

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

श्री ए. मोहन अलंकामणी , लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष

BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI. G. PAVAN KUMAR, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.2343/Mds/2015

निर्धारण वर्ष /Assessment year : 2010-2011.

P.K. Ramesh Kumar,
Prop:- The Professional Couriers,
27, Ram Arcade, Court Street,
Tiruppur 641 601.

Vs. The Assistant Commissioner of
Income Tax,
Circle I,
Tiruppur.

[PAN ACQPR 8181B]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. M. Narayanan, Addl.CIT(Retd)

प्रत्यर्थी की ओर से /Respondent by : Shri. A.V. Sreekanth, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 25-02-2016

घोषणा की तारीख /Date of : 27-04-2016

Pronouncement

आदेश / O R D E R

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the assessee is directed against order of the Commissioner of Income-tax (Appeals)-3, Coimbatore in ITA No.116/13-14, dt.29.10.2015 for the assessment year 2010-2011

passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The assessee has raised only one substantive ground that the Commissioner of Income Tax (Appeals) erred in confirming the addition of ₹2,33,26,922/- by the Assessing Officer on suspicion even though deposits are supported with withdrawals, source, identity and genuineness of the transactions are established.

3. The Brief facts of the case that the assessee is an individual and is in courier business and generation of electricity through windmill and filed Return of income on 19.04.2011 disclosing total income of ₹17,33,020/- includes income from house property, business income and agricultural income. Subsequently return was processed u/s.143(1) of the Act and under scrutiny norms notice u/s.143(2) of the Act was issued. In compliance to notice, the Id. Authorised Representative of the assessee appeared from time to time and produced books of Account and submitted details. The Id. Assessing Officer perused the financial statements produced in the assessment proceedings. The assessee has failed to comply with the further details of bank accounts and Assessing Officer issued summons u/s.131 of the Act to Bank Managers and obtained details and observed at page 3 of his order as under:-

Particulars	Deposits	
	Cash	Others
1. City Union Bank	11,900	4,72,025
2. Royal Bank of Scotland	74,73,295	
3. Axis Bank	69,95,290	
4. Karur Vysya Bank (SB A/c.)	25,69,990	
5. Tamil Nadu Mercantile Bank	--	4,23,199
6. Karur Vysya Bank (Current A/c.)	18,94,552	1,03,91,528
7. Canara Bank (Current A/c.)		82,58,345
8. SBI (Current A/c.)	2,20,000	
9. INDUSIND Bank	35,52,536	61,94,605
10. ICICI (Closed in Mid Year)	35,700	
11. Tamilnadu Merchantile Bank (SB) (undisclosed account) 075100050089070.	3,82,106	
12. Canara Bank (SB) (undisclosed account) 151010102856	2,02,096	
Total	2,33,37,465	2,57,39,702

On perusal of the above receipts the total credits in the bank account including cheques worked out to ₹4,90,77,167/-. The Assessing Officer identified that the assessee has disclosed total receipts of ₹2,57,50,245/- only and as per bank statements there are lumpsum cash withdrawals. The Id. AO alleged that there are no urgent necessity for assessee to withdraw the cash and amount withdrawn

was fragmented and deposited in three or four banks on same day or within a day or two. On perusal of the cash book deposits are not reflected in cash or bank accounts maintained and also wrong entries were passed showing cash deposits as cheque deposits in bank book of the assessee. Similarly, the cheque deposits were entered as cash deposits in the cash book. The Id. AO to have more clarity on issued relied on bank statement of M/s.Karur Vysya Bank for the period from 01.04.2009 to 15.04.2009. On verifying the bank statements the assessee has withdrawn lumpsum amount from one bank and deposited the same in other banks. The withdrawals were not treated as the source for the subsequent deposits made by the assessee. On comparison with the bank statement of Karur Vysya Bank and bank account in the cash book, few deposits are reflected and the Id. AO further compared bank statement of M/s. Canara Bank as on 11.04.2009 with the bank book of assessee and bank deposits are reflected. The Id. Assessing Officer considered the circumstances and alleged at page 9 as under:-

'There is no doubt that the behavior of the assessee in making cash withdrawals for apparently no purpose is extremely suspicious and abnormal. However, the only factors in his favour are identical proceedings withdrawals and the absence of any evidence to show that these withdrawals are used for some purpose other than what is claimed by the assessee''.

and show cause notice dt. 25.02.2013 was issued for explanations of entries in the cash book and why difference of ₹2,33,26,922/- considered as undisclosed receipts. In compliance the assessee filed replying as under:-

'We have withdrawn amounts from some banks and deposited the same on some other banks for the following reasons-

- 1. To meet some urgent expenditure.*
- 2. We spend the money from some bank accounts only for some specific expenditure in order to have control over the expenditure.*
- 3. Whenever we want to issue cheque from a particular bank and if the funds available are insufficient, we withdraw the requirement amount from other bank accounts and deposit the same in the required account.*
- 4. Transfer of money from one bank to another bank by cheque also takes three days time normally(through local clearing) and some times even more days during Bank Holidays".*

'The reply of the assessee is very vague and therefore not found satisfactory as neither the deposits are proved by the assessee nor the claim of peak is established by him. It is very clear from the books of the assessee that he did not have any urgent expenditure as claimed by him. As the assessee is into courier business and has pick up centers in various places in Tirupur itself, the deposits are nothing but daily collections of various centers. The assessee has also failed to show-the real destination of the money withdrawn by him out of the cash deposited In the bank accounts thereby suppressing material facts in understanding the nature of the cash inflow and its destination. Entire transaction of the deposits remained under the crowd of secrecy and therefore, the explanation furnished by the assessee remained unsatisfactory.

As all the evidences on record are against the assessee and as the assessee could not explain the nexus between the deposits and the withdrawals despite opportunity provided, the difference in the receipts of ₹2,33,26,922/- is treated as undisclosed receipts and is added to the total income of the assessee”.

The Id. Assessing Officer on perusing the facts and submissions of the assessee suspected, the explanations are vague and not satisfactory and as per the books of accounts there is no necessity for withdrawals for any urgent expenditure. The assessee in the courier business has different branches and pickup points at Tiruppur and concluded the deposits are nothing but daily collection of various centers and there is suppression of various material facts and further assessee could not explain the nexus of deposits and cash withdrawals and treated the difference in receipts as undisclosed receipts alongwith other disallowance and assessed total income ₹2,50,58,499/- and raised the demand. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Authorised Representative reiterated the submissions and grounds raised against order of Assessing Officer on disallowances including disputed issues. The Id. Authorised Representative submitted that assessee is

operating at Tirupur with radius of 50 Kms and have pick up centers in various places. The assessee estimates the financial commitments and withdraw cash from bank and instead of keeping in safe in office and deposited the amount in various bank account depending on the presentation of cheques for clearance and ECS as per the commitment decided by the Manager of the assessee. In most cases branches directly deposit cash and cheques in bank accounts and credited in the ledger accounts and mistakes are committed in passing journal entries and writing narrations and cash deposit are reflected as cheque deposits viz-a-viz cheque deposits. The Id. CIT(A) considered the submissions and material available on record. Further the Id. AO erred in not considering the cash withdrawals on various dates and deposits simultaneously on the same date. The Id.AO has not made any specific finding of deposit in one bank and withdrawals in other bank. The assessee has withdrawn aggregate amount of ₹3,43,67,134/- from all the Bank accounts in the said financial year being more than sufficient equating aggregate cash deposits of disallowance ₹2,33,37,465/-. The Id. Commissioner of Income Tax (Appeals) considered the evidence and statements and called for the remand report and Id. Assessing Officer filed interim report dated 24.03.2015 based on the evidence filed by the assessee in appellate proceedings.

The Id. Commissioner of Income Tax (Appeals) has confirmed the findings of the Assessing Officer in page 6.2 of his order as under:-

'The Assessing Officer has treated ₹2,33,26,922/- as undisclosed receipts and added the same to the total income of the assessee. The basis for this addition is that this is the difference between receipts shown in the books and the total deposits in the bank. The Assessing Officer has made a detailed discussion on the unreliability of entries in the cash book of the assessee. During the course of the hearing, the authorized representative stated that he is not able to produce the books. Cash and cheque entries have been inter changed and it has been stated that these are errors of the accountant. In the absence of the evidence in the form of cash book, it is impossible to reconcile the entries in the bank account and the receipts of the assessee. The arguments made by the Assessing Officer is not rebutted cogently by the authorized representative. The contention that the Assessing Officer has not rejected the books of accounts does not meet the issue in question. The valid defects pointed out by the Assessing Officer still persist as they have not been rebutted the evidence. The addition made by the Assessing Officer is in principle correct and cannot interfered with. The excess of investment in the bank, as narrated over and above the amount in the books does assume the character of unexplained investment''.

Aggrieved by the CIT(A) order, the assessee assailed an appeal before Tribunal.

5. Before us, the Id. Authorised Representative of the assessee reiterated the submissions of assessment proceedings and appellate proceedings and relied on judicial decisions. The Id. Authorised Representative argued that assessee is in the courier business at Tiruppur and have various branches and pick up point. The Assessing Officer contention is based on non-reconciliation of deposits and withdrawals and the action is totally on suspicion. The nature of business being delivery of goods were there are multiple number of customers using the services. The Id. Commissioner of Income Tax (Appeals) also accepted the evidence filed and satisfied that there is excess cash balance on comparison with deposits withdrawals and totally ignored and concurred with the findings of Assessing Officer as undisclosed receipts and overlooked bank account statements. Hence, the addition is illogical and illegal and prayed for deletion.

6. Contra, the Id. Departmental Representative relied on the orders of the lower authorities and opposed the grounds.

7. We heard the rival submissions and perused the material on record. The addition is based on the assessee's bank account copies and bank statement issued by the bank. The assessee has committed mistake in passing the entries. The assessee being an individual, have

branches in different parts of the city and offering income from courier business. The action of the Id. Assessing Officer is deep thoughted though the assessee is maintaining bank account referred at page 3 of the order but Assessing Officer treated the amount as unexplained source. The Id. Assessing Officer has to compare the margins with the other courier business and compute the income. The Assessing Officer relied on the defective cash book and bank account and calculated the difference by applying sampling technique based on statement of M/s.Karur Vysya Bank and M/s. Canara Bank. The Id. Commissioner of Income Tax (Appeals) considered the grounds and submissions of the assessee and not the mistakes committed by the assessee in passing the entries in the books which could not be rectified in the assessment. The Assessing Officer without rejecting Books of account were cash book does not reflect the correct and actual balance has investigated based on bank statement of one month only. On perusal of assessment order, the hearing of the case took place from 19.12.2012 and ultimately the order was passed on 04.03.2013. When the Assessing Officer was suspicious of the books of account and entries, the assessment should have been made with the rectified books as ample time was available to the Assessing Officer. There is nothing on record to show that independent enquiry has been

conducted for making additions except summons issued to the Bank Managers u/s.133(1) of the Act for submitting bank statements as per assessment order. No doubt transactions cannot totally ignored considering the genuinity of the entries. In such circumstances the Id. Assessing Officer having collected the bank statements from all the bank and books of accounts in the custody should applying peak credit methodology. The Assessing Officer could establish the peak by configuration of all the bank accounts with cash and bank deposits. Considering preceding withdrawals in the bank accounts and deposits in fragmenting of unequal amount in the bank accounts the assessee submitted written submissions and rely on the judicial decision of Punjab and Haryana High Court of *Shiv Charan Dass vs. Commissioner of Income Tax 126 ITR 263*. We are of the opinion that the matter has to be re-examined in depth based on bank statements issued by the bank and rectified correct cash book by the assessee and peak credit has to be calculated for addition. Therefore, we set aside the order of Commissioner of Income Tax (Appeals) and remit the entire issue to the file of Assessing Officer who shall verify and calculate peak credit and pass the order and assessee shall co-operate in submitting

necessary material and corrected books of account.

8. In the result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced on Wednesday, the 27th day of April 2016 at Chennai.

Sd/-

(ए. मोहन अलंकामणी)

(A. MOHAN ALANKAMONY)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य /JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:27th April, 2016.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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