

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, CHENNAI

श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री एस.एस. गोदारा, न्यायिक सदस्य केसमक्ष

BEFORE SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI S.S. GODARA, JUDICIAL MEMBER

आयकर अपील सं./ITA No.2113/Mds/2014

निर्धारण वर्ष / Assessment Year : 2010-11

Smt. N. Kalaimani,
C/o Shri S. Sridhar, Advocate,
112/1, Periyar Street,
Erode – 638 001.

v. The Income Tax Officer,
Ward I(4),
Erode.

PAN : AKIPK 5601 P

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri S. Das Gupta, JCIT

सुनवाई की तारीख/Date of Hearing : 16.02.2015

घोषणा की तारीख/Date of Pronouncement : 11.03.2015

आदेश / O R D E R

PER S.S. GODARA, JUDICIAL MEMBER:

This assessee's appeal for assessment year 2010-11 arises from order of the Commissioner of Income Tax (Appeals)- I, Coimbatore, dated 18.07.2014 passed in Appeal No.151/13-

14, partly sustaining additions of unexplained cash deposits of ₹25.50 lakhs to ₹6 lakhs, upholding unexplained fixed deposits in Tamilnad Mercantile Bank Ltd. of ₹3 lakhs, unexplained deposits of ₹28,000/- in South Indian Bank, unaccounted interest income of ₹4,052/- arising from the aforesaid fixed deposits and that of unexplained/poor drawings of ₹36,000/-, in proceedings under Section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee refers to her grounds and submits that her pleas at Nos.3 and 5 of unexplained deposits of ₹ 28,000/- and poor drawings addition of ₹ 36,000/- are not pressed. The Revenue does not oppose this contention. This leaves us with the remaining three issues. Rather two of them only as for unexplained fixed deposits and interest grounds are interconnected.

3. The assessee / an 'individual' is a money lender. She filed her return on 26.02.2011 admitting total income of ₹2,86,920/-. The A.O. took up 'scrutiny'. He inter alia noticed cash deposits of ₹25.50 lakhs in the Tamilnadu Mercantile Bank on various dates without any corresponding entry in the capital

account and balance sheet. She had not declared the said sum as income. The assessee had made the impugned deposits from 18.09.2009 onwards starting from a sum of ₹4 lakhs to have been returned by her husband (to the extent of ₹ 3.90 lakhs, ₹ 20,000/- per month as monthly income). The nature of other deposits on various dates from 26.09.2009 to 08.02.2010 was stated to be on account of withdrawals made earlier. It was pleaded that a sum of ₹ 2 lakhs had come from earlier surplus withdrawals, monthly income, LIC payments and cash gifts from her husband. All these averments could not impress the assessing authority. It concluded that the assessee's explanation quoted hereinabove did not refer to any supportive material, no cash flow statement was forthcoming, absence of relevant evidence and entries in the balance sheet revealing lack of necessary details. It observed that an attempt had been made to suppress the impugned deposits. This resulted in addition in question of ₹25.50 lakhs as unexplained cash deposits.

4. The CIT(Appeals) has adopted peak credit formula to restrict this addition to the tune of ₹6 lakhs as under:-

“7. I have gone through the submissions made by the appellant and also the order of the Assessing Officer. The Assessing Officer in the assessment order has stated that after examining the reply of the assessee, the Assessing Officer concluded that the assessee has just narrated a suitable figure just to fit-in in order to explain the source of cash deposits. The Assessing Officer treated the explanation tendered by the assessee as not genuine, true and reasonable. Regarding the 1st cash deposit in the above S.B. Account amounting to ₹ 4 lakhs, the Authorized Representative submitted that an amount of ₹ 3,90,000/- was returned by her husband Shri M.P. Nagarajan and there was an income of ₹ 20,000/- per month from April 2009 to August 2009 amounting to ₹ 1 lakh. From the available source of ₹ 4,90,000/- the assessee had deposited ₹ 4 lakhs. The Assessing Officer verified the details and stated that an amount of ₹ 3,90,000/- was the balance outstanding money advanced by the appellant towards her husband as on 31.03.2009 and a sum of ₹ 2,30,000/- is still shown as outstanding as on 31.03.2010. The Assessing Officer has not brought-in any evidence on record to show that the appellant does not earn the amount of ₹ 20,000/- per month from milk booth. The Authorized Representative while explaining the source of cash deposit of ₹ 4,00,000/- made on 18.09.2009 referred to the receipt of money returned from her husband amounting to ₹ 3,90,000/-. Regarding the other deposits, the assessee explained that they were made out of withdrawals made earlier from the said bank account. An examination of the Bank Account would clearly show that on 24.09.2009, the appellant withdrew an amount of ₹ 3,97,500/- and deposited ₹ 1 lakh on 26.09.2009 and ₹ 3 lakhs on 29.09.2009. Similarly an amount of ₹ 4 lakhs was withdrawn on 01.10.2009 and deposited back on 20.10.2009. The assessee also explained the source for cash deposit made on 24.10.2009. The source was from the milk booth income for the months of September and October and cash available i.e. out of ₹ 4,90,000/- only ₹ 4 lakhs was deposited on 18.09.2009. However, after considering all the cash withdrawals and also cash deposits, I find that the peak cash deposit of ₹ 6 lakhs is to be treated as unexplained income u/s 68 of the Income-tax Act, 1961. This ground of appeal is PARTLY ALLOWED.”

5. We have heard both sides and gone through the relevant findings. The assessee produces her bank account statement from 18.09.2009 to 31.03.2010. She argues that the CIT(Appeals) has wrongly treated a peak credit of ₹ 6 lakhs instead of ₹ 2 lakhs. It is evident that peak credit in her account statement is ₹ 6,27,500/- as on 08.02.2010 instead of ₹ 6 lakhs. The assessee had deposited ₹4 lakhs on 18.09.2009. A sum of ₹3,90,000/- is stated to have been returned by her husband. The CIT(Appeals) does not reject veracity of this plea. It is further seen that the assessee had deposits a sum of ₹2 lakhs as on 20.10.2009 over and above the aforesaid sum of ₹ 4 lakhs. Remaining amounts are corresponding deposits and withdrawals instances. The assessee claims to be earning a monthly milk book income of ₹20,000/-. She failed to substantiate it in the course of assessment. The Assessing Officer does not reject this plea altogether. But only cites lack of sufficient material. It is also an undisputed fact that the CIT(Appeals)'s findings do not specifically deal with that of Assessing Officer's conclusion. In these circumstances, we feel that interest of justice would be met in case this peak credit of ₹6 lakhs is further modified to ₹3 lakhs

only. More so, when the lower appellate order accepts genuineness of ₹4 lakhs deposited on 18.09.2009 leaving behind a sum of ₹2 lakhs only. We reiterate that peak credit in this case is ₹6,27,500/-. These peculiar circumstance result in modification of this addition to ₹3 lakhs only. The assessee's ground partly succeeds.

6. Now we come to the assessee's second substantive ground regarding unexplained fixed deposit of ₹3 lakhs made in Tamilnad Mercantile Bank made in cash. The Assessing Officer observes that the assessee's balance sheet or statement of income does not reflect the said income. The assessee pleads that her maternal grand father Shri S.P. Muthusamy Gounder had deposited this sum in her name. He was stated not to be having any bank account. This reply could not impress upon the assessing authority. It rejected the donor's affidavit filed without any attestation or certification by a Notary. The Assessing Officer further referred to the assessee's accounts not declaring the aforesaid sum as gift. He also returned a finding that it was the assessee herself instead of her maternal grand father, who had deposited this amount into bank. All these materials made

him to observe that the assessee's gift claim was not a genuine and bonafide one. The Assessing Officer quoted the assessee's failure to discharge onus of proving source of the impugned fixed deposit and made consequential addition of ₹3 lakhs u/s 69 of the Act.

7. The CIT(Appeals) has sustained the Assessing Officer's findings.

8. We have heard both sides and perused the case file. The assessee submits that neither of the authority below has summoned her maternal grand father. This procedural plea is not supported by any material. Once the Assessing Officer had examined all of her pleas at length in assessment order, it was incumbent on the assessee to have prayed for necessary remand report in the lower appellate proceedings or to take sufficient measures for proving authenticity of her claim. This was never done. In these circumstances, we observe that this procedural plea deserves to be rejected in the absence of sufficient material on record. It is also not her case that of the lower authority has not complied with principles of natural justice

and denied sufficient opportunity of hearing. Therefore, the assessee's corresponding ground fails. Third addition of interest income of ₹4,052/- on said fixed deposits is also decided against her.

9. The assessee's appeal is partly allowed.

Order pronounced on Wednesday, the 11th of March, 2015 at Chennai.

sd/-
(A.Mohan Alankamony)
(ए. मोहन अलंकामणी)

लेखा सदस्य/Accountant Member

sd/-
(S.S. Godara)
(एस.एस. गोदारा)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 11th March, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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