

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गराव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.294/Vizag/2017
(निर्धारण वर्ष / Assessment Year: 2007-08)

ITO, Ward-1(3), Vijayawada (अपीलार्थी / Appellant)	Sri Pydimarri Venkata Naga Suresh Kumar, Vijayawada [PAN No.AJDPP5173H] (प्रत्यार्थी / Respondent)
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C.O. 77/Vizag/2017
(Arising out of I.T.A.No.294/Vizag/2017)
(निर्धारण वर्ष / Assessment Year: 2007-08)

Sri Pydimarri Venkata Naga Suresh Kumar, Vijayawada (अपीलार्थी / Appellant)	ITO, Ward-1(3), Vijayawada (प्रत्यार्थी / Respondent)
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अपीलार्थी की ओर से / Appellant by	: Shri M.N. Murthy Naik, DR
प्रत्यार्थी की ओर से / Respondent by	: Shri K. Siva Ramkumar, AR

सुनवाई की तारीख / Date of hearing	: 03.07.2018
घोषणा की तारीख / Date of Pronouncement	: 11.07.2018

आदेश / O R D E R

PER D.S. SUNDER SINGH, Accountant Member:

This appeal filed by the revenue is directed against order of the Commissioner of Income Tax (Appeals), Vijayawada {CIT(A)}, vide ITA No.17/CIT(A)/VJA/2015-16 dated 31.1.2017 for the assessment year 2007-08. The assessee filed the cross objections supporting the order of the Ld.CIT(A).

2. All the grounds of appeal raised by the revenue are on two issues i.e. addition made towards unexplained sources for peak credits in ICICI Bank Account but not disclosed in the books of accounts amounting to ₹ 50,89,252/- and Gross profit addition of ₹ 24,49,962/-.

During the assessment proceedings, the A.O. found that the assessee has made the cash deposits in ICICI Bank account bearing No.030301000019 but not disclosed the transactions in the regular books of accounts. The A.O. worked out the peak credits in the bank account at ₹ 50,89,252/- and assessed the same as income under the head "unexplained sources".

3. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and argued that the A.O. erred in working out the correct peak credit balance. The AO worked out the peak credit balance

at ₹ 50,89,252/- instead of ₹ 5.00 lakhs as on 27.2.2007. The Ld.CIT(A) upheld the addition of ₹ 5 lakhs as against the addition made by the A.O. at ₹ 50,89,252/-.

4. Aggrieved by the order of the Ld.CIT(A), the revenue is in appeal before us. During the appeal hearing, the Ld. D.R. submitted that the assessee made cash deposits in ICICI bank account on various dates to the tune of ₹ 73,88,902/- and the peak credit balance was worked out by the ITO at ₹ 50,89,252/- correctly and thus argued that the order Ld. CIT(A) be set aside and restore the order of the AO.

5. On the other hand, the Ld. A.R. submitted that the A.O. has made incorrect workings of peak credits and actual peak credit balance was Rs.5.00 lacs but not Rs.50,89,952/-. The A.R. further submitted that while arriving at the peak credit balance, the A.O. did not consider and exclude the closure of deposits on 5.3.2007, amounting to ₹ 7 lakhs. The assessee further submitted that the transaction in the account of ICICI bank were related to purchase and sales account of third parties and the assessee received only meager amount of commission on purchases and sales made for others. The assessee submitted that the transaction did not pertain to his proprietary business, hence not disclosed in the regular books of accounts. However, having failed to

establish that the account does not belong to the him, the Ld. A.R. submitted that for making the addition representing peak credit balance the same should be worked out correctly taking into account of all the credits and the debits in the bank account but not the cash deposits and withdrawal alone. In nutshell the assessee submitted that withdrawals by cheque also should be considered as source for redeposit. The Ld.AR further submitted that the peak credit balance after taking into account of all the debits and credits was worked to ₹ 5.00 lakhs which was upheld by the Ld.CIT(A) and no interference is called for in the order of the Ld. CIT(A).

6. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The assessee is operating ICICI bank account bearing No.030301000019 which was not disclosed to the department in the Income tax return. Though the assessee claimed that the transactions in the said bank account was representing the purchases and sales of goods relating to others for a meager commission, the assessee failed to establish that the transactions reflected in the bank account did not pertain to his own business. The assessee neither disclosed the turnover in the bank account nor disclosed the commission received on account of the transactions made in the bank account. The assessee did not furnish

any evidence like names of parties, their address, the quantum and nature of transactions party wise and their PAN numbers, etc. Even the quantum of commission given by the parties who said to have been used the assessee's bank account for their business purposes was not disclosed for the I.T. purposes. In the absence of any evidence, we have no hesitation to hold that the transactions of the account are assessee's unaccounted transactions.

6.1 The Ld. A.R. argued that while arriving at the peak credit, the A.O. should take the entire debits and credits in the bank account. However, the Ld. A.R. could not support his arguments with relevant evidences to show that the cheques issued in favour of third parties were ploughed back to the undisclosed bank account of the assessee and the assessee also failed to establish that the stocks and goods purchased by issue of cheques in the names of various parties were accounted in the regular books of accounts. Since the assessee failed to establish that withdrawals made by cheques in the name of third parties were brought back to the account, contention of the Ld. A.R., for arriving the peak credit balance the entire debits and credits required to be considered is untenable. In the absence of any evidence to show that payments made to third parties were brought back to the undisclosed account and the resultant cash was circulated, only the cash withdrawals cash

deposits and unexplained credits should be considered for arriving the peak credit balance.

6.2 There is no dispute that the peak credit of the undisclosed bank account required to be brought to tax. This issue has been accepted by both the parties. The Id. CIT(A) has directed the A.O. to adopt peak credit of ₹ 5.00 lakhs as against a sum of ₹ 50,89,252/- worked out by the A.O. and the Ld.CIT(A) has not given the detailed working for arriving the peak credit balance. However, as observed from the order of the Ld. CIT(A), there is credit for closure of deposits made in the account on 5.3.2007 which was also included for arriving the peak balance. It is not explained whether the sources of deposits were disclosed or not in the regular books of accounts. Therefore, while confirming the action of the Assessing officer for making the addition of peak credit balance, we direct the A.O. to work out the peak credit balance correctly, taking into the account of the cash deposits, cash withdrawals and the unexplained undisclosed entries in the bank account. Accordingly, we set aside the order of the Ld. CIT(A) and remit the issue back to the file of the A.O. to rework the peak credit balance correctly. Needless to say, that the A.O. should give reasonable opportunity to the assessee before completing the assessment.

Accordingly, the appeal of the revenue on this ground is allowed for statistical purposes.

7. The assessee also filed cross objections supporting the order of the Ld.CIT(A). Since we have confirmed the action of the AO in the appeal of the revenue with regard to the addition of peak credit balance and remitted the matter back to the file of the AO to rework the peak credit balance correctly we consider it is not necessary to adjudicate cross objection separately. Accordingly, the cross objection stands allowed for statistical purposes.

8. The next issue in this case is estimation of gross profit on unaccounted purchases. The A.O. found that the assessee has made the purchases of ₹ 60,86,864/- through various parties through the same bank account of ICICI bank, and the A.O. has estimated the gross profit @ 40.25% on the turnover amounting to ₹ 60,86,864/- and brought to tax the amount of ₹ 24,49,962/-. The Ld. CIT(A) restricted the addition to 15% of gross profit on unaccounted purchases which worked out to ₹ 9,39,029/-.

9. Aggrieved by the order of the CIT(A), the revenue has filed the appeal and the assessee has filed the cross objections. During the appeal hearing, the Ld. D.R. argued that estimation of income @

40.25% is reasonable since no other evidence is produced for expenditure incurred. Further the Ld. DR argued that the entire business expenditure was accounted in the regular books of accounts and nothing remained to be booked.

10. On the other hand, the Ld. A.R. submitted that the estimation of income @ 15% is highly unreasonable and requested to estimate the reasonable profit.

11. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The assessee had issued cheques on various parties towards purchase of copra and neither disclosed the sales nor the profit. The A.O. had estimated the gross profit @ 40.25% on entire purchases taking the cue from the Ld. CIT's order u/s 263 of the Act in assessee's own case for the A.Y.2009-10. However, the A.O. has not brought on record any comparable cases of others or the assessee's own case in the earlier years for resorting for estimation of income @ 40.25%. Whereas, the CIT(A) has considered the comparable cases and observed that the rate of gross profit from copra was ranging from 4.68% to 13.25% in regular cases where the purchases and sales were accounted and accordingly, sustained gross profit estimation @ 15% of unaccounted purchases. No

other evidence was brought on record by the Ld. D.R. and the A.R. to controvert the finding given by the Ld. CIT(A) to establish that the income from unaccounted purchases is less than 15%. Therefore, we do not find any reason to interfere with the order of the Ld. CIT(A) and dismiss the appeal of the revenue as well as the cross objection of the assessee on this issue.

12. In the result, both the appeal of the revenue and cross objection filed by the assessee are partly allowed for statistical purposes.

The above order was pronounced in the open court on 11th Jul'18.

Sd/-

(वी. दुर्गराव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 11.07.2018

VG/SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – The ITO, Ward-1(3), Vijayawada
2. प्रत्यर्थी / The Respondent – Sri Pydimarri Venkata Naga Suresh Kumar, Prop. Sri Madhavi Enterprises, Shop No.223, M.G.W. Commercial Complex, Gollapudi, Vijayawada.
3. आयकर आयुक्त / The CIT, Vijayawada
4. आयकर आयुक्त (अपील) / The CIT (A), Vijayawada
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम /
DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

// True Copy //

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, VISAKHAPATNAM