

**THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B-SMC", HYDERABAD**

BEFORE SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER

**ITA No.950/Hyd/2017
Assessment Year: 2009-10**

Sri Tumukunta Venkata Rami Reddy, Kurnool.	vs.	ITO, Ward-2, Kurnool.
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PAN- AGUPT7834P

(Appellant)

(Respondent)

Assessee by :	Shri K.A. Sai Prasad
Revenue by :	Smt. N. Swapna

Date of hearing :	25-04-2018
Date of pronouncement :	27-04-2018

ORDER

PER SHRI B. RAMAKOTAIAH, AM:

This is an appeal by Assessee against the ex-parte order of CIT(A), Kurnool dated 10.01.2017.

2. Briefly stated facts are, assessee an individual, filed the return of income admitting taxable income of Rs. 1,45,538/-. The case was selected for scrutiny under CASS. A.O made an addition of Rs. 10,43,035/- by stating as under:

"During the course of scrutiny assessment proceedings, the assessee's AR, vide this office order dated 09.12.2011, was asked to explain sources for cash deposits in Bank A/c. and also to produce Books of Accounts, failing which the assessment would be completed ex-parte u/s. 144 of the IT Act. However, the AR did not comply till date. In view of this, the income of the assessee is computed by adopting the "peak Credit" method, and the assessment is completed accordingly".

3. Assessee preferred an appeal before Ld. CIT(A), Kurnool, who has recorded that various notices have been issued and since none appeared in response to the notices, he not only decided to dismiss the appeal for non-prosecution of the appeal but also on merits on the reason that Assessee failed to substantiate the addition made by A.O with reference to the source of cash deposits into the bank account.

4. In the course of appeal proceedings, it was the contention of Ld. Counsel that Assessee's counsel even though appeared before A.O, could not appear later and due to non-compliance by the assessee for the notices issued, A.O passed the order ex-parte u/s 144 of the IT Act. Referring to the Form No. 35 filed before Ld. CIT(A), it was submitted that in the address column where the notices have to be sent, Assessee has given his tax consultant Shri Vijaya Goud address in Kurnool who passed away. It was further submitted that Assessee came to know about the dismissal of appeal by CIT(A) when a notice for completion of penalty proceedings were received and thereafter Assessee obtained the copies from the office of the ITO/ CIT(A) and preferred the appeal. It was submitted that Assessee can explain the source of deposits if an opportunity is given.

5. Ld. DR however submitted that Assessee has not explained any source of cash deposits therefore the addition was made by A.O being peak credit. Before CIT(A) there is no response, therefore CIT(A) has confirmed the same.

6. I have considered the rival contentions and perused the orders placed on record and the copy of the reply given in the penalty proceedings u/s 271(c) of the IT Act. As can be seen from the assessment order, A.O indeed made an addition of peak credit but the order does not indicate the extent of deposits in the bank account, the source of information AO received and even the name of the bank account and without any information being stated in the order, A.O determined the peak credit, the computation of which is also not placed on record. Therefore on the basis of the assessment order, it is not possible to examine the extent of cash deposits and the working of the peak credit, so as to examine the veracity of the addition made. As seen from the order of CIT(A) and Form No. 35, Assessee has given the address of his tax consultant for service of notices. Unfortunately the said tax consultant Shri Vijaya Goud seems to have passed away and hence Assessee was unaware about the pending proceedings or finalization of proceedings by Ld. CIT(A). As seen from the letter dated 03.05.2017 filed before ITO, Kurnool Assessee came to know about the ex-parte dismissal of the appeal by the order dated 10.01.2017 only after receipts of the show cause notice for finalizing penalty. In this circumstances, I am of the opinion that Assessee should be given due opportunity to explain the peak cash credits and accordingly, I set aside the order of A.O and CIT(A) on this issue and restore the assessment proceedings to the file of the A.O. Assessee should be given due opportunity and A.O can complete the assessment based on the facts and law. grounds allowed for statistical purposes.

7. In the result appeal filed by Assessee is allowed for statistical purposes.

Pronounced in the open court on 27th April, 2018.

Sd/-
(B. RAMAKOTAIAH)
ACCOUNTANT MEMBER

Hyderabad, Dated: 27th April, 2018.

KRK

- 1) *Shir T. Venkata Rami Reddy C/o Ch. Parthasarathy, & Co 1-1-298/2/B/3, 1st Floor, Sowbhagya Avenue, St. No. 1, Ashoknagar, Hyderabad -20*
- 2) *ITO, Ward-2, Kurnool.*
- 3) *CIT(A), Kurnool.*
- 4) *The Pr.CIT, Kurnool.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File*