

आयकर अपीलीय अधिकरण , 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI**

श्री धुव्वुरु आर. एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन लेखा सदस्यसमक्ष
**BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 841/Mds/2016

निर्धारण वर्ष/Assessment Year : 2011-12

Shri. Shaji Purushothaman,
No. 346 A, Pantheon Road,
Egmore,
Chennai – 600 008.

The Assistant Commissioner of
Vs. Income Tax,
Business Circle –VII/NCC-9,
Chennai.

[PAN: AAIPS 8327E]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: Shri. A.S. Sriraman, Advocate

प्रत्यर्थीकीओरसे/Respondent by

: Shri. M. Palanichamy, JCIT

सुनवाईकीतारीख/Date of Hearing

: 06.10.2017

घोषणाकीतारीख/Date of Pronouncement

: 04.01.2018

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of Commissioner of Income Tax (Appeals)-10, Chennai in New ITA No. 28/2014-15/CIT(A)-10 dated 25.02.2016 for assessment year 2011-12.

2. Shri Shaji Purushothaman, the assessee, a partner in EMPEE Packaging Industries, received salary from EMPEE Distillaries, admitted rental and interest income . The AO received information through AIR that there were huge cash deposits in the assessee's SB account at Andhra Bank , Egmore Branch . At the time of assessment for ay 2011-12, the AO noticed that this account did not indicate his regular receipts of salary, rent etc which has been offered as income. The AO after analyzing the pattern of the cash withdrawals and the cash deposits, did not accept the assessee's explanation that the earlier cash withdrawals made from the bank is the source for the subsequent cash deposits in the bank and hence brought to tax the entire cash deposits made on various dates at Rs.45,56,604/- as an unexplained investment u/s.69. The CIT(A) dismissed the appeal. Aggrieved, the assessee filed this appeal contending that the CIT (Appeals) erred in sustaining the addition of Rs.45,63,708/- , representing cash deposits in the bank account , u/s 69 . The sources for the cash deposits was fully explained but the CIT(A) failed to appreciate the detailed analysis of the bank statement, he has not properly looked into it and hence his decision is vitiated. The CIT(A) failed to appreciate his alternate contention for quantifying the addition based on peak credit method, hence his decision is vitiated completely and the decisions relied on him have no application to the facts of this case etc.

3. We heard the rival submissions and gone through relevant material. For clarity sake, the details of the cash deposits & cash withdrawals specified in a chart in the assessment order is extracted as under:

Date	Cash Deposit	Cash Drawings
Opening balance as on		
01/04/2010		96,50,313
23/04/2010	55,00,000 (cheque issued)	
11/05/2010		10,000
18/05/2010		30,000
29/05/2010		3,000
01/06/2010		24,000
02/06/2010		50,000
05/06/2010		81,500
07/06/2010		1,00,000
15/06/2010		20,00,000
16/06/2010	30,000	
12/06/2010	10,000	
19/06/2010	25,000	
03/07/2010		70,000
05/07/2010		68,000
06/07/2010		18,000
13/07/2010		1,20,000
15/07/2010	18,20,000	
19/07/2010		50,100
03/08/2010		50,000
04/08/2010		75,000
04/08/2010		50,000
05/08/2010		1,00,000
06/08/2010	1,00,000	
03/09/2010	10,000	
06/09/2010		1,00,000
08/09/2010		23,000
14/09/2010		23,000
24/09/2010	1,00,000	
26/09/2010	2,00,000	
27/09/2010	15,000	

27/09/2010	8,000		
	40,000		
15/10/2010		30,000	
15/10/2010			6,00,000
18/01/2011			3,000
24/01/2011			6,000
07/02/2011			70,000
21/02/2011			5,00,000
25/02/2011			1,95,000
02/03/2011			20,000
02/03/2011			50,000
05/03/2011			15,000
17/03/2011			22,000

4. Before the AO, the assessee has submitted that the cash deposits are from the withdrawals already made from the same bank account. The AO analysed the cash withdrawal & deposits, recorded his observations and findings in the order. Let us examine them as under :

a) The balance in the bank account as on 01/04/2010 is Rs. 96,50,313/-. During April, there are no cash withdrawals from the bank statement as well as from the day book . The assessee has stated that Rs 55 lakhs is withdrawn by cash. However, the entry in the bank statement is "T.R. Bhaskaran 765027 55,00,000." 765027 which is the cheque number. Therefore, it is clear that this does not pertain to a cash withdrawal.

b) From 11/05/2010 to 15/06/2010, cash deposits totaling to Rs. 22,98,500/- is made. The cash deposit made on 15/6/2010 alone is

Rs.20,00,000/-. There is no cash withdrawal from 1st April till 15/06/2010. Since, there are no sources for the cash deposits in the day book , the assessee's explanation of cash withdrawals being the source for cash deposits from 11/05/201 to 15/06/2010 of Rs. 22,98,500/- is without any basis and not acceptable.

c) On 16/06/2010, 17/06/2010 & 19/06/2010, there are cash withdrawals of Rs.65,000/-. After this withdrawal, there is a cash deposit of Rs. 70,000 on 3/7/2010 which can be explained by the withdrawal of Rs, 65,000/-, partly, and the balance Rs. 5000 is not explained. Subsequent to this date, there are cash deposits of Rs. 68,000 (05/07/2010), Rs. 18,000 (06/07/2010). Rs.1.20,000 (13/07/2010) for which sources are not explained. Therefore, during this period ie from 3/7/2010 to 13/7/2010, the total cash deposits made at Rs. 2,01,000 are not explained.

d) There is a cash withdrawal of Rs. 18,20,000/- on 15/7/2010. The assessee claimed that this cash withdrawal was made for the purpose of investment in agricultural land, which did not materialize and out of the unutilized cash withdrawal he made cash deposits of Rs. 3,25,000/- from 19/07/2010 to 05/08/2010 leaving approx Rs. 15 lakhs in the assessee's hand. The AO held that this explanation is highly improbable and without any logic for the reason that the cash withdrawal made on 15/7/2010 at Rs. 18,20,000/- for the investment in agricultural land did

not materialize, then, it does not explain why he should redeposit small sums of Rs. 50,100/-, 50,000/-, 75,000/-, 50,000/- & 1,00,000/- etc on different dates. The logical thing would be to re-deposit the whole sum on a single day. No convincing reason has been given for the varying amounts of cash withdrawal. Sometimes huge amounts like Rs. 18,20,000/- were withdrawn and sometimes cash withdrawals were made for small sums like Rs. 10,000/- & 15,000. This clearly shows that there is no nexus between the cash withdrawal & the deposits. Further, the subsequent cash withdrawals and deposits in the bank account are as under:

Date	Withdrawal	Deposit
06/08/2010	1,00,000	
03/09/2010	10,000	
03/09/2010	10,000	
06/09/2010		1,00,000
08/09/2010		23,000
14/09/2010		23,000
24/09/2010	1,00,000	
26/09/2010	2,00,000	
27/09/2010	15,000	
27/09/2010	8,000	
	40,000	

e) The AO considered that there is an improbability in the above explanation that if the assessee's claim that he had a balance cash of approx Rs 15 lakhs with him, even then, the assessee finds it necessary to withdraw smaller amounts like Rs. 1,00,000/- on 6/8/2010,

Rs 20,000/- (Rs 10000/-, each) on 3/9/2010, Rs. 1 lakh on 24/09/2010, Rs.2 lakhs on 26/09/2010, Rs. 8,000/- on 27/09/2010 etc. This makes it clear that the assessee did not have any cash with him as on 03/09/2010 (sic) and other dates out of the earlier cash withdrawals . With reference to the remaining withdrawals and cash deposits in the above chart the AO observes that the withdrawals made from 24/09/2010 to 27/09/2010 are at Rs. 3,63,000/-only. This does not explain the sources of total deposits at Rs. 15,11,000/-made from 15/10/2010 to 17/03/2011, nor does it explain why these deposits were made over a period of 5 months from October 2010 to March 2011. Thus, the AO , inter alia, held that the only evidence for the sources of the cash deposits is the withdrawals from the same bank account and the pattern of withdrawals and the cash deposits has been judged. The onus is on the assessee to provide proof for the claim made by him and the assessee has failed to discharge the onus . From the above facts, the AO held that it is clear that the assessee has been unable to convincingly explain the sources of cash deposits in his bank account and the explanation offered is only a make believe statement, an afterthought when faced with the question of how to explain the cash deposits. The explanation is totally unconvincing, without logic or reason and not acceptable. The AO also relied on the ratio of the Apex

Court in the case of CIT Vs Durga Prasad More reported in 82 ITR 540(SC) and made the impugned addition.

5. On the assessee's appeal, the CIT(A) upheld the AO's action. The relevant portion of his order is extracted as under :

" 4.3.3 I have perused the bank account statement considered by the Assessing Officer. In addition to the cash deposit and withdrawal, there are several cheque and RTGS transactions in the said account. It is not a bank account wherein there are only cash deposits and cash withdrawals wherein the Appellant can make a claim of working out the peak credit. The Appellant's AR during the appearance on 03-02-2016 was specifically given an opportunity (recorded in the order sheet) to furnish additional submission to explain the source of cash deposit on or before 15-02-2016. Till the date of passing of this appeal order, the Appellant neither submitted the details explaining the source of cash deposits in the Appellant's bank account nor gave the working of peak credit substantiated by account entries.

4.3.4 I have gone through the assessment order, wherein the Assessing Officer has dealt with each and every cash deposit and rebutted the Appellant's explanation for the source. For the elaborate reasons given by the Assessing Officer in para 6 of the assessment order, the Appellant's explanation with regard to the source of cash deposits is not acceptable."

5.1 Relying the cases of Bhaiyalal Shyam Behari v CIT(A) (2005) 276 ITR 38 (All.), ITO vs Murlidharan G Pillai, the Hon'ble ITAT Bench A, Ahmedabad in ITA No. 225/Ahd/2010 CO No. 258/Ahd/2010&CIT vs Vijay Agricultural Industries (2007) 294 ITR 610 (All.) , the CIT(A) refused to consider the assessee's alternate plea of making the addition on Peak credit method.

6. Before us also, the assessee contended the same pleas taken before the lower authorities. Per contra, the DR supported the orders of the lower authorities. We have considered them. On the above facts, it is clear that the assessee did not have any explanation for the sources of cash deposits made from 11/05/2011 to 15/06/2010 at Rs. 22,98,500/- and hence the addition made to this extent is confirmed. The AO's observations that are cash withdrawals of Rs.65,000/-made on 16/06/2010, 17/06/2010 & 19/06/2010 . Thereafter, there is a cash deposit of Rs. 70,000 on 3/7/2010 which can be explained by the withdrawal of Rs. 65,000/-, partly , and the balance Rs. 5000 is not explained is held as justified. The AO's decision that the subsequent cash deposits of Rs. 68,000/- (05/07/2010), Rs. 18,000/- (06/07/2010) & Rs.1.20,000/- (13/07/2010) for which sources are not explained are also justified on the above facts. However, there is error in his decision when he computed the total unexplained cash deposits during that period at Rs. 2,01,000/-. This should have been at Rs.2,06,000/- only (Rs. 68,000 +Rs. 18,000 +Rs.1.20,000). Hence, all the above 3 additions at Rs 25,04,500/- (Rs. 22,98,500/-+Rs. 5000 +Rs. 2,01,000/-) are held as warranted and justified on the above facts.

6.1 However, the assessee pleads that he has withdrawn cash of Rs. 18,20,000/- on 15/7/2010 for the purpose of investment in agricultural land, which did not materialize and out of the unutilized cash withdrawals, he made the subsequent cash deposits. Further deposits were made out of the subsequent withdrawals. Alternately, he pleads that the addition be quantified based on the peak credit method. The A O , though accepted such plea till the period 03.7.2010, refused to consider such plea for the later period for the above stated reasons . The CIT(A) refused mainly for the reason that till the date of passing his appeal order, the assessee neither submitted the details explaining the source of cash deposits in his bank account nor gave the working of peak credit substantiated by account entries. We have considered the submissions and gone through the relevant material. Where a single credit or number of credits appear in the books in the account of any particular person side by side with a number of debits is that they should all be arranged in serial order, that a credit following a debit entry should be treated as referable to the latter to the extent possible and that, not the aggregate but only the 'peak' of the credit should be treated as own unexplained. This plea is generally accepted as it is logical and acceptable (whether the creditor is a genuine party or not), provided that there is nothing in the material on record to show that a particular withdrawal/repayment could not have been available on the date of the subsequent credit. In the assessee's case , the cash withdrawal of Rs. 18,20,000/- made on 15/7/2010

is not disputed. The assessee pleads that out of the unutilized cash withdrawals, he has made the subsequent cash deposits etc. The lower authorities have not brought any material to establish that the cash withdrawn by the assessee on and after 15.07.2010 was not available . Neither they held that such cash was either used or expended by the assessee or invested by him etc so that such cash could not have been a source for the subsequent deposits. When there is no material on record to indicate such a finding , the cash withdrawn by the assessee on 15.7.2010 and on the subsequent dates have to held that they were available with him for making the subsequent credits or deposits. More so, when the impugned cash is withdrawn from the unexplained income determined , assessed and sustained up to this level. The assessee will be entitled to set off of such credits when he is seeking such credits based on the peak of credit. Since the assessee is seeking the relief based on the peak of credit, the AO is directed to determine the peak of credit from the period 15.7.2010 to 17.03.2011 and assess such sum as unexplained credit . The assessee's appeal is allowed to that extent.

7. In the result, the assessee's appeal is partly allowed.

Order pronounced on Thursday, the 04th day of January, 2018 at Chennai.

Sd/-

(धुव्वुरुआर.एलरेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसजयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 04th January, 2018

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

- | | | |
|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त) अपील(/CIT(A) |
| 4. आयकरआयुक्त/CIT | 5. विभागीयप्रतिनिधि/DR | 6. गार्डफाईल/GF |