

आयकर अपीलिय अधिकरण, बी / एस एम सी न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' SMC BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य के समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos.2985, 2986, 2987 & 2988/Mds/2014

निर्धारण वर्ष / Assessment Years : 2001-02 to 2004-05

Shri M. Rajendran,
41, Periathambi Nagar,
Kumbakonam – 612 001.

v. The Income Tax Officer,
Ward I(1),
Kumbakonam.

PAN : AAIPR 7441 Q
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.2980, 2981, 2982, 2983 & 2984/Mds/2014

निर्धारण वर्ष / Assessment Years : 1999-00 to 2002-03 & 2004-05

Shri K. Palanisamy,
By L/H P. Sathishkumar,
14, Ponnusamy Nagar,
Kumbakonam – 612 001.

v. The Income Tax Officer,
Ward I(1),
Kumbakonam.

PAN : AAKPP 2961 P
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellants by : Shri N. Quadir Hoseyn, Advocate

Shri B. Natarajan, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri Supriyo Pal, JCIT

सुनवाई की तारीख/Date of Hearing : 20.06.2016

घोषणा की तारीख/Date of Pronouncement : 01.09.2016

आदेश / O R D E R

All the appeals of the two independent assesseees are directed against the respective orders of the Commissioner of Income Tax (Appeals), Tiruchirappalli. Since common issue arises for consideration in all these appeals, I heard these appeals together and dispose of the same by this common order.

2. The first issue arises for consideration is addition towards interest on money lending in the case of both the assesseees.

3. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee submitted that during the year under consideration, the assessee has offered interest income from hand loan. However, no details were furnished. In the course of assessment proceeding, the assessee has furnished all the details of the hand loan outstanding. However, the Assessing Officer without appreciating the materials filed by the assessee made addition. The Ld.counsel further submitted that the assessee has furnished all the details with regard to hand loan and interest received, etc. before the Assessing Officer. In fact, the Assessing Officer has reproduced the same at page 2 of his order. The CIT(Appeals) confirmed the addition

without going into the details filed by the assessee. According to the Ld. counsel, the income estimated by the Assessing Officer is arbitrary. The Assessing Officer estimated the rate of interest as 24 to 30% in the money lending business. According to the Ld. counsel, 24 to 30% is very unreasonable. Therefore, the addition made by the Assessing Officer is not justified.

4. On the contrary, Shri Supriyo Pal, the Ld. Departmental Representative, submitted that the assessee is a partner in number of financial institutions, receiving salary and interest income. The assessee is also engaged independently in money lending business. Since the assessee has not produced any books of account and other details regarding the name and address of the persons to whom the loan was advanced, rate of interest and settlement of loan, etc., the Assessing Officer in fact estimated the income from money lending business. For the assessment year 2002-03, the assessee himself agreed for estimation of interest at ₹2,50,000/-. Considering the rate of interest charged as per the information furnished, the Assessing Officer reasonably estimated the interest at 25%. Therefore, according to the Ld. D.R., no interference is called for.

5. I have considered the rival submissions on either side and perused the relevant material available on record. Though the assessee claims that it was hand loan, the way in which the assessee carried on the business shows that the assessee is engaged in the business of money lending business. The assessee showed the amount of hand loan in the balance sheet as on 31.03.1999 at ₹2,50,000/- and interest income offered was ₹44,000/-. This comes to 17.6%. Similarly, for the period ending 31.03.2000, the balance sheet of the assessee showed hand loan of ₹1,25,000/- and the interest income offered was ₹45,000/-. Similarly, for the period ending 31.03.2001, the outstanding hand loan was ₹2,25,000/-. The interest income offered was ₹40,000/-. The rate of interest worked out to 17.7%. The assessee himself offered interest income exorbitantly higher figure. When the assessee himself offered the higher rate of interest from money lending business, this Tribunal is of the considered opinion that estimating the interest income does not arise for consideration. Moreover, the estimation made by the Assessing Officer at 25% is highly arbitrary and without any supporting material. Therefore, this Tribunal is unable to sustain the estimation made by the Assessing Officer. When the assessee himself offered the interest income at

higher rate, it may not be justified to estimate the interest income any further. Accordingly, the orders of the lower authorities are set aside and the addition made by the Assessing Officer is deleted.

6. The next ground of appeal is with regard to income from agriculture in the case of both the assessee.

7. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that the assessee has claimed agricultural income by producing necessary material. According to the Ld. counsel, the Assessing Officer without any basis, disallowed the claim of the assessee.

8. I have heard Shri Supriyo Pal, the Ld. Departmental Representative also. As seen from the order of the CIT(Appeals), the assessee filed the copy of patta and details of the crop cultivated. The CIT(Appeals) rejected the claim of the assessee on the ground that the assessee has not produced bills or vouchers. This Tribunal is of the considered opinion that agricultural sector continues to remain unorganized. The agricultural produces are sold in an unregulated market. Therefore, expecting bills and vouchers for sale of agricultural produce is not justified. When the assessee has filed the copies of the patta to substantiate the land

holding and the details of the crop, the Assessing Officer is not justified in restricting the income from agriculture. Expecting bills and vouchers from the agriculturist for sale of agricultural produce is something which could not be produced by the ordinary agriculturist. The assessee is an individual and not maintaining any books of account. This Tribunal is of the considered opinion that when the assessee filed the copies of the patta and the details of the crop cultivated, the Assessing Officer is not justified in disallowing the claim of the assessee. Accordingly, the orders of both the authorities below are set aside and the addition made by the Assessing Officer as income from other sources is deleted. The Assessing Officer shall take the income declared by the assessee as income from agriculture.

9. The next ground of appeal is with regard to loan received from Shri K. Pugazhendi as undisclosed income in the case of Shri M. Rajendran.

10. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that the assessee has received loan from Shri K. Pugazhendi. According to the Ld. counsel, the assessee has filed confirmation letter from the creditor. Therefore, according to the Ld.

counsel, the Assessing Officer is not justified in making any addition.

11. On the contrary, Shri Supriyo Pal, the Ld. Departmental Representative, submitted that on verification of bank account of Shri Pugazhendi, the Assessing Officer found that the funds were transferred to the assessee through demand drafts. In the case of the assessee, the bank account indicates the credits received through demand drafts from the creditor and no other credit was found. This indicates that the assessee has opened the bank account only for the purpose of accommodation of the amounts he planned to receive from the said Shri Pugazhendi. According to the Ld. D.R., in the absence of any reason for crediting the amount by demand draft, the Assessing Officer found that the credit found in the books of account is nothing but income of the assessee. The Assessing Officer has also reproduced the credits in the bank account with reference to the date and DD. According to the Ld. D.R., whenever the assessee required funds, DD was issued from the account of Shri Pugazhendi. Before issuing the DD, the amount was deposited in the account of Shri Pugazhendi. Therefore, according to the Ld. D.R., it is nothing but routing the money belongs to the assessee.

12. I have considered the rival submissions on either side and perused the relevant material available on record. The assessee is holding a peculiar pattern of giving credits for the amount received from Shri Pugazhendi. The case of the Revenue is that DD was taken from the account of Shri Pugazhendi by depositing cash. The contention of the Revenue is that the assessee deposited the cash for issue of DD. No material is available on record to suggest that the assessee deposited the cash in the bank account of Shri Pugazhendi. The Assessing Officer on presumption observed that money belongs to the assessee was deposited. The fact remains that DD was issued from the account of Shri Pugazhendi. The cash was deposited to the account of Shri Pugazhendi. Therefore, it is for Shri Pugazhendi to explain the source for making deposit in his bank account. From the orders of the lower authorities it appears that the said Shri Pugazhendi was examined by the Assessing Officer and he confirmed the fact of giving the money to assessee. The Assessing Officer apparently disbelieved the statement of Shri Pugazhendi on the ground that a sum of ₹3 lakhs was entrusted to the assessee to maintain Shri Pugazhendi's mother. The fact remains that money was given by Shri Pugazhendi to the assessee by DD and the DD was issued from the bank account of the above

said Shri Pugazhendi. Therefore, as observed earlier, addition, if any, has to be made in the hands of Shri Pugazhendi and not in the hands of the assessee. Accordingly, the orders of both the authorities below are set aside and the addition made by the Assessing Officer is deleted.

13. The next ground of appeal is with regard to addition made towards investment in chits in the case of both the assessees.

14. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that the Assessing Officer found during the course of survey that one of the partners, Shri P. Ramaswamy admitted unaccounted chit auction with several persons. Based on question No.21 recorded from Shri P. Ramaswamy, the Assessing Officer estimated the yearly contributions and arrived at income of the assessee from chit contributions. According to the Ld. counsel, the chit contribution was used for making investment in money lending business.

15. I have heard Shri Supriyo Pal, the Ld. Departmental Representative also. The assessee contends before this Tribunal that the income from chit scheme was the source for making investment in the money lending business. The details of

investment made and subscription to the chit funds are not available on record. The assessee claims that the chit contributions were made from available funds and from the interest earned on the money lending business. In the early part of this order, this Tribunal deleted the addition made towards interest on money lending business. The Assessing Officer estimated the assessee's contribution on the basis of the statement said to be recorded from one Shri Ramasamy. Other than this statement of Shri Ramasamy, no other material is available on record. The Assessing Officer presumed that the total contribution was ₹96 lakhs and the assessee's share was ₹16 lakhs. From the material available on record and the statement recorded from Shri Ramasamy, it appears that they are conducting 3 lakh and 5 lakh chits and each group had 20 members. The chit was conducted by a partnership firm consisting of six persons. Therefore, the contribution to the chit was made by 20 members and the firm consisting of six partners is acting as foreman. The contribution to chit was made by other members and not by the partners. Therefore, the addition made in the hands of the assessee is not justified. If at all any addition is to be made, it has to be made in the hands of 20 members who contributed / subscribed to the chits. Therefore, this Tribunal is

unable to uphold the orders of the lower authorities. Accordingly, the orders of both the authorities below are set aside and the addition made by the Assessing Officer is deleted.

16. The next ground of appeal in the case of of Shri K. Palanisamy is with regard to addition on account of sale of jewellery.

17. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that in the cash flow statement, the assessee has shown a sum of ₹3,84,000/- towards sale of jewellery. The assessee has claimed capital loss in computation of income from sale of jewellery at ₹3,84,000/- and worked out the loss to the extent of ₹2,66,899/- after adjusting the cost of acquisition of 960 grams of jewellery claimed at the cost of ₹6,50,899/-. The Assessing Officer disallowed the claim of the assessee on the ground that the assessee has not produced any bills or vouchers for purchase and sale of gold jewellery. According to the Ld. counsel, the assessee in fact sold the gold jewellery and suffered a loss. Therefore, the Assessing Officer is not justified in making any addition.

18. On the contrary, Shri Supriyo Pal, the Ld. Departmental Representative, submitted that the addition was made in the

absence of bills and vouchers on sale of jewellery. When the assessee claims that he sold gold jewellery to the extent of ₹3,84,000/- and claims capital loss at ₹2,66,899/-, it is for the assessee to produce necessary bills for purchase and sale of gold jewellery. In the absence of any details with regard to sale of jewellery, the Assessing Officer has estimated cash credit at ₹2 lakhs.

19. I have considered the rival submissions on either side and perused the relevant material available on record. The assessee has shown a sum of ₹3,84,000/- in the cash flow statement as sale of gold jewellery. Jewellery cannot be sold to a dealer without bills. The acquisition of gold jewellery may be incidental one and the assessee may not be able to produce purchase bill for purchasing the gold jewellery. However, when the assessee sells the gold jewellery to a goldsmith or any other individual, sale bills/invoice may not be available to the assessee. The assessee claims that he sold jewellery for ₹3,84,000/- and claims capital loss of ₹2,66,899/- This Tribunal is of the considered opinion that in view of the smallness of the amount involved, the assessee cannot be blamed for non-production of bills and vouchers. Since the small time goldsmiths are also purchasing jewellery without issuing bills, the

Assessing Officer is not justified in making addition. Accordingly, the orders of the lower authorities are set aside and the addition made by the Assessing Officer is deleted.

20. The next ground raised in both the appeals is with regard to cost of construction.

21. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that the assessee admitted the cost of construction at ₹82,75,777/-. However, the Departmental Valuation Officer estimated the cost of construction at ₹90,81,900/-. The difference between the two was added as unexplained investment in the cost of construction. According to the Ld. counsel, the difference between the cost of construction disclosed by the assessee and the cost of construction estimated by the Departmental Valuation Officer is less than 15%. Therefore, no addition is called for.

22. I have heard Shri Supriyo Pal, the Ld. Departmental Representative also. As rightly submitted by the Ld.counsel for the assessee, the addition made by the Assessing Officer is less than 15% of cost of construction. In fact, the cost of construction declared by the assessee is at ₹82,75,777/-, whereas, the Departmental Valuation Officer has valued at ₹90,81,900/-.

Admittedly, the difference between the two is only less than 15%. The allowance for supervision and purchase of material by the assessee would go to reduce the cost of construction more than 20%. Therefore, this Tribunal is of the considered opinion that the addition made by the Assessing Officer towards cost of construction is not justified. Accordingly, the addition made towards cost of construction is deleted.

23. To sum up the result, all the appeals of both the assessees are partly allowed for statistical purposes.

Order pronounced on 1st September, 2016 at Chennai.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 1st September, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A), Tiruchirappalli
4. आयकर आयुक्त/CIT-II, Trichy
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.