

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **3427/CHNY/2019**

निर्धारण वर्ष/Assessment Year: 2016-17

Shri V.V.V.R. Thendral,
443, Main Bazaar,
Virudhunagar – 626 001.

The ACIT,
vs. Central Circle - 1,
Madurai.

PAN: ABLPT 0993P

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./ITA No.: **3428/CHNY/2019**

निर्धारण वर्ष/Assessment Year: 2016-17

Shri V.V.V.R. Muthu,
443, Main Bazaar,
Virudhunagar – 626 001.

The ACIT,
vs. Central Circle - 1,
Madurai.

PAN: AGLPM 4471G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./ITA No.: **3429/CHNY/2019**

निर्धारण वर्ष/Assessment Year: 2016-17

Shri V.V.V.R.Sathiyam,
443, Main Bazaar,
Virudhunagar – 626 001.

The ACIT,
vs. Central Circle - 1,
Madurai.

PAN: AHNPS 92484N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellants by

: Shri G. Sekar, CA &
Shri S. Sashank Srivatsan, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri R. Mohan Reddy, CIT

सुनवाई की तारीख/Date of Hearing : 05.01.2023

घोषणा की तारीख/Date of Pronouncement : 11.01.2023

आदेश / O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

These three appeals by the three different assesseees are arising out of different orders of the Commissioner of Income Tax (Appeals)-19, Chennai in ITA No.320/17-18, 319/17-18 & 318/17-18 dated 27.09.2019, 09.10.2019 & 27.09.2019. The assessments were framed by the ACIT, Central Circle-1, Madurai for the assessment year 2016-17 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act'), vide orders dated 29.12.2017, 28.12.2017 & 29.12.2017.

2. At the outset it is noticed that the appeals in ITA No.3427 & 3429/CHNY/2019 are time barred by 9 days. It is noticed from Form 36 that the order of CIT(A) was received on 19.10.2019 and appeal was to be filed on or before 18.12.2019 but appeal was actually filed on 27.12.2020. The assesseees have filed affidavit for condonation of delay stating the reason that the assessee has requested his Chartered Accountants to file appeal but due to filing returns of income and GST returns, the Chartered Accountants had filed the appeal with a delay of 9 days. We see that the delay is very small

and cause seems reasonable, which was not contested by the Revenue. Since the delay is very small, we condone the delay in filing of these appeals by assessees and admit the appeals for adjudication.

3. The only common issue in these three appeals of different assessee's is as regards to the order of CIT(A) partly restricting the addition made by AO in regard to gold jewellery and ornament found, treated as unexplained. For this in all three three appeals, three assessees have raised exactly identical grounds and facts are identical except the quantum of gold jewellery i.e., gold weight. Hence, will take the facts from ITA No.3427/CHNY/2019 in the case of V.V.V.R. Thendral for assessment year 2016-17.

4. Brief facts are that the assessee submitted that the gold owned by family which is to the tune of 3,297.006 grams. The AO noted that at the time of search by the Department on 17.11.2015 gold weighing 2700.5 grams belonging to the assessee and 2009.27 grams belonging to Smt. V.R. Jegathambal and 400 grams was seized from the share of the assessee. He noted that the gold weighing 2009.27 grams belonging to Smt. V.R. Jegathambal for which wealth tax returns were filed by the assessee up to

assessment year 2015-16 and the same was accepted. The AO noted that the assessee at the time of search could not explain the balance of 2700.50 grams of gold which was found in his possession. Accordingly the same was brought to tax by the AO as unexplained and further he valued this unexplained gold of 2700.50 grams @ Rs.2543/- per gram as on 17.11.2015 and valued the same at Rs.68,67,371/- and also added 5% of making charges at Rs.3,43,369/- thereby confirmed the addition of Rs.72,10,740/-. Aggrieved assessee preferred appeal before CIT(A).

5. The CIT(A) allowed the rebate of gold jewellery as per CBDT Instruction No.1916 dated 11.05.1994, which is for the purpose of not to seize jewellery if it found, even if it is not found explained and that is restricted to seize per the Board Circular in Item No.(ii) as under:-

“(ii) In the case of a person not assessed to wealth-tax gold jewellery and ornaments to the extent of 500 gms. per married lady 250 gms per unmarried lady and 100 gms. per male member of the family, need not be seized.”

The CIT(A) allowed the relief of 950 grams and balance, he held to be unexplained. He also deleted the making charges added by AO @ 5%.

6. Aggrieved, assessee came in appeal before the Tribunal in regard to unexplained jewellery restricted by the CIT(A) and filed complete paper-book, in which he filed evidences that the gold jewellery is declared in the wealth tax return and also the bills and vouchers of the jewellery purchased including the jewellery entered into accounts of the assessee. The Id.counsel for the assessee filed this paper-book consisting of pages 1 to 254 wherein he particularly drew our attention to many bills and vouchers on purchase of jewellery prior to the date of search and through cheques. When these were confronted to Id.CIT-DR, he stated that he need time to study this paper-book and to verify these bills and vouchers, he will refer the matter back to the file of the AO for taking remand report. At this point of time, the Bench advised both that let the AO verify all the bills and vouchers and consequent payment by cheque or cash whether explained or not, matter can be remanded back to the file of the AO, the assessee will file all these paper-books before AO and will explain before him that how much jewellery is purchased prior to the date of search and through explained sources. In case, the assessee is able to prove, the AO will not make the addition. To this proposal, the Id.AR as well as the Id.CIT-DR fairly agreed that at this stage it is not possible to verify each and every entry and each and every bill which is placed before us for the first time.

7. After hearing both the sides and going through the case records and paper-books filed in all the three appeals by different assessees, it is noticed that the assessees have purchased this gold through banking channels or through accounting entries, this needs verification. Hence, all these three appeals are remanded back to the file of the AO and orders of AO as well as the CIT(A) restricting the addition are set aside. The assessees will file all these details before AO, who will verify and examine in detail the source of jewellery as well as explanation. In term of the above, all the three appeals are allowed for statistical purposes.

8. In the result, the appeals filed by the assessees are allowed for statistical purposes.

Order pronounced in the open court on 11th January, 2023 at Chennai.

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 11th January, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|-------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellants | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त (अपील)/CIT(A) |
| 4. आयकरआयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |