

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.3081/Chny/2018
(निर्धारण वर्ष / Assessment Year: 1995-96)

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आयकर अपील सं./ ITA No.3083/Chny/2018
(निर्धारण वर्ष / Assessment Year: 1996-97)

DCIT Central Circle-2(2), Chennai.	बनाम/ Vs.	Smt. N.Sasikala 36, Poes Garden Chennai-600 086.
स्थायी लेखा सं./ जी आइ आर सं./ PAN/GIR No. AMNPS-6598-J		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri D. Hema Bhupal (JCIT) - Ld. DR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri T.Vasudevan, (Advocate) Ld.AR

सुनवाई की तारीख/ Date of Hearing	:	24-04-2023
घोषणा की तारीख / Date of Pronouncement	:	23-06-2023

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by Revenue for Assessment Years (AY) 1995-96 and 1996-97 arise out of separate orders of learned first appellate authority. The impugned order for AY 1995-96 has been passed by Ld. Commissioner of Income Tax (Appeals)-18, Chennai [CIT(A)] on

31.07.2018 in the matter of an assessment framed by Ld. Assessing Officer (AO) u/s 143(3) r.w.s. 148 of the Act on 20.03.2003. The impugned order for AY 1996-97 has been passed by same authority against similar assessment framed by Ld. AO on 20.03.2003. The facts as well as issues are stated to be substantially the same. The grounds taken by revenue in AY 1995-96 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 learned CIT(A) erred in directing the AO to allow 5/6th of the on-money paid by the assessee for purchase of the immovable property out of the total on-money of Rs. 76 Lakhs.
 - 2.1 The learned CIT(A) ought to have appreciated the fact that the assessment was based on the report of the DVAC submitted after due verification of the material found during the search conducted in the case of Ms.J.Jayalalitha and her associates.
 - 2.2 The learned CIT(A) ought to have appreciated the fact that the assessee had failed to substantiate her claim that only 1/6th share was hers, that the payment of onmoney had been confirmed and that the receiving party had already paid taxes on the on-money.
3. The learned CIT(A) erred in directing the AO to allow the assessee's claim of agricultural income though no evidence had been furnished at the scrutiny stage.
 - 3.1 The assessee did not furnish any evidence to substantiate her claim of agricultural income though the onus of proof lies with the assessee.
 - 3.2 The Id.CIT(A) did not consider the decision of the Hon'ble Supreme Court in the case CIT vs. .R.Venkataswamy Naidu (29 ITR 529) wherein it was held that the assessee had to put before the authorities proper materials which would enable them to come to a conclusion that the income which was sought to be assessed was agricultural income and it was not for the authorities to prove that it was not agricultural income.
4. The learned CIT(A) erred in allowing assessee's appeal as she had claimed that the sworn statements recorded by the Enforcement Directorate from the Manager of Indian Bank, Smt Suchitra and the then Manager of State Bank of India, Shri Jayaprakash, were not given to the assessee.
 - 4.1 The Id.CIT(A) failed to appreciate that the assessee did not use the opportunities provided to the assessee despite an elaborate show cause notice wherein in Page 4 para 8 mentioned the transaction which was required to be explained.
 - 4.2 The Id.CIT(A) failed to appreciate that the assessee had adjusted her loans against the NRNR deposits of another customer, Smt.Susila Ramasamy, which were given as security for the loan of Rs.3 Crores advanced to M/s. Bharani Beach Resorts Ltd., (wherein the assessee has business interests) which would not be possible if it weren't the assessee's own funds routed through Sushila Ramasamy.

5. The learned CIT(A) erred in allowing assessee's appeal holding that the AO had not taken into consideration the loans obtained from the various concerns.

5.1 The learned CIT(A) did not appreciate that the AO had added the accretion to assets only in the absence of documentary evidence for the loans availed by her, only after giving due opportunity to the assessee to explain, as seen from the para 9 of the show cause notice.

5.2 The learned CIT(A) erred in allowing assessee's appeal when neither any documentary evidence was furnished before the AO nor a remand report called for.

6. 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.

As is evident, four issues fall for our consideration i.e., (i) Relief granted on account of alleged on-money; (ii) Claim of Agricultural income; (iii) Addition of NRNR deposits; (iv) Addition on account of Accretion to Assets.

2. The Ld. Sr. DR advanced arguments supporting the case of the revenue. The Ld. AR controverted the same and supported the adjudication as done in the impugned order. Having heard rival submissions and after perusal of case records, our adjudication would be as under. The assessee is a resident individual. The assessee did not file the return of income for this year. A notice u/s 148 was issued and the assessee filed 'Nil' return on 31.12.1997. The assessee filed certain income to the extent of Rs.58.06 Lacs which was stated to be admitted by her under VDIS, 1997. The directorate of Vigilance and Anti-corruption (DVAC), Chennai conducted search in the case of Ms. J. Jayalalithaa, former Chief Minister of Tamil Nadu and registered a case. In the charge sheet, the lists of assets found in the name of Ms. J. Jayalalithaa and her associates were also enclosed and the copy of the same was given to accused persons. The assessee figured in this list and

accordingly, the case was reopened wherein impugned additions were made. The Ld. CIT(A) provided certain relief to the assessee against which the revenue is in further appeal before us. The impugned issues are adjudicated as under.

3. Payment of on-money

3.1 The assessee, along with other co-owners, sold certain property situated at 1, Luz Avenue which was covered by Doc. Nos.247/95 to 252/95 for Rs.10.87 Lacs. The DVAC report mentioned that an amount of Rs.76 Lacs was paid over and above the value as mentioned in the documents. Consequently, a search was conducted on the seller of the property Mrs. S. Ramayamma w/o Sri S.Nageshwar Rao wherein she admitted to have received the said amount of Rs.76 Lacs in cash. The property was registered under six documents for a total consideration of Rs.54 Lacs in favor of separate entities / persons, assessee being one of them. Accordingly, Ld. AO held that the cash payment of Rs.76 Lacs was to be considered as income of the assessee. The assessee denied having paid the same. However, rejecting the same, Ld. AO added the impugned cash payment of Rs.76 Lacs in the hands of the assessee.

3.2 The Ld. CIT-DR concurred with the view of Ld. AO. However, since the assessee's share in the property was only to the extent of 1/6th, Ld. AO was directed to reduce the impugned addition to that extent. Aggrieved, the revenue is in further appeal before us.

3.3 The fact that the assessee had share only to the extent of 1/6th remain undisputed before us. The alleged money as paid on the transaction, in our considered opinion, could not be considered fully

in the hands of the assessee only as she was co-owner to the extent of 1/6th only. Therefore, the impugned adjudication, on this issue, could not be faulted with. The corresponding grounds raised by the revenue stand dismissed.

4. Claim of Agricultural Income

4.1 The assessee admitted agricultural income of Rs.1.25 Lacs which was treated as 'income from other sources' since details and evidences, in that regard, could not be furnished by the assessee.

4.2 The Ld. CIT(A), relying upon the decision of this Tribunal in assessee's own case in ITA No.1289/Mds/2008 dated 30.09.2016, reversed the action of Ld. AO. In the decision of Tribunal, it was held that considering the land holding of the assessee, the income shown was quite reasonable. In case of petty farming, it may not always be practicable to maintain documentary evidences for carrying out agricultural activities. Aggrieved, the revenue is in further appeal before us. Since the adjudication of Ld. CIT(A) follows a binding judicial precedent, no fault could not be found in the same. We order so.

5. Addition on Account of Loan

5.1 In show-cause notice, Ld. AO alleged that the money sent to one Smt. Sushila Ramasamy belonged to the assessee. The same stem from the assessment proceedings in the case of M/s Bharani Beach Resorts Private Ltd. (BBRPL) wherein it was noted that Smt. Sushila Ramasamy (a resident of Malaysia) made substantial deposits in the form of NRNR deposits / FCNR with Indian Bank as well as with State Bank of India. Out of these, certain deposits were given as security for loan of Rs.3 Crores as availed by BBRPL from

Indian Bank, Rs.50 Lacs availed by Smt. L.Masilamani and Rs.25 Lacs availed by Smt. V.Gunabhushani. Both these persons availed the loan and made investment in BBRPL. Ms. T.Chitra was MD of that concern. The amount of Rs.3.75 Crores so received by BBRPL was utilized to make advances to various concerns in which the assessee and two others were partners. Subsequently, the loans with the banks were discharged against deposits. The corporate entity BBRPL became partner in the concerns. The enforcement directorate (ED) recorded statement of Smt. Sucharitha (the then Manager of Indian Bank) as well as from Sri Jaiaprakash (Manager of State Bank of India). From the statement of Smt. Sucharitha, it was seen that the drafts and currencies for the various deposits held in the name of Smt. Sushila Ramasamy were received from or through a messenger of assessee. In the light of these facts, it was alleged that the assessee was the beneficial owner of such deposits and the same was to be considered for assessment in the hands of the assessee.

5.2 The assessee opposed the same on the ground that statement recorded by ED could not be applied directly by any other department as the proceedings before ED and Income Tax department were separate proceedings. The assessee also demanded copy of statement of Smt. Sucharitha so relied upon by Ld. AO to make proposed additions. However, rejecting the same, NRNR deposits held in the name of Smt. Sushila Ramaswamy for Rs.426.75 Lacs were treated as belonging to the assessee and accordingly, added in her hands.

5.3 The Ld. CIT(A) noted that foreign remittances were received through banking channels. Against these deposits, loans were obtained by the relatives of the assessee to advance the same to various concerns in which the assessee was interested. Later on, these loans were adjusted against the deposits. It was further noted that similar addition was made in the case of Smt. Sushila Ramasamy bringing to tax the entire amount. The same reached up to the level of Tribunal vide ITA No.1616/Mds/2008 dated 02.04.2009. The Tribunal deleted the addition since AO did not bring on record any corroborative evidences to show that the money brought by way of foreign remittances through banking channels really belonged to the assessee. Aggrieved, the revenue is in further appeal before us.

5.4 We find that the whole basis of addition by Ld. AO is the statement taken by other authorities. However, these statements have not been confronted to the assessee. Further, no independent verification has been carried out by Ld. AO to establish the fact that these deposits, in fact, constitute income of the assessee. For this reason alone, addition has been deleted by Tribunal in the case of Smt. Sushila Ramasamy. The remittances have come through banking channels from foreign sources and therefore, the same could not be considered as assessee's income. We order so. The corresponding grounds raised by the revenue stand dismissed.

6. Accretion to assets

6.1 The assessee was directed to furnish the source of accretion to the assets to the tune of Rs.84.04 Lacs and Rs.23.25 Lacs in the concern namely M/s Metal King and M/s Vinodh Video Visions. The

assessee offered income under VDIS for Rs.58.06 Lacs whereas accretion to the asset was for Rs.103.29 Lacs. Accordingly, the differential of the two i.e., Rs.45.23 Lacs, was added in assessee's hand as unexplained investment.

6.2 During appellate proceedings, the assessee submitted that Ld. AO did not take into consideration the loans obtained by the two concerns. M/s Metal King obtained loans of Rs.31.73 Lacs from M/s Namadhu MGR and another loan of Rs.11.72 Lacs from M/s Vinod Video Visions. Similarly M/s Vinod Vide Vision obtained loan of Rs.17.50 Lacs from M/s Jaya Publication. Considering these loans, sources were available to the extent of Rs.60.95 Lacs as against impugned addition of Rs.45.23 Lacs as made by Ld. AO. Accepting the same, Ld. CIT(A) deleted the impugned addition against which the revenue is in further appeal before us.

6.3 We find that the stated facts could not be controverted by revenue before us. The assessee is able to demonstrate that it has extra sources to the extent of Rs.60.95 Lacs as against impugned addition of Rs.45.23 Lacs. Therefore, we find no reason to interfere in the impugned order, on this issue. The corresponding grounds raised by the revenue stand dismissed. The appeal of the revenue stand dismissed.

Assessment Year 1996-97

7. The issues to be adjudicated in this year are (i) Claim of Agricultural income for Rs.3.60 Lacs; (ii) Addition of NRNR deposits for Rs.218.75 Lacs; (iii) Unexplained cash credit for Rs.30 Lacs.

8. Facts as well as issues qua first two additions are common as in AY 1995-96. The adjudication in the impugned order is on similar lines.

Therefore, our adjudication as for AY 1995-96 shall mutatis mutandis apply to this year also. The corresponding grounds raised by the revenue stand dismissed.

9. The addition of Rs.30 Lacs stem from the fact that the assessee reflected credit balance of Rs.45 Lacs in the name of M/s Housing Real Estate Private Ltd. The assessee filed reply only for Rs.15 Lacs and accordingly, the balance was added to the income of the assessee. The impugned amount of Rs.30 Lacs was obtained by the assessee on 06.01.1996 through banking channels vide cheque No.397151. The Ld. CIT(A) considering documentary evidences and submissions made by the assessee deleted the addition against which the revenue is in further appeal before us.

10. We find that the amount of Rs.15 Lacs as accepted by Ld. AO has similarly been received by the assessee through banking channels vide cheque no.397154 dated 05.03.1996. Therefore, there is no reason as to why the remaining amount was to be considered as unexplained cash credit. The assessee has also placed account confirmation from the said party on page no.57 of the paper-book. Therefore, the impugned order, on this issue, could not be faulted with. The appeal of the revenue stand dismissed.

Conclusion

11. Both appeals stand dismissed.

Order pronounced on 23rd June, 2023

Sd/-
(V. DURGA RAO)
न्यायिक सदस्य /JUDICIAL MEMBER

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

चेन्नई/ Chennai; दिनांक/ Dated : 23-06-2023
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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