

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SMT P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 692, 693 & 694/Hyd/2016
Assessment Years: 2009-10, 2010-11 and 2012-13**

Matta Rekha, Bangalore PAN – AAMPM 3617 P (Appellant)	vs.	Dy. Commissioner of Income- tax, Central Circle – 1(1), Hyderabad. (Respondent)
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Assessee by : Shri S. Rama Rao
Revenue by : Shri B. Suresh Babu

Date of hearing : 24/04/2018
Date of pronouncement : 11/05/2018

ORDER

PER S. RIFAUR RAHMAN, A.M.:

These three appeals filed by the assessee are directed against a common order dated 30/11/2015 of CIT(A) – 11, Hyderabad for AY 2009-10, 2010-11 and 2012-13. Since identical issue is involved in these appeals, the same were clubbed and heard together and, therefore, a common order is passed for the sake of convenience.

2. The assessee filed these appeals with a delay of 45 days. To this effect, assessee filed a petition for condonation of the said delay wherein she stated that she has shifted her residence to Bangalore to look after her ill mother due to which the delay occurred in filing the appeals after discussing the issues in detail with her advocate who is stationed at Hyderabad. She further stated that the delay is for the reasons beyond her control and is not intentional. Considering the submissions of the assessee and the objection of the Id. DR, we hereby

condone the delay as the assessee was prevented by reasonable cause in not filing the appeals within the stipulated time.

2. Briefly the facts of the cases, as taken from AY 2009-10, are, the assessee filed her return of income for the AY 2009-10 dated 12/08/2009 admitting income of Rs. 10,97,600/-. A search and seizure operation under section 132 of the Income-tax Act, 1961 (in short 'the Act') was conducted at the residential premises of the assessee on 03/08/2011. Subsequent to the search, a notice u/s 153A of the Act was issued on 01/03/2012 for AYs 2006-07 to 2011-12. In response to the above notice, the assessee filed the return of income on 09/10/2012, admitting an income of Rs. 18,30,120/-. Notices u/s 143(2) and 142(1) of the Act along with the questionnaire were issued to the assessee. In response to the notices, the AR of the assessee filed the information as called for. The AO completed the assessment determining the assessed income at Rs. 45,54,070/- by making the additions towards i) unexplained cash credit of Rs. 3,23,949/- and ii) unaccounted cash salary of Rs. 24,00,000/-, which is the subject matter in the three appeals under consideration.

2.1 The AO observed that the assessee revealed during the course of search proceedings she got unofficial salary of Rs. 2 lakhs per month which is said to be deposited in her bank account held with Dhana Lakshmi Bank Ltd., Nellore as cash deposit. The relevant portion of the statement recorded on 03/08/2011 is reproduced as under:

Q6. You have mentioned to Q. No. 4 that you had received a salary of Rs. 1 lakh per month upto October, 2009 which was increased to Rs. 1.25 lakh during October, 2009 and further increased to Rs. 1.5 lakh per month in the month of December, 2010. However, as per your calculation sheet you have received 3 lakhs per month. During 2008, which is increased to Rs. 3.25 lakhs per month from October, 2009 onwards and to Rs. 3.5 lakhs per month from December, 2010 onwards.

Ans. I have received Rs. 2 lakhs per month in cash apart from my regular salary from March, 2008 onwards. This Rs. 2 lakhs

reflected in my bank account with Dhana Lakshmi Bank, Nellore as cash deposit.

2.2 AO observed that in the return of income submitted for the AY under consideration, the assessee has not offered the cash portion of salary of Rs.24,00,000/- which is received by her. On account of assessee's failure to offer the income, in the questionnaire dated 29.01.2014, the assessee was specifically asked vide question No.3 as to why the assessee has not complied with the declaration, referring to the reply of the assessee to question no.14, given under Section 132(4) of the IT Act on 03.08.2011. In response, the assessee submitted a letter dated Nil. In this connection, it is pertinent to refer to the relevant portion of the reply of the assessee, particularly, in the context of the cash portion of salaries which is reproduced hereunder:-

"At the time of preparation of the return of income, the bank accounts, the deposits made and the deposits matured were all analysed. It was found that some of the deposits got matured and were re-deposited. When the redeposited amounts were withdrawn, fresh deposits made during the financial years 2005-06 to 2011-12 aggregated only to Rs.95,61,835. Therefore, the deposits made into the bank account were treated as the income of the assessee and were admitted accordingly."

2.3 After considering the above submissions, AO observed that the assessee has not discussed anything about the cash portion of the salary and also the reasons for not offering the said income for taxation despite the statement that the said amount was deposited in the bank account of the assessee. The assessee submitted only a copy of receipts & payment account which do not reflect cash portion of the salaries and the corresponding deposits in the bank account. The assessee failed to submit the statement of affairs for the AY under consideration. In the absence of a satisfactory reply by the assessee, the AO concluded that the assessee does not want to offer any explanation in respect of unaccounted salaries. Therefore, he

added an amount of Rs. 24,00,000/- as unexplained cash credit u/s 68 of the Act.

3. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A).

4. The CIT(A) passed a consolidated order from AY 2006-07 to 2012-13. As regards the said addition of Rs. 24,00,000/- as unexplained cash credit u/s 68 of the Act, the CIT(A) confirmed the same in the AYs under consideration by observing as under:

"08.4 The undisputed position emerging from this set of facts is that the monthly income of Rs.2 lakhs derived from the Narayana Group from March, 2008 onwards rests on more than the mere statement of the assessee. It is therefore a reliable basis for computing assessable income for the relevant period. It is seen that the additional income offered by the assessee does not bear correspondence with this factual position. The additional income offered for the AYs 2008-09 to 2012-13 is Rs.2.40 lakhs, Rs.2.75 lakhs, Rs.15.25 lakhs, Rs.47.75 lakhs and Rs.2,15,150/- respectively. During the hearing when questioned about this aspect, Ld. AR admitted this position, however, contended that the additional income offered was on the basis of accretion to fixed deposits in the bank accounts. This position is clearly unacceptable. Income has to be recognised as it accrues, arises or is received. Application of this income into assets is not only a subsequent fact but is also discretionary. To recognise income only at the stage of its application would, therefore, give rise to anomalous results. In this case, it is seen that there is an admitted receipt of Rs.2 lakhs per month which is also corroborated by accompanying circumstances for the entire period of the assessee's association with the Narayana Group. Under the circumstances offering additional income of Rs.2.75 lakhs in AY 2009-10 is as much unacceptable as admitting Rs.47.75 lakhs on this issue in the later AY 2011-12 is incorrect. The additional income correctly chargeable to tax should, therefore, be Rs.2 lakhs in AY 2008-09 and Rs.24 lakhs in each of the AYs from 2009-10 to 2012-13."

5. Aggrieved by the order of CIT(A), the assessee is in appeal before us challenging the action of the CIT(A) in confirming the addition of Rs. 24,00,000/- u/s 68 of the Act made by the AO in the appeals under consideration.

6. Ld. AR submitted that the assessee is a Doctor employed at Narayana Hospital. There was search in the case of Narayana Educational Society at Nellore on 03/08/2011 and consequent to search, the premises of the assessee was also searched and a statement u/s 132(4) was recorded. In such statement, assessee has disclosed salary income received by her from the Institution from 2001 onwards and also accepted to have received Rs. 2.00 lakhs per month in cash apart from regular salary from March'08 onwards. This disclosure was made mainly due to deposits in bank, which was detected by the department. She has filed two affidavits before the officers explaining the facts, as per which, she has disclosed this additional salary in cash under distress and later she found that some of the bank deposits, which have matured were deposited. Such deposits were properly reconciled and accordingly disclosed the additional deposits made in the bank. Ld. AR submitted that assessee has clearly brought on record the additional deposits made in bank and it is not proper to add Rs. 2 lakhs per month till the end of the year in which search took place. He further submitted that Id. CIT(A) was wrong in confirming the additions made by the AO. With regard to AY 2012-13, he submitted that addition should be restricted to the date of search not till the end of the AY.

7. Ld. DR relied on the order of CIT(A).

8. Considered the rival submissions and perused the material on record. Assessee has declared in sworn statement that she was in receipt of Rs. 2 lakhs per month in cash apart from salary. However, while filing the revised return of income, assessee has not disclosed the above Rs. 2 lakhs per month, but, disclosed additional income based on the bank deposits made during that period. By doing so, assessee has disclosed additional income in AY 2009-10 – Rs. 7,32,520/-, in AY 2010-11 – Rs. 23,02,2010/-, in AY 2011-12 – Rs. 55,79,680/- and in AY 2012-13 – Rs. 21,40,450/-. After the search,

the known source of income to assessee are, salary income (official), professional income in cash and interest from bank. There is no other source of income either disclosed by the assessee or unearthed by the department. Therefore, the income of the assessee cannot be more than the above three sources of income. On careful reading of the cash flow statement and bank statement submitted by the assessee, we find that there are cash deposits in the bank of Dhanalakshmi, Nellore to the extent of Rs. 2 lakhs per month in AY 2012-13 and no regular deposits in AY 2009-10 and 2010-11. However, we also find that such deposits of Rs. 2 lakhs were made in each month regularly in the AY 2012-13. It clearly shows that assessee was in receipt of Rs. 2 lakhs of professional income in cash. However, it was not deposited regularly in AY 2009-10 and 2010-11. Therefore, the income of the assessee must be the official salary income, professional income of Rs. 24 lakhs per annum and relevant bank interest. Since assessee has disclosed the income based on bank deposits, which is not consistent with the source of income disclosed or found after search, we direct the AO to assess the income of the assessee only to the extent of above sources of income and wherever additional incomes based on the deposits are disclosed by the assessee should be eliminated as per the findings of Id. CIT(A). Therefore, we are in agreement with the findings of the Id. CIT(A). Accordingly, the grounds raised by the assessee are partly allowed in all the three years under consideration.

9. In the result, all the three appeals under consideration are partly allowed.

Pronounced in the open Court on 11th May, 2018.

Sd/-

(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated: 11th May, 2018

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Copy to:-

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- 3) *CIT(A) – 11, Hyderabad.*
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- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File*