

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री एस.आर. रगुनाथा, लेखा सदस्य के समक्ष
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri S.R. Raghunatha, Accountant Member

आयकर अपील सं./I.T.A. No.2952/Chny/2024
निर्धारण वर्ष/Assessment Year: 2012-13

Palani Gurumurthy,
No. 10A, Park Lane Paper Mills Road,
Perambur, Chennai 600 011.

Vs. The Income Tax Officer,
Non Corporate Ward 17(6),
Chennai.

[PAN:AIHPG8291J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : None
प्रत्यर्थी की ओर से/Respondent by : Ms. Sandhya Rani Kure, JCIT
सुनवाई की तारीख/ Date of hearing : 12.03.2025
घोषणा की तारीख /Date of Pronouncement : 13.03.2025

आदेश / O R D E R

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order dated 20.06.2024 passed by the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi for the assessment year 2012-13.

2. We find that this appeal is filed with a delay of 81 days. The assessee filed an affidavit for condonation of delay explaining reasons for the said delay and prayed for condonation of that delay. On perusal of the

condonation petition and upon hearing the Id. DR, we find that the reasons explained by the assessee are bonafide and therefore, the delay is condoned and admitted the appeal for adjudication.

3. We find that this appeal was filed on 20.11.2024. After scrutiny, the Registry fixed the appeal for hearing on 13.02.2025 and intimated the said date of hearing to the assessee vide notice dated 11.12.2024 by RPAD. We find no representation on behalf of the assessee or any application filed seeking adjournment on 13.02.2025. The Bench adjourned the appeal hearing to 12.03.2025 and intimated the same to the assessee vide notice dated 13.02.2025 by RPAD. However, the said notice returned unserved with an endorsement dated 19.02.2025 by Postal authorities that "the assessee is left India". Therefore, it is clear from the record that the assessee is not in India. Thus, the assessee called absent and set exparte and proceed to adjudicate the appeal on merits after hearing the Id. DR.

4. We note that the Assessing Officer found cash deposits to an extent of ₹.16,81,000/- in assessee's ICICI bank account No. 603801505936. The Assessing Officer sought for explanation from the assessee vide notice under section 142(1) of the Income Tax Act, 1961

["Act" in short]. According to the Assessing Officer, no return of income filed by the assessee for the year under consideration and accordingly, notice under section 148 of the Act was issued requesting the assessee to file return of income. However, no return of income filed in response to the said notice under section 148 of the Act. Again, notice under section 142(1) of the Act seeking details regarding the cash deposits as found in the assessee's bank account, however, there was no response from the assessee. Further, a show-cause notice was also issued by the Assessing Officer stating why the cash deposit should not be treated as income of the assessee. Having no response from the assessee, the Assessing Officer proceeded to complete the assessment under section 144 of the Act dated 13.12.2019 by determining the total income of the assessee at ₹.16,81,000/-.

5. Having aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the Id. CIT(A). It was contended that the source of cash deposits was gold loan obtained in cash and the assessee was forced to deposit the money in cash from the loan. In support of the same, the assessee furnished 3 gold loan certificates before the Id. CIT(A). We find that the gold loan certificates were reproduced at page 5, 6 & 7 of the impugned order. We find that the

said gold loan certificates furnished by the assessee were matured on 09.11.2011 and are relevant to the financial year 2011-12 (AY 2012-13). Further, he did not accept the statement of the assessee that the HDFC bank disbursed the impugned loan in cash and by placing reliance in the case of Shri Charan Singh v. Chandra Bhan Singh (AIR 1988 SC 6370), which held the burden of proof lies on the party who substantially asserts the affirmative of the issue and not upon the party who denies it. Further, the Hon'ble Supreme Court held that the party cannot, on failure to establish a prima facie case, take advantage of the weakness of his adversary's case and thereby confirmed the order of the Assessing Officer. For ready reference, relevant part of the impugned order from para 5.4 to 5.7 are reproduced herein below:

5.4 I have perused the AO's order, grounds of appeal, the appellant's reply and other details available on record. The appellant through his reply dated 05.09.2023 stated that "The source of the cash deposit is being the appellant has pledged gold and obtained loan in cash and savings made by the appellant and his family members, the appellant was forced to deposit the money in cash from the loan being taken since the appellant had EMIs and loans to be paid and also had to issue some cheques, in order to facilitate the same the appellant has no other choice than to pledge the loan and deposit the same

5.5 On perusal of the response of the appellant it is observed that the appellant has no explanation regarding the source of cash deposits. The gold loan certificates attached by the appellant were matured on 09 Nov. 2011, hence it is clear that these loans were not taken during the F.Y. 2011-12. Further, while the appellant submitted copies of gold loan maturity notices, he failed to file the relevant sanction letters from which it could have ascertained that (i) when the loan was actually disbursed; and (ii) what was the mode of disbursement of such loans. From the material available on record, it is not substantiated that the impugned loans were disbursed by HDFC Bank in cash, In view of the same, the appellant statement that he has pledged gold and obtained loan in cash cannot be accepted. Further, after filing the initial submissions, the appellant failed to respond to subsequent notice. He could have utilized this

opportunity to establish his claim by submitting necessary documents. The appellant has completely failed to produce any evidence whatsoever which could have substantiated the claim that the cash deposit was from a declared source of income. In the present case, the appellant has not been able to discharge his initial burden of proof

5.6 It is settled law that Burden of proof that transaction is genuine lies on the assessee. In the case of Shri Charan Singh vs. Chandra Bhan Singh(AIR 1988 SC 6370), the Hon'ble Supreme Court have clarified that the burden of proof lies on the party who substantially asserts the affirmative of the issue and not upon the party who denies it. It has been further held that the party cannot, on failure to establish a prima facie case, take advantage of the weakness of his adversary's case. The party must succeed by the strength of his own right and the clearness of his own proof. In this case, the burden of evidence was on the appellant if he wanted to prove that the transaction in question was a genuine transaction. During the assessment proceedings and even during the present appellate proceedings, the appellant has failed to produce any evidence to support his contentions.

5.7 Since the appellant completely failed to explain the source of the cash deposited in his bank account along with documentary evidences, I am of the considered view that the Assessing Officer was justified in making addition of Rs. 16,81,000/- in his order passed u/s 144 of the Act and accordingly, the ground of appeal of the appellant is "Dismissed".

6. On perusal of the above, we note that the assessee made submissions before the Id. CIT(A) along with gold loan certificates. The Id. CIT(A) examined the same and held that the assessee failed to furnish relevant sanction letter to ascertain when the gold loan was actually disbursed and the mode of disbursement of such loans.

7. Before us, no record was filed to show that the deposits were out of gold loan. Further, on perusal of the gold loan certificates reflected in page 5, 6 & 7 of the impugned order. We note that it is not clear whether such gold loan certificate showing disbursement of loan amount in cash or not. Therefore, we agree with the reasons given by the Id.

CIT(A) at para 5.4 & 5.5 of the impugned order and we find no infirmity in the order of the Id. CIT(A). Thus, the grounds raised by the assessee are dismissed.

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on 13th March, 2025 at Chennai.

Sd/-
(S.R. RAGHUNATHA)
ACCOUNTANT MEMBER

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Chennai, Dated, 13.03.2025

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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