

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC-A” BENCH : BANGALORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA No. 1230/Bang/2016
Assessment year : 2011-12

The Income Tax Officer, Ward – 2, Vijayapur.	Vs.	Shri Basavaraj S. Kallur, L/H of Shri Arvind S. Kallur, Prop: Dhanvantari Medical & General Stores, Dhanvantari Hospital, B. Bagewadi Road, Vijayapur. PAN: BBZPK 5843G
APPELLANT		RESPONDENT

Appellant by	:	Shri M.K. Biju, JCIT
Respondent by	:	Shri S. Ramasubramanian, CA

Date of hearing	:	22.05.2017
Date of Pronouncement	:	31.05.2017

ORDER

Per Vijay Pal Rao, Judicial Member

This appeal by the revenue is directed against the order dated 22.03.2016 of CIT(A) for the assessment year 2011-12. The revenue has raised the following grounds.

(1) In the facts and circumstances of the case and in law, the Id.CIT(Appeals) erred in admitting additional evidences in respect of agricultural income and existence of books of accounts, etc in contravention of Rule 46A since the case did not satisfy any condition mentioned in Rule 46A(1) of the I.T. Rules, 1962.

(2) In the facts and circumstances of the case and in law, the Id.CIT(Appeals) erred in accepting the deposits as explained from withdrawals without any explanation or evidence on record.

(3) In the facts and circumstances of the case and in law, the Id.CIT(Appeals) erred in admitting additional claim of application of peak credit theory without appreciating the contradiction existing in his own argument. Peak credit can only be applied if the details and nature of the transactions are available and could be linked. The Id. CIT(A) on the one hand treated the transaction as explained being not linked to agricultural income but incorrectly granted the benefit of peak credit by treating the same as explained and similar in nature.

(4) In the facts and circumstances of the case and in law, the Id.CIT(Appeals) erred in accepting the withdrawals without any explanation on record for the purpose of withdrawals and re-deposit of the same in subsequent period.

(5) In the facts and circumstances of the case and in law, the Id CIT(Appeals) erred in applying peak credit theory without appreciating the facts of the case which clearly proved that the cash deposits and bank account were not routed through books of account produced by the assessee during remand proceedings.

(6) In the facts and circumstances of the case and in law, the Id CIT(Appeals) erred in applying peak credit theory without appreciating the facts of the case which clearly proved that the cash deposits and bank account were not routed through books of account produced by the assessee during remand proceedings.

2. The AO while completing the assessment u/s. 144 vide order dated 28.11.2013 made an addition of cash deposit in Corporation Bank of Rs. 43,89,000/-. The assessee challenged the order of the AO before the CIT(A). The CIT(A) called for a remand report from the AO on the

submissions made by the assessee as well as the verification / examination of books of accounts and source of deposit made in the said bank account. The AO submitted his remand report dated 15.06.2015. After considering the remand report the CIT(A) restricted the addition to the peak credit in the savings bank account instead of the entire deposit made by the AO.

3. I have heard the Id. DR and Id. AR and considered the relevant material on record. At the outset it is noted that the CIT(A) has granted part relief of Rs. 35,16,911/- and confirmed the addition to the extent of peak credits in para 8.1 as under:

8.1 The assessee was Mr. Shri. Arvind S. Kallur an individual who expired leaving no legal heirs. Shri. Basawraj S. Kallur is a brother of the assessee who filed this appeal. The fact of assessee's family holding 43 acres of agricultural land is recognized by the A.O. The legal heir was not involved in the financial activities of the deceased assessee. A.O. during the scrutiny recognized that savings A/c. in Corporation Bank has credits of Rs.44,02,841/- which was not routed through books of account. AR request the bank account should be seen in totality considering both credits & debits. As assessee is no more who maintained this account and no other family member was earlier involved in this activity the circumstance factors should be taken into consideration for arriving at income chargeable to tax. Taxing the whole receipts without allowing any expenses is against the established principles of law. If the bank account is analyzed there are debits of an equal amount to credit or nearer to the credit amount either on the same date or on the next few days. A.O. was unable to accept that these credits & debits related to agricultural activity of the assessee stating that only Rs.1,11,750/- was shown as agricultural income. As the assessee is no more exact explanation or reason is not possible but we can reasonably estimate the income. From the facts of credits & debits continuously appearing in the bank statement for equal amount in a short duration may give a clue that the assessee was frequently operating the account both by depositing & withdrawing the amounts. In such a situation a reasonable estimation of income would be the "peak credit" during the financial year plus any direct income such as interest credited which was not offered to tax. Taking the holistic view of the facts & circumstances I feel "peak credit" in this bank account which is Rs.8,58,248/- (Working sheet enclosed as an annexure) should be treated as undisclosed income. Interest amount of Rs.13,841/- was not disclosed in the return of income. This interest is credited into this particular bank account. Accordingly this interest of Rs. 13,841/- also to be added to the total income. Hence an amount Rs.8,72,089/- confirmed out of total addition of credits of Rs.43,89,000/- to taxation to meet the justice. Balance amount of Rs.35,16,911/- (Rs.43,89,000/- - 8,72,089/-) is deleted as unreasonable.

4. The ld. DR has submitted that even if the peak credit is taken into account the withdrawals made by the assessee himself can be considered for that purpose and not the payments made to the third party. Thus he has submitted that accepting the entire withdrawals including the payment to the third parties by the CIT(A) while determining the peak credit is not permissible. On the other hand, the ld. AR of the assessee has submitted that the principle of peak credit has been well settled by various decisions. In support of his claim he has relied upon the decision of Hon'ble Allahabad

High Court in case of CIT Vs Saraf Trading Co. and another (376 ITR 534). Thus he has submitted that the CIT(A) has rightly given the benefit by considering the peak credit in the savings bank account instead of the entire deposits made on different dates.

5. Having considered the rival submissions as well as relevant material on record it is noted that there are deposits as well as withdrawals in the savings bank account of the assessee as per the details attached to the impugned order of the CIT(A). The concept of peak credit is applied in a case where there are corresponding withdrawals, and therefore, subsequent deposits can be explained from the earlier withdrawal as a source. In this case except for six entries of withdrawal which appears to be the payment to the third parties all other withdrawals are either in cash or self withdrawal by the assessee. One withdrawal is made by the brother of the assessee Shri Basavaraj S. Kallur who is also representing the deceased assessee in the present appeal. Therefore except those four withdrawals representing the payment to third parties all other entries are self withdrawals of the assessee and hence, has to be taken into account for the purpose of computing the peak credits. Accordingly, on principle I concur with the view of the CIT(A) of taking only peak credit for the purpose of addition on account of deposits in the savings bank account however since some of the entries are payments to the third parties which are required to be excluded from the total withdrawals

made during the year. Accordingly the AO is directed to recompute the peak credit by taking into account the entries of payment made to the third party.

6. In the result the appeal of the revenue is partly allowed.

7. Pronounced in the open court on this 31st day of May, 2017

Sd/-
(VIJAY PAL RAO)
Judicial Member

Bangalore,
Dated, the 31st May, 2017.
/MS/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.