

आयकर अपीलीय अधिकरण, B/‘SMC’ न्यायपीठ, चेन्नई ।

IN THE INCOME TAX APPELLATE TRIBUNAL  
B/“SMC” BENCH, CHENNAI

श्री. चंद्र पूजारी लेखा सदस्य, के समक्ष ।

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

**I.T.A.No.973/Mds./2017**

(Assessment Year : 2011-12 )

Shri R.Seeniraj,  
430,Edayar Street,  
Coimbatore-641 001.

**Vs.** The Income Tax Officer,  
Ward-III(3),  
Coimbatore.

**PAN AZWPS 1882 M**  
(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Mr.S.Sridhar,Advocate  
: Mr.B.Sagadevan, JCIT, D.R

सुनवाई की तारीख/ Date of hearing : 08.11.2017  
घोषणा की तारीख /Date of Pronouncement : 08.11.2017

**आदेश / O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal is filed by the assessee, aggrieved by the order of the Learned Commissioner of Income Tax(A)-2, Coimbatore dated 31.01.2017 pertaining to assessment year 2011-12.

2. The assessee has raised the following grounds for consideration.

1. The order of The Commissioner of Income Tax (Appeals) 2, Coimbatore dated 3101.2017 in I.T.A.No.411/2014-15 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.
2. The CIT (Appeals) erred in partly sustaining the addition made on the consideration of the explanation offered for the source of cash deposit in the joint bank account in the computation of taxable total income without assigning proper reasons and justification.
3. The CIT (Appeals) failed to appreciate that the assessment of such sum in the hands of the appellant fully (though deleted partly in the appellate order) was wrong, erroneous, unjustified, incorrect and not sustainable in law.
4. The CIT (Appeals) failed to appreciate that in any event the source from bogium amount received to the extent of Rs.13 Lakhs was properly explained with evidence and ought to have appreciated that the rejection of the explanation both in the assessment order as well as in the appellate order at para 4.1 was wrong, erroneous, unjustified, incorrect and not sustainable in law.
5. The CIT (Appeals) failed to appreciate that the source from gifts received to the extent of Rs.20,60,000/- was correct as well as supported by evidence and ought to have appreciated that the rejection of the explanation to the extent of Rs.12,60,000/- in para 4.2.0 and para 4.2.1 of the impugned order was wrong, erroneous, unjustified, incorrect and not sustainable in law.
- 6 The CIT (Appeals) failed to appreciate that the source from pattarai advances to the extent of Rs.3 Lakhs was proved with evidence for the

- purpose of explaining the source for cash deposit and ought to have appreciated that the rejection of the explanation in para 4.3 of the impugned order was wrong, erroneous, unjustified, incorrect and not sustainable in law.
7. The CIT (Appeals) failed to appreciate that the source from savings from the earnings of the brothers and their spouses for making the cash deposit was proved undisputedly and rejection of such explanation in para 4.4 of the impugned order to the extent of Rs.5,08,214/- was wrong, erroneous, unjustified, incorrect and not sustainable in law.
  8. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.
3. The brief facts of the case are that the assessee filed a return of income for AY.2011-12 on 26.07.2011 declaring total income of ₹2,51,750/- During scrutiny proceedings, the AO asked the assessee to explain the sources of cash deposits made in SBI account, which was jointly maintained by him along with his brothers in City Union Bank, Ramnagar Branch. Regarding the source of cash of ₹95,00,000/- deposited in that account, the assessee replied that it was an account jointly maintained by him and his brothers who are all goldsmiths by profession except one brother who is working in a company. It was explained that the brothers planned to buy an asset severally in their names out of their own incomes. Accordingly, they

approached the seller who has a bank account in City Union Bank. In order to settle the amount to the seller, all brothers together opened savings bank account in that bank, wherein they deposited cash of ₹75,00,000/-. As there was some shortage, they borrowed hand loan of ₹20,00,000/- from Sri Krishna Sweets and transferred the same to this bank account. Thereafter, the seller had been paid the whole of the consideration by transferring the amounts to the sellers account. The property was separately registered in the name of four brothers and their spouses and another brother Shri. Rajasekar, who was unmarried. It was explained that the hand loan of ₹20,00,000/- lakhs was returned to Sri Krishna Sweets out of bogium amounts (lease advance) received from certain persons who took the property on lease. As per the assessee's balance-sheet, the purchase of property was shown at ₹17,84,520/-. In order to prove that the property was severally purchased by the brothers and their spouses, the assessee filed Balance- sheets of other family members i.e., his brothers and sisters-in-law evidencing the purchase of the property by them also.

3.1 The assessee had also explained that all the brothers and their spouses who had purchased this property are assessed to tax and had filed returns of income for AY. 2010-11 showing cash balance available with each of them. It was stated that part of the cash deposited was out of this cash balance available with each of them. In that manner, the assessee explained that ₹31,31,786/- came out of cash balances available with all of them. Regarding the balance amount, the explanation furnished was as below.

"Sl.No.	Name	In Favour of	Amount received	Date of Receipt	Date of Bogium
1	P.Palanikumar	R. Seeniraj	Rs.4,00,000/-	01.07.2010	05.08,2010
2	A. Balaji	R.Seenivasan	Rs. 4,00,000/-	12.07.2010	05.08.2010
3	G. Rajeswari	R.Balasubramanian	Rs. 3,00,000/-	11.07.2010	13.08.2010
4	A. Barani Kumar	R. Shanmugaraj	Rs. 2,00,000/-	12.07.2010	05.08.2010
Total			Rs.13,00,000/-		

### III. Gift amount received from R. Chellammal (mother)

By R. Rajsekar on 10.07.2010	- Rs.10,00,000/-
Gift amount received from Thayammal (Mother in law) By R. Seenivasan on 09.07.2010	- Rs 4,00,000/-
Gift amount received from P. Seeniammal (Sister) by R. Rajasekar on 09.07.2010	- Rs. 4,00,000/-
Gift amount received from Mr. Paulraj (Grand Father) by R. Shamnugaraj on 09.07.2010	- Rs. 2,00,000/-
Gift amount received from R. Chellammal (Mother in law) by S. Rajalakshmi on 09.07.2010	- Rs. 60,000/-
Total	<u>Rs. 20,60,000/-</u>

IV. Pattarai advance received by R. Seeniraj ₹3,00,000/-

As a result, total funds available as mentioned above is Rs. 67,31,786/- as detailed below:

(a) Funds available as on 31.03.2010 as in point No.1	Rs. 31,31,786/-
(b) Loan received against bogium as in Point. II	Rs. 13,00,000/-
(c) Donations received as in Point No. III	Rs. 20,60,000/-
(d) Pattarai advance received by. R. Seeniraj as in point No. IV	<u>Rs. 3,00,000/-</u>
Total	<u>Rs. 67,91,786/-</u>

Balance amount of ₹7,08,214/- has been borned by all five brothers and their respective spouses (Except Rajasekar- Bachelor) from their own earnings during Financial Year 2010-2011 (Assessment Year 2011-2012)".

3.2 After verifying the income tax return of the brothers and the spouses, the AO accepted source for cash of ₹31,31,786/- as explained above. Regarding bogium amount totaling to ₹13,00,000/- received from different persons, the AO made enquiries with those persons and recorded statements. Three out of four of them admitted to have given bogium amounts mentioned by the appellant to have been received by the brothers. One person Shri A Balaji initially admitted to have given bogium amount of

₹4,00,000/- to Shri. R. Srinivasan, (brother of appellant) but has not been able to produce any proof for the payment. Later when questioned about his address being different in the ration card, he stated that he never stayed in the house of Shri. Srinivasan and that he had not given any bogus amount to Shri. Srinivasan. When questioned about denial of Balaji about payment of bogus amount, the appellant explained that Shri. Balaji became nervous during the statement and in an urgency to go to doctor for the treatment of chest pain developed during recording the statement, he denied it. Otherwise, Shri. Balaji stayed for about six months between June 2015 to January 2013 and being a well-wisher of Srinivasan, he gave bogus amount of ₹4,00,000/-. The AO was however not convinced with the appellant's explanation or the acceptance of payments of bogus amounts by other three persons. According to the AO, the house was in a dilapidated condition and not fit for stay by any persons. So the question of letting out of such building does not arise. The bogus agreements (unregistered) have been entered into only for the purpose of showing the receipt of bogus amounts and explain the cash deposited in the bank account. Accordingly, the AO

treated source for cash of ₹13,00,000/- as unexplained and added the same.

3.3 Regarding gifts explained as source for cash deposit, the AO recorded statements of the donors and after pointing out certain mismatches in their statements, held that the gifts are not genuine and added the amount of ₹20,60,000/-.

3.4 Regarding Pattraai advances, although the appellant filed their addresses and confirmation letters, the AO found that the above persons were labour working with the appellant and they did, not have sufficient source of income. Accordingly, the AO held this amount as not genuine pattraai advance and added back ₹3,00,000/-. As regards the explanation that 7,08,214/- was out of their current year savings of brothers, the AO was of the view that no proof was produced to substantiate this claim and added back the same. Aggrieved by the order of Id. Assessing Officer, the assessee carried the appeal before the Ld.CIT(A). On appeal, Ld.CIT(A) had given a partial relief. Against the order of Ld.CIT(A), now the assessee is in appeal before us.

4. At the outset, the Id.A.R submitted that the CIT (Appeals) erred in partly sustaining the addition made on the consideration of the explanation offered for the source of cash deposit in the joint bank account in the computation of taxable total income without assigning proper reasons and justification. According to Id.A.R, the bank account is a joint account as discussed in earlier para of this order. The amount relating to the lease, deposits and gifts was received from various persons in individual capacity and later, it was deposited under the joint bank account and the entire amount cannot be considered in the hands of single person i.e. the assessee. The assessee raised this ground relating to this issue before Ld.CIT(A) in ground-6 as follows:-

*“6. The Id. Assessing Officer has accepted that the amount has been deposited in joint account of myself and my four brothers. This clearly indicates that the amount of Rs.75,00,000/- is not fully belonging to me.”*

The Id. Assessing Officer has accepted that the amount has been deposited in joint account of assessee with his four brothers. This

clearly indicates that an amount of ₹75 lakhs is not fully belonged to present assessee. Thus, he submitted that in spite of this ground raised before Ld.CIT(A), he failed to adjudicate the same and findings on this issue would go to the root of the matter. Hence, he prayed that it is to be adjudicated.

5. On the other hand, Id.D.R fairly conceded that it is necessary to adjudicate this ground by the Ld.CIT(A) . Hence, it may be remitted to the file of Ld.CIT(A) for his consideration.

6. I have heard both the parties and perused the material on record. In my opinion, the ground No.2 in this appeal as above is emanated from the ground of appeal raised before Ld.CIT(A) and it was brought to the notice of the lower authorities that the bank account is in the name of assessee and four of his brothers. As seen from page -3 of Ld.CIT(A)'s order that the amount received by various persons in their individual capacity and latter, it was said to be deposited to the joint bank account of them. Being so, the Ld.CIT(A) required to give the findings on this issue. Hence, this

issue is remitted to the file of Ld.CIT(A) to adjudicate the ground No.2 raised before him. Since I have remitted above issue to the file of Ld.CIT(A), at this stage, I refrain from going into other grounds of appeal raised by the assessee.

7. In the result, the appeal of assessee is partly allowed for statistical purposes.

Order pronounced on 08<sup>th</sup> November, 2017.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Chennai,

Dated the 08<sup>th</sup> November, 2017.

K s sundaram.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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