

आयकर अपीलीय अधिकरण, ' ए ' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष
**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./ I.T.A. Nos. 827 & 828/Mds/2016

निर्धारण वर्ष/Assessment Year : 2007-08 & 2008-09

Income Tax Officer,
Non Corporate Ward - 8(i),
Chennai - 34.

Shri R. Babu,
Vs. H 89 & H-90, Periyar Vegetable Market,
Koyambedu, Chennai - 92.

[PAN: AEZPB 6549J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Shiva Srinivas, JCIT
प्रत्यर्थी की ओर से/Respondent by : Shri B. Ramakrishnan, CA

सुनवाई की तारीख/Date of Hearing : 14.09.2016
घोषणा की तारीख/Date of Pronouncement : 07.12.2016

आदेश / O R D E R

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The Revenue has filed an appeal against the order of Commissioner of Income Tax (Appeals) - 6, Chennai ITA No. 209/CIT(A)-6/2013-14, dated 18.01.2016 for the assessment year 2007-08 and ITA No. 210/CIT(A)-6/2013-14 dated 18.01.2016 for the assessment year 2008-09. Since, the issues are

common in both the appeals, we take the facts for the appeal for the assessment year 2007-08.

2. The Revenue has raised the following grounds:
 - 2.1 The CIT(A) erred in deleting the addition of Rs. 27,98,000/- made on account of unexplained cash credit under sec. 68 of the Income Tax Act by way of protective measure by the AO.
 - 2.2 The CIT(A) ought to have upheld the addition as made in the hands of assessee Shri R. Babu as it is a protective assessment and as it is based on assessee's statement only.
 - 2.3 The CIT(A) erred in not appreciating the fact that the assessee is not at all maintaining any books of account and the burden would be upon the assessee to give explanation on the source of cash deposits found in the respective bank accounts.
 - 2.4 The CIT(A) failed to appreciate that no evidence whatsoever it produced by the assessee before the Assessing Officer on the source for cash deposits. Mere statement of the assessee that cash deposits in his bank accounts are not of his own and the money credited in the respective bank accounts is by Justice P.D. Dinakaran group would not absolve assessee from the onus cast under provision of section 68.

2.5 The CIT(A) failed to appreciate the fact that in view of failure of assessee to discharge burden cast upon it, the AO added amount in question to assessee's income by invoking provisions of section 68.

3. The assessee is a vegetable vendor and in survey operations u/s. 133A of the Act conducted at the business premises on 24.11.2010 the Revenue has recorded a statement u/s. 131 of the Act, where the assessee is in the business of wholesale and retail vegetables on commission for the last 27 years and has not maintained any Books of accounts. The vegetables are normally received in lorries and the same are sold in the market and sale proceeds are paid to the farmers after deducting 10% commission, labour and transport charges. Further, the assessee does not issue any purchase Bills to the farmers as they do not insist any such Bills and the assessee's daily turnover of business range between Rs. 20,000/- to 30,000/- and the commission on sale will appropriately 10% and the net profit worked out after deducting the expenditure is Rs. 22,000/- (Aprox.) pm. The sworn statement recorded for financial years 2005-06 to 2007-08, in respect of cash deposits in the bank and the Ld. AO made reference at page 2 of the Assessment Order.

4. The contention of the assessee that these deposits are in respect of the sale proceeds of agricultural product and cheques are issued for purchase in favour of Shri P D Dinakaran & Others. There are contradicting

submissions made by the assessee, but finally the assessee has come forward and explained that these amount represents sale of vegetables. The Ld. AO found that the assessee has made the different submissions as a commission agent and as the assessee is an illiterate and the small time commission agent was acquainted with the above group. The Assessing Officer made addition of total deposits in Bank account as unexplained credit u/s. 68 of the Act and commission on Agricultural produce at Rs. 22,000/- per month. The Ld. AO discussed elaborately in his order on the statement recorded at page 2 to 5, where there the deposits made in the Bank account and assessee supported the source as agricultural product sale and commission and Ld. AO passed order u/s. 143(3) r.w.s. 147 dated 08.02.2013.

5. Aggrieved by the order, assessee has filed the appeal before the Ld. CIT(A). The Ld. AR argued that the action of the Assessing Officer in treating the amount of Rs. 27,98,000/- as unexplained credit without any basis and commission income has been estimated. The statements were recorded by the Revenue and the same was retracted by the assessee subsequently by affidavit. The statements recorded were not furnished to the assessee and in response to the notice u/s. 148 of the Act, assessee has filed the Return of income. The Assessing Officer has summoned the assessee on various dates and statements were recorded. The Assessing Officer relied on the statement of staff person Mr. Selvam and has not provided copy of statement recorded.

The facts that the assessee is illiterate and has estimated vegetables turnover and profit as he does not maintain Regular books of accounts to compute the exact profit, on the disputed issue of cash credits in the bank account, it was explained that the assessee has received amount on sale of the agricultural produce and sellers were insisting the cheque payments and same were deposited into the account of the assessee and cheques issued to Shri P. D. Dinakaran family. Since, there was the requisite necessity of issuing cheques, therefore, the amount of agricultural produce deposited in the Bank account and cheques were issued and also assessee has offered income @ 5% of Agricultural transactions in the Return of Income and prayed for allowing the appeal.

6. In appellate proceedings, the Ld CIT(A) considered the grounds and findings of the Assessing Officer and written submissions of assessee filed on 13.01.2016 referred at page 3 to 7 of the order and further the Co-ordinate bench of the Tribunal in the case of Shri P.D. Dinakaran in Revenue appeal ITA No. 1482/Mds/2013 dated 18.11.2000, where these facts were considered and recorded. Further, the Ld. CIT(A) relied on vita facts of the co-ordinate bench decision at Para 5.3 to 5.4 of the order which read as under:

"5.3 To recapitulate, the facts and circumstances as they emerge are as under:

a) The appellant during the course of survey in a statement recorded by the DDIT(Inv.) stated that Shri Selvam, an employee of Justice PD. Dinakaran deposited the cash in his account, and the

appellant in turn issued the cheque in favour of the persons mentioned by Shri Selvam. The appellant also admitted that he had not received any agricultural produce from Justice PD. Dinakaran group.

b) The appellant later retracted the statement. The Assessing Officer has mentioned in the order that during course of assessment proceedings, in the statement recorded u/s. 131 of the Act, the appellant deposed that he had actually, received the agricultural produce and issued cheques in favour of the Justice PD Dinakaran group.

c) The Assessing Officer added the impugned sum protectively in the hands of the appellant as unexplained cash credits.

d) The CIT(A) in the case of Justice P.D. Dinakaran (supra) and M/s. Dearlands India Private Limited (supra) held that the supply of agricultural produce was genuine, and no adverse inference can be drawn from the statement of Shri R. Babu.

e) The Ld. ITAT, Chennai in its order in the case of Justice P.D. Dinakaran & Others (supra) upheld the factual findings of CIT(A), that the supply of agricultural produce was genuine, and that statement of the appellant before DDIT (Inv.) is not reliable and trustworthy.

5.4 In view of the facts and circumstances as they emerge, I find that the protective assessment in the hands of the appellant cannot be sustained. When the Ld. ITAT, Chennai, the highest fact finding authority, has held that the supply of agricultural produce by Justice P.D. Dinakaran group was genuine, the payments made by the appellant can only be regarded as the payments made for the purchase and nothing else. As such, the protective assessment of cash credits in the hands of the appellant stands deleted. The appellant's ground of appeal succeed on this account."

The Ld. CIT(A) based on facts and submissions has deleted the cash credits in the hands of the assessee. The Ld. CIT(A) considered the submissions at page 9 where the assessee has been saving 10% of sale value after deducting the

expenditure which works out approximately to Rs. 20,000/- to Rs. 22,000/-. The Ld. CIT(A) also considered the profit and loss account filed by the assessee and expenditure incurred on such transactions. Since, the assessee has been admitting the commission income, thus addition by the Assessing Officer is purely mathematical calculations, cannot be considered as the excess commission received in the said financial year and deleted the addition and allowed the appeal.

7. Aggrieved by the order, the Revenue has filed an appeal before the Tribunal. The Ld. DR argued the grounds and emphasized on the findings of the Assessing Officer on the sources of cash deposit in the Bank account. The Ld. CIT(A) has erred and considered only one side of the assessee version of cash deposits and money credited in the Bank account pertaining to P.D. Dinakaran group and ignored assessee's contradicting statements and the provisions of section 68 of the Act. Whereas, the Ld. CIT(A) has relied on the Tribunal decision of P.D. Dinakaran group and deleted the additions and prayed for allowing the Revenue appeal. Contra, the Ld. AR of the assessee relied on the order of the CIT(A) and supported with the judicial decisions and prayed for dismissal of appeal.

8. We heard the rival submissions, perused the material on record and judicial decisions. The contention of the Ld. DR that, the Ld. CIT(A) erred in

deleting the addition of unexplained cash credits u/s. 68 of the Act, whereas the Ld. AR submitted that the purchases are made from the P.D. Dinakaran group and family and the cash deposit pertains to the agricultural produce and cheques were issued. The assessee being a commission agent for vegetables is not disputed and also genuineness of transactions of purchase of agricultural produce. Shri P.D. Dinakaran group substantiated with evidence in there proceedings before appellate authority. The assessee being a commission agent and for non-maintenance of profit and loss account has offered income @ 5% of turnover for taxation. Even the Assessing Officer has not disputed the issue. We found, there is a force in the arguments of the Ld. AR of the assessee. The Ld. CIT(A) has considered the facts at page 7 of his order relied on the decision of the Tribunal in the case of Justice P.D. Dinakaran and others (Supra). On issue of the cash deposits, there is no dispute, which the Tribunal has already considered in above order. The contention of the Ld. AR that the assessee over a time purchase agricultural produce and the seller insisting for cheque payments. Hence, the amount was deposited into the bank and cheques were issued and these facts were considered by the Tribunal in passing the order. The Ld. AR drew our attention to the decision of P.D. Dinakaran and family on unexplained cash credit u/s. 68 of the Act and the provisions of the Act require compliance of genuineness and the credit worthiness. The assessee is a vegetable vendor and the amount pertaining to the agricultural produce purchased from Mr.

Slevam on behalf of Dinakaran family, since vegetables are sold in the market and the proceeds are to be paid to the seller, the same was deposited into the Bank account and cheques were issued. The co-ordinate bench of this Tribunal has already considered the facts of Dinakaran family in the order, and the Ld. AR further supported his arguments with the decision of Tribunal in the case of Smt. Manasi Mahendra Pitkar Vs. ITO 1(2), Thane in ITA No. 4223, 4224/Mum/2015 for the assessment year 2011-12, dated 12.08.2016. The Tribunal held that where the sum is credited in the pass books, same cannot be held as unexplained cash credit, as the Assessing Officer has examined the pass book of the assessee treated the cash deposits in Bank account as unexplained cash credit u/s. 68 of the Act. Since, the assessee is not maintaining Books of accounts and estimating of income cannot be considered as Books of accounts maintained by the assessee. The provisions order and the provisions of section 68 shall not be applicable. In applying the principles to the present case the sum is credited in the Bank account cannot be treated as unexplained credit as the assessee is not maintaining any Books of accounts. The assessee being the vegetable vendor and senior citizen under the provisions of Income Tax Act and has not maintained any Books of accounts in respect of savings. The commission income does not explain the accurate basis offered by the assessee and the assessment order also does not specify methodology of estimation of commission on purchases and sale except rely on the submission of the assessee. Considering the Apparent

facts, material on record and judicial decision cited, we are of the opinion that remitting the issue to the Assessing Officer to estimating the income does not serve any purpose as the assessee not maintained any Books of account. Hence, in the interest of justice, we estimate the commission income at 15% of the turnover of the assessee and accordingly the Revenue appeal is partly allowed.

12. Similarly, ITA No. 828/2016 for the assessment year 2008-09, filed by the Revenue is also partly allowed.

Order pronounced on Wednesday, the 7th day of December, 2016 at Chennai.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 7th December, 2016

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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