

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

आयकरअपीलसं./I.T.A.No.399/Mds/2016
(निर्धारणवर्ष / Assessment Year: 2009-10)

Smt. S. Nageswari, No.3, J.Ratna Apartments, 35, Velachery Main Road, Chennai – 600 042.	Vs	The Income Tax Officer, Salary Ward V(3), Chennai – 600 034.
PAN: ACNPN3295P		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri K. Meenakshisundaram, ITP
प्रत्यर्थीकीओरसे/Respondent by	:	Shri Supriyopal, JCIT

सुनवाईकीतारीख/Date of hearing	:	12.06.2017
घोषणाकीतारीख /Date of Pronouncement	:	31.08.2017

आदेश / ORDER

This appeal by the assessee is directed against the order passed by the Ld. Commissioner of Income Tax (Appeals)-5, Chennai dated 01.01.2016 in ITA No.365/CIT(A)-5/2013-14 for the assessment year 2009-10 passed u/s.250(6) r.w.s.143(3) of the Act.

2. The assessee has raised several grounds in her appeal, however the crux of the issue is that the Ld.CIT(A) has erred in

confirming the disallowance made by the Ld.AO amounting to Rs.20,30,000/- as unexplained credits u/s. 68 of the Act.

3. The brief facts of the case are that the assessee is an individual earning income from salary, filed her return of income for the assessment year 2009-10 on 28.03.2010, admitting total income of Rs.5,11,450/-. Initially the return was processed U/s.143(1) of the Act. Subsequently the case was selected for scrutiny under CASS and finally order U/s.143(3) of the Act was passed on 30.12.2011, wherein the Ld.AO added Rs.19,20,346/- as 'Income from other sources'.

4. During the course of scrutiny proceedings, it was observed by the Ld.AO from the cash flow statement and the balance sheet submitted before him that the assessee has disclosed the following details:-

(i)	Loan from brother	– Rs.9,70,000/-
(ii)	Loan from sister's son	– Rs.2,00,000/-
(iii)	Amount received from son (Ranjit Bawa)	– Rs.8,60,000/-
	Total	- Rs.20,30,000/-

The assessee had also disclosed an amount of loan given to assessee's son Ranjit Bawa amounting to Rs.15,30,000/- and

the loan received from the assessee's sister son of Rs.2,00,000/- was also repaid.

5. In order to justify the loan, the assessee submitted the confirmation letter from her brother, sister's son and son Ranjit Bawa. She also furnished all the particulars of her brother, son and sister's son. However, the Ld.AO rejected the explanation given by the assessee because the assessee had not explained the source of the amount lend by the assessee's brother, sister's son and her son. Thereafter the Ld.AO made addition for Rs.19,00,000/- under the head 'income from other source'.

6. On appeal, the Ld.CIT(A) concurred with the view of Ld.AO, however corrected the totaling mistake made by the Ld.AO and accordingly the amount of Rs.20,30,000/- was treated as the unexplained credits. While doing so, the Ld.CIT(A) relied on certain case laws discussed in his order wherein it was held that the burden of proving the identity of the creditors, capacity of the creditors to advance money and genuineness of the transaction is on the assessee and in the case of the assessee all these aspects were missing.

7. Before us the Ld.AR submitted that the assessee had borrowed money from her relatives and she had furnished the confirmation letters from them and also had explained the source from where her relatives had lent the money to her. The Ld.AR further argued stating that the Ld.A.O without verifying the explanation offered by the assessee and examining the creditors, had held the transaction not to be genuine on the basis of surmises and conjectures. It was therefore pleaded that the addition made by the Ld.AO which was further upheld by the Ld.CIT(A) may be deleted. The Ld.DR on the other hand relied on the orders of the Ld. Revenue authorities and prayed for confirming the same.

8. I have heard the rival submissions and carefully perused the material available on record. From the facts of the case, it is apparent that the assessee has submitted the confirmation letter from all her relatives from whom she had borrowed the money. She had also furnished the particulars of the creditors. The Ld.AO without examining the creditors and brushing aside the explanation offered by the assessee simply made addition in the hands of the assessee under the head 'income from other source'. This act of the Ld.AO is not justifiable. The Ld.AO

ought to have summoned the creditors and examine their source before arriving at his decision. The Ld.CIT(A) also without further examining and verifying the issue had simply followed the order of the Ld.AO. This action of the Ld.CIT(A) is also not justifiable. At this juncture I am reminded of the decision of the Hon'ble Guwahati High Court & Calcutta High Court discussed herein below:

1. *Jalan Timbers v. CIT [1997] 223 ITR 11 (Gau.)*

Where, in respect of certain cash credits, the assessee had not only disclosed them in his return of income but also produced confirmatory letters from the creditors, and the creditors had also declared the amounts in their income-tax returns which were accepted by the ITO, addition made as cash credits by ignoring the aforesaid facts would not be justified.

2. *S.K. Bothra & Sons, HUF v. ITO [2011] 203 Taxman 436/15 taxmann.com 298 (Kol.) :*

It is settled law that while considering the question whether the alleged loan taken by the assessee was a genuine transaction, the initial onus is always upon the assessee and if no explanation is given or the explanation given by the assessee is not satisfactory, the Assessing Officer can disbelieve the alleged transaction of loan. But the law is equally settled that if the initial burden is discharged by the assessee by producing sufficient materials in support of the loan transaction, the onus shifts upon the Assessing Officer and after verification, he can call for further explanation from the assessee and in the process, the onus may again shift from the Assessing Officer to the assessee. However, the Assessing Officer would not be justified if he merely directed the inspector to verify the statements, and later on the basis of his report, straightaway arrive at the conclusion that the transactions were not genuine without giving further

opportunity to the assessee to explain the alleged information disclosed by the Inspector to the Assessing Officer.”

In the case before us the assessee had furnished all the details with respect to the loan received by her, thus the initial onus thrust on the assessee is discharged and shifts to the Ld.A.O. However the Ld.A.O had had neither examined nor verified the particulars furnished by the assessee. Considering these facts and the decision of the higher Judiciary cited herein above, I do not have any other option but delete the addition made in the hands of the assessee by the Ld. A.O because the Ld.A.O has not discharged his onus. Accordingly, I hereby direct the Ld.AO to delete the addition of Rs.20,30,000/- made in the hands of the assessee as unexplained credits.

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

Order pronounced on the 31st August, 2017 at Chennai.

Sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 31st August, 2017

RSR

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 |