

आयकर अपीलीय अधिकरण, 'एस.एम.सी' 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL ,
'SMC' 'D' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष
Before Shri A. Mohan Alankamony, Accountant Member

आयकरअपीलसं./I.T.A.No.792/Mds/2017
(निर्धारणवर्ष / Assessment Year: 2011-12)

Shri Jayavel Karthick, 25, Tiruvalluvar Salai, Teynampet, Chennai – 600 018.	Vs	The Income Tax Officer, Non-Corporate Ward 7(2), Chennai
PAN: AQVPK7192E		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Anand Babunath, CA
प्रत्यर्थीकीओरसे/Respondent by	:	Shri R. Clement Ramesh Kumar, Addl. CIT

सुनवाईकीतारीख/Date of hearing	:	08.06.2017
घोषणाकीतारीख /Date of Pronouncement	:	13.06.2017

आदेश / ORDER

This appeal by the assessee is directed against the order passed by the Ld. Commissioner of Income Tax (Appeals)- 2, Chennai dated 28.09.2016 in ITA No.120/CIT(A)-2/2014-15 for the assessment year 2011-12 passed u/s.250(6) r.w.s.143(3) of the Act.

2. The appeal was filed by the assessee with a delay of 107 days. The Ld. AR submitted that the delay had occurred since the assessee's father was critically ill. Therefore the Ld. AR

pleaded that the delay may be condoned. The Ld. DR strongly objected to the submission of the Ld. AR. After hearing both sides, I am of the considered view that the delay of 107 days in filing the appeal should be condoned because the delay was beyond the control of the assessee. Therefore I hereby condone the delay and proceed to hear the appeal on merits.

3. The assessee has raised several grounds in his appeal, however the crux of the issue is that the Ld.CIT(A) has erred in sustaining the addition of Rs.15,86,670/- invoking the provisions of Section 69A of the Act towards unexplained cash deposits.

4. The brief facts of the case are that the assessee is an individual earning income from other source, filed his return of income for the assessment year 2011-12 on 18.11.2011, admitting total income of Rs.1,57,270/-. Subsequently the case was selected for scrutiny under CASS and finally order U/s.143(3) of the Act was passed on 07.03.2014, wherein the Ld.AO made addition of Rs.15,86,670/- to the income of the assessee as unexplained cash deposit U/s.69 of the Act.

5. During the course of scrutiny assessment, it was observed by the Ld.AO that the assessee has made cash deposits of Rs.25,97,550/- in State Bank of India. The assessee had explained that he had received Rs.21,42,471/- as loan from relatives, which was deployed in his online trading business with friends, which resulted in heavy losses. The assessee also provided the name. address and PAN number of his brother, mother and father from whom he had received the loan. However, the Ld.AO after granting relief towards loan received by cheque amounting to Rs.7,06,683/- made addition of the balance amount of Rs.15,86,670/- as unexplained cash deposit U/s.69A of the Act. On appeal, the Ld.CIT(A) confirmed the order of the Ld.AO by observing that the assessee had failed to establish the credit-worthiness of the so called five loan creditors.

6. Before us, the Ld.AR submitted that the assessee had given the details of his close relatives such as brother, mother and father from whom he had received cash, which he deployed in his business along with his friends. The Ld.AR further submitted that without considering the particulars furnished by the assessee before the Revenue authorities and also without giving the benefit of peak credit, the Ld.AO made addition of the

entire sum deposited by the assessee in his bank account, which is erroneous. The Ld.AR further argued that the Ld.AO as well as the Ld.CIT(A) has also not granted the benefit of self-earned capital deployed in the business considering his financial status. The Ld.AR accordingly pleaded for deleting the addition made by the Ld.AO. The Ld.DR on the other hand could not controvert to the submission of the Ld.AR. However, he relied on the orders of the Revenue authorities.

7. I have heard the rival submissions and carefully perused the materials available on record. From the facts of the case, it is apparent that the assessee had given the details of the loan creditors before the Ld.AO. The same is reproduced herein below for reference:-

Name	Relationship	PAN	Amount
Mr. Ravikumar	Brother	AWCPR3651A	4,51,061
Mr. J. Prabhu	Brother	AOJPP6633D	5,06,748
Mr. Selvam	Brother	EWTPS1264R	4,34,662
Ms. J. Vedhavalli	Mother	AATPV8859M	3,50,000
Mr. L. Jeyavel	Father	ACPPJ8209D	4,00,000

The Ld.AO based on the return filed by the respective loan creditors came to a conclusion that the credit worthiness is not adequate and thereby simply rejected the contention of the assessee without examining the loan creditors. I do not find this

action of the Ld.AO to be justifiable. The Ld.AO ought to have made enquiries with the loan creditors before coming to a conclusion that they are not creditworthy. Further the amount advanced by the loan creditors is quite nominal which ranges between Rs. 3.5 to 5 lakhs, which is reasonable. Moreover, an individual will definitely possess some capital in his hand for which allowance has to be given. Considering all these aspects, I am of the considered view that the addition made by the Ld.AO for Rs.15,86,670/- is not warranted. Therefore I hereby direct the Ld.AO, to delete the addition made by the Ld.AO of Rs.15,86,670/- invoking the provisions of Section 69A of the Act in the case of the assessee.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the court on the 13th June, 2017.

Sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 13th June, 2017

JR

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 |