of Rs.0.10 Crores
4.	Maheshwari Brothers Coal Ltd.	3.87	--	Substantial Addition of Rs.3.45 Crores (Rs.2.87 Crores+Rs.0.58 Crores). The AO has mistakenly taken Rs.2.87 Crores instead of correct amount of Rs.3.87 Crores as per the submissions of assessee during assessment proceedings
5.	Chennai Raj Chits P. Ltd.	0.783	Substantial Addition of Rs.0.783 Crores	Protective Addition
6.	Infant Jesus Foundation	0.83	Substantial Addition of Rs.0.83 Crores	Protective Addition
	Total	10.963		

The Ld. CIT(A) held that the entire amount of Rs.10.96 Crores represent unaccounted income of the assessee. The assessee claimed that since it was paid as commission, the same would not constitute its income. Just because the assessee utilized the part of unaccounted income to convert remaining unaccounted income into accounted income, the same would not take away the character of income of the amount so expended. There was a difference between expenditure incurred for earning of income and application of income so earned. In the former case, the expenditure is deductible from total receipts for arriving at net income. In the later case, expenditure is incurred out of net income earned and therefore, no deduction is allowable. Therefore the claim was rejected and the addition made by Ld. AO for Rs.10.96 Crores was upheld on substantive basis. Aggrieved, the assessee is in further appeal before us.

4.5 On the issue of applicability of provisions of Sec.69A, Ld. CIT(A) held that the assessee admitted that it had directed Shri Vishunath to get the money deposited in the some third-party accounts. He undertook to admit Rs.11.77 Crores under PMGKY with respect to amount deposited in the bank account of M/s Sri Sakthi and IJF. This statement was not retracted till date. Accordingly, the invocation of Sec.69A was held to be justified. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

5. From the facts, it emerges that the assessee was associated with various entities. The assessee played key role in managing, controlling arranging and syndicate cash transfer and deposits in various concerns. The assessee has facilitated cash deposits in various concerns which include M/s Sri Sakthi, Infant Jesus Foundation (IJF) and CRCPL.

Ultimately, the assessee has declared various amounts under PMGKY for various group concerns i.e., ABT (Madras) P. Ltd., Arumuga Holdings Pvt. Ltd., Overseas Beverages P. Ltd., Imperial Spirits and Wines Ltd. and Nethravati Distilleries P. Ltd. The declaration so made aggregated to Rs.49.50 Crores as detailed on Page No.18 of the paper-book. The declaration has been made for cash deposits in various other concerns. The declaration is on collective basis. In such a situation one-to-one linkage between the cash deposits and the declaration made by these concerns may not be available directly. Nevertheless, the cognizance of declaration so made by the assessee has to be considered. In the same In the above background, our adjudication would be as follows.

6. The assessee has deposited sum of Rs.15 Crores in M/s Sri Sakthi. Out of this, an amount of Rs.4.25 Crores has already been admitted by M/s ABT Madras P. Limited which has been accepted by lower authorities. The amount of Rs.4.65 Crores has been retained by M/s Sri Sakthi. The Ld. AO added the same on protective basis in the hands of M/s Sri Sakthi whereas Ld. CIT(A) enhanced the same into substantive addition. A copy of assessment order of M/s Sri Sakthi has been placed on Page Nos. 30 to 35 of the paper-book. Upon perusal of the same, it could be seen that remaining deposit of Rs.10.75 Crores (Rs.15 Crores Less Rs.4.65 Crores) has been bifurcated into two parts i.e., Rs.6.10 Crores added substantively in the hands of Shri T. Rajkumar and the same has been added protectively in the hands of M/s Sri Sakthi. The remaining amount of Rs.4.65 Crores which represent commission and other receipts has been added substantively in the hands of the M/s Sri Sakthi. Since these are circular transactions, the same could be added substantively only once. The Ld. AR has submitted

that the addition in the hands of M/s Sri Sakthi has attained finality since there is no further appeal against that addition. In other words, substantive addition has already been confirmed in the hands of M/s Sri Sakthi. This being the case, another substantive addition for the same amount in the hands of the assessee could not be held to be justified. Therefore, the addition to the extent of Rs.4.65 Crores, substantively as well as protectively, stands deleted.

7. Proceeding further, it could be seen from Page No.18 of the paper-book that M/s Arumuga Holdings Pvt. Ltd. has admitted amount of Rs.15.84 Crores under PMGKY Scheme. The detailed declaration made by that entity is as below: -

No.	Particulars	Amount (Rs. Crores)
1.	Padam Sugars Co.	2.05
2.	Hapline Commodities P. Ltd,	3.55
3.	Topflow Suppliers P. Ltd.	0.25
	Total (A)	5.85
	<u>Infant Jesus Foundation</u>	
4.	Maheshwari Coal Brothers	0.58
5.	Arumuga Holdings P. Ltd.	6.50
6.	Imperial Spirits & Wine P. Ltd.	0.66
7.	Arumuga Holdings P Ltd.- Current Account	2.00
8.	Medicare Clinic P. Ltd	0.25
	Total (A)	9.99
	G. Total (A)+(B)	15.84

The Ld. CIT(A) has denied the claim of the assessee on the ground that the assessee failed to make any direct one-to-one linkage between the amount transferred to these entities and declaration made by Arumuga Holdings P. Ltd. However, we are of the opinion that once the amount has been declared on collective basis under PMGKY, the same could

not be added again in the hands of the individual parties and the cognizance of declaration so made by the assessee has to be taken into account. It could be seen that the assessee was managing and controlling various group entities with a view to make cash deposits through circular transactions. If the transaction is taxed once, the circular transactions could not be taxed again and there may not be any direct linkage available with the assessee, in such a scenario. Therefore, the addition of Rs.5.85 Crores pertaining to three parties listed at serial nos. 1 to 3, as sustained in the impugned order, stand deleted since the same has already been offered under PMGKY. The addition of Rs.0.58 Crores as made for cash deposit in the account of IJF with respect to Maheshwari Brothers Coal also stand deleted on same logic. The corresponding grounds of appeal stand allowed.

8. The amount of Rs.0.83 Crores as retained by IJF has been added substantively, in the hands of that entity which is evident from its assessment order which has been placed on Page Nos.36 to 40 of the paper book. The amount of Rs.11.78 Crores as transferred to this entity has been bifurcated into two parts i.e., Rs.10.95 Crores added substantively in the hands of Shri T. Rajkumar and the same has been added protectively in the hands of IJF. The remaining amount of Rs.0.83 Crores which represent commission receipts has been added substantively in the hands of the IJF. Since these are circular transactions, the same could be added substantively only once. The Ld. AR has submitted that the addition in the hands of IJF has attained finality since there is no further appeal against that addition. In other words, substantive addition has already been confirmed in the hands of IJF. This being the case, another substantive addition for the same

amount in the hands of the assessee could not be held to be justified. Therefore, the addition to that extent, substantively as well as protectively, stands deleted. Similar facts exist for amount of Rs.0.783 Crores in the hands of CRCPL. The addition in the hands of that entity has attained finality (Page Nos.41 to 46 of the paper book). Therefore, this addition also stand deleted on same logic.

9. The amount of Rs.3.87 Crores pertaining to Maheshwari Brothers Coal is stated to have been retained by that entity. This being so, the same could be subject matter of substantive addition in the hands of that entity only as done by Ld. AO while framing assessment for M/s Sri Sakthi and IJF. This amount represents commission / other receipts for that entity. Therefore, applying the same logic, this amount cannot be added in the hands of the assessee. We order so.

10. No plausible explanation is available for aggregate amount of Rs.0.25 Crores pertaining to Shri Magesh & Shri KS Jaishankar. Therefore, the addition to that stand confirmed. No other ground has been urged in the appeal.

11. The appeal stand partly allowed in terms of our above order.

Order pronounced on 10th December, 2024

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

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

चेन्नई Chennai; दिनांक Dated :10-12-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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