

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

माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
माननीय 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.765/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2009-10)

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2. आयकर अपील सं/ ITA No.766/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2010-11)

&

3. आयकर अपील सं/ ITA No.767/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2011-12)

&

4. आयकर अपील सं/ ITA No.768/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2012-13)

DCIT Central Circle-2(1) Chennai	बनम/ Vs.	M/s Cavinkare Private Limited 12, Cavin Ville, Cenotaph Road Teynampet, Chennai-600 018.
स्थायी लेखा सं./जी आइ आर सं./PAN/TAN No. AAACB-3754-B		
(पीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri A. Sasikumar (CIT) - Ld. DR
प्रत्यर्थीकी ओरसे/Respondent by	:	Shri T. Banusekar (Advocate) – Ld.AR

सुनवाईकी तारीख/Date of Hearing	:	15-01-2025
घोषणाकी तारीख /Date of Pronouncement	:	24-02-2025

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by revenue for Assessment Years (AY) 2009-10 to 2012-13 arises out of common order passed by learned

Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] on 26-04-2023 in the matter of separate assessments framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s. 153A of the Act on 30-12-2016. It is admitted position that the facts as well as issues are quite identical in all the years. First, we take up appeal for AY 2009-10. The registry has noted delay of 2 days in the appeal which stand condoned. The grounds raised by the revenue read as under: -

1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

2. The Ld.CIT (A) erred in deleting the disallowance of addition made under the head disallowance of excess claim of deduction u/s.80IC, Disallowance u/s.40a(ia) for non deduction of TDS, addition towards inflation of purchases, Remuneration paid to related party, disallowance u/s.36(1)(ii), disallowance of deduction u/s.35(2AB), excess claim of depreciation for the reason that the additions were not made on the basis of incriminating materials. The Ld.CIT(A) erred in failing to adjudicate the issues on the basis of merits of the case.

2.1 The Ld.CIT(A) failed to appreciate that the disallowance of excess claim of 80IC deduction was made since the assessee had shown excess value of closing stock in respect of units claiming 80IC deduction. This addition was made on the basis of search findings.

2.2 The Ld.CIT(A) erred in deleting the addition made towards remuneration paid to R. Thenmozhi, without appreciating that she deposed in her sworn statement recorded during the course of search that she was only housewife and did not have any role in the affairs of the company.

2.3 The Ld.CIT(A) erred in failing to appreciate that in respect of inflation of purchases, additions were made on the basis of sworn statements of responsible persons of supplier companies recorded during consequential survey u/s.133A and assessee's failure to reconcile the purchases from these suppliers.

2.4 The Ld.CIT(A) failed to appreciate that other additions such as Commission paid to Shri. C.K. Rangathan, Disallowance u/s.40a(ia) for non deduction of TDS in respect of transactions with third party units, etc were made on the basis of search findings. On account of search only, the department had unearthed the discrepancies leading to the additions.

3. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

2. The Ld. CIT-DR advanced arguments and submitted that the impugned additions were based on seized material as well as sworn statements and therefore, Ld. CIT(A) erred in granting relief on the

ground that there was no incriminating material. The Ld. CIT-DR drew attention to the statement recorded during search proceedings on the assessee. The list of material as seized during the course of search in the assessee has been tabulated in letter dated 31-05-2024. The Ld. AR also advanced arguments and stated that there is difference in seized material and incriminating material. The Ld. AR stated that the impugned additions are not based on any incriminating material and therefore, Ld. CIT(A) rightly deleted the impugned additions. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings

3.1 The assessee being resident corporate assessee is stated to be engaged in personal care line of business and also engaged in business of food products and beverages. The assessee, in its return of income, claimed deduction u/s 80-IC in respect of entire gross income. An assessment was framed u/s 143(3) determining the total income at Rs. 'Nil'. However, the assessee was subjected to search u/s 132 on 24-09-2014 and notice u/s 153A was issued on 07-04-2016. The assessee filed return of income claiming similar deduction u/s 80-IC on gross total income. Subsequently, notices u/s 143(2) and 142(1) were issued calling for requisite information / details from the assessee. The assessee furnished replies on the basis of which impugned assessment was framed.

3.2 In the assessment order, Ld. AO disallowed excess claim made u/s 80-IC. The Ld. AO, referring to the search on assessee, observed that the assessee manipulated closing stock figures in Hardwar unit and it was claiming higher deduction u/s 80-IC. The Ld. AO also disallowed

salary paid to Smt. Thenmozhi on the ground that during search it was found that she was a homemaker and played no role in the affairs of the company. She was not technically qualified enough and not even graduate. The Ld. AO referred to her statement during search to make this addition. The Ld. AO made disallowance u/s 40(a)(ia) for non-deduction of TDS u/s 194C for payments made to contract manufacturers. The Ld. AO has referred to search findings to make this addition. The reference was made to statements recorded from contract manufacturers also. The Ld. AO alleged that there was inflation of purchases. During search, it was noted that there was difference in books of the assessee as well as in the books of various third-parties to the extent of Rs.31.08 Crores. Accordingly, the difference was brought to tax. The Ld. AO alleged that there was sales inflation with respect to an entity M/s Hemlata Enterprises resulting in excess claim of 80-IC deduction. Upon perusal of related party transactions as reported in tax audit report, it was observed by Ld. AO that the assessee paid remuneration and commission to its Managing Director. The commission would attract disallowance u/s 36(1)(ii). The assessee's claim of deduction u/s 35(2AB) was denied on the ground that the assessee did not submit Form 3CL. The assessee could not produce bills for certain fixed assets and accordingly, the depreciation was denied on these assets. Upon perusal of Audit Report, it was noted that the assessee received / repaid loans or deposits beyond specified threshold limits and accordingly penalty proceedings were to be initiated in due course. Finally, the income was determined at Rs.70.49 Crores and the assessment was framed. The assessment was framed on similar lines

for subsequent years also. Aggrieved, the assessee assailed the action of Ld. AO in further appeals.

Appellate Proceedings

4.1 The assessee, inter-alia, submitted that the assessment for AYs 2009-10 to 2011-12 had already been completed u/s 143(3) whereas for AY 2012-13, the time limit to issue notice u/s 143(2) had already expired prior to commencement of search proceedings. It was also contended that none of the additions as made by Ld. AO had any nexus with the material found during the course of search action. On the given facts, as per judicial precedents, the additions could be made only on the basis of incriminating material found during the course of search proceedings on the assessee.

4.2 Concurring with the same, Ld. CIT(A) held that all the additions were made on the basis of materials already available on record or on the basis of sworn statements. With respect to the disallowances made u/s. 35(2AB), Section 14A, Section 40(a)(i) and (ia), Section 36(1)(ii), Section 40A(2), depreciation, reduction in the claim of deduction u/s. 80-1C, there was no reference to the seized material based on which the additions were made. The addition made due to un-reconciled balances with the Third-Party Units (TPUs) was also not made on the basis of incriminating material. The inference of inflation of purchases from TPUs was made after calling for certain records and not on the basis of what was found during the course of the search. Accordingly, the impugned additions, for all the years, were deleted. Aggrieved, the revenue is in further appeal before us.

Our findings and Adjudication

5. In its letter dated 31-05-2024, the Ld. AO has tabulated the detail of incriminating material found during the course of search on assessee as under: -

No.	Description
1.	1 TB Seagate hard disk containing working copy of tally server system seized vide annexure ANN/CS/CK/ED/S-2 dated 24/09/2024 from the office premises of M/s. Cavinkare Pvt Ltd at No.12, Cavin ville, Cenotaph Road, Teynampet.
2	Three DVDs containing ERP database seized vide annexure ANN/CS/CK/ED/S-9 dated 24/09/2014 from the office premises of M/s. Cavinkare Pvt Ltd at No.12, Cavin ville, Cenotaph Road, Teynampet
3	One Touro hard disk containing working copies of the electronic devices impounded vide annexure ANN/CRR/RI/ED/S dated 24/09/2014 from the premises of M/s. Rohit India located at No.153/7, Manapetveli, Puducherry-607402 and the electronic devices impounded vide annexure ANN/ST/DC/ED/IMP dated 21/10/2014 from the premises of M/s Daffy Cosmetics Pvt Ltd, Uttarakhand.
4	One 500 GB Seagate hard disk containing working copies of electronic devices impounded vide annexure ANN/ST/MGS/ED/IMP dated 19/10/2014 from the premises of M/s. G. Shahani and Co. New Delhi and working copy of one HP 8GB pen drive impounded from the premises of M/s. Sujatha Biotech, Uttarakhand.

The revenue thus submits that there was enough incriminating material before Ld. AO to make the impugned additions. The Ld. CIT-DR also submitted that the sworn statements itself may also be incriminating.

6. The Ld. AR, on the other hand, referred to the findings of Ld. CIT(A) to submit that there was no incriminating material or even sworn statement so far as the disallowance of Commission u/s.36(1)(ii), disallowance of deduction u/s. 35(2AB), depreciation, disallowance u/s 14A and expenditure in foreign currency is concerned. On the other issues also, it has been stated that the same is not based on any incriminating material. The Ld. AR has tabulated the assessment position, for all the years, as under: -

AY	Return filing date	Date of passing 143(3) Order	Search Date	Time Limit for issuing Notice u/s 143(2)	Date of 143(3) rws 153A order
2009-10	29.09.2009	30.12.2011	24.09.2014	Not relevant	30.12.2016
2010-11	02.10.2010	31.03.2013	24.09.2014	Not relevant	30.12.2016
2011-12	28.11.2011	20.03.2014	24.09.2014	Not relevant	30.12.2016
2012-13	28.09.2012	-	24.09.2014	30.09.2013	30.12.2016

The Ld. AR thus submitted that all the years are case of unabated assessment years and therefore, in the absence of any incriminating material, no addition could have been made by Ld. AO in terms of settled legal position.

7. Upon careful consideration of facts and circumstances of the case and considering the fact that Ld. AO has referred to various incriminating material as found during the course of search proceedings while making the impugned additions, we set aside the impugned order and restore the assessments, for all the years, back to the file of Ld. AO for de novo adjudication in accordance with law. In terms of settled legal position, the additions as proposed to be made by Ld. AO are to be based on incriminating material and / or sworn statements which shall be confronted to the assessee. All the issues are kept open.

8. All the appeals stand allowed for statistical purposes.

Order pronounced on 24th February, 2025

Sd/-
(MANU KUMAR GIRI)
न्यायिक सदस्य / JUDICIAL MEMBER

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

चेन्नई Chennai; दिनांक Dated : 24-02-2025
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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