

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

श्री वी. दुर्गा राव, 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.435/Viz/2017
(निर्धारण वर्ष/Assessment Year:2011-12)

K.Subrahmanya Prasad
D.No.6-2-20, T Nagar
Rajamahendravaram
East Godavari Dist.
[PAN :AHNPM6745N]

Vs. The Income Tax Officer
Ward-1(2)
Rajahmundry

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

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

: Shri G.V.N.Hari, AR
: Shri V.Appala Raju, DR

सुनवाई की तारीख / Date of Hearing

: 11.09.2018

घोषणा की तारीख/Date of Pronouncement

: 19.09.2018

आदेश /ORDER

PER D.S. SUNDER SINGH, Accountant Member:

This appeal is filed by the assessee against the order of the Commissioner of Income Tax(Appeals) [CIT(A)], Rajahmundry vide ITA.No.03/2014-15/CIT(A)/RJY/W-2/RJY/2016-17 dated 15.03.2017 for the assessment year 2011-12.

Delay: There was a delay of 39 days in filing the appeal attributed to illness of the wife of the assessee which was supported by the medical certificates and the copies of discharge certificates from the hospital. We have considered the submissions made by the Ld.A.R and the objections of the DR and hold that there is a reasonable cause for delay in filing the appeal accordingly the delay is condoned.

2. The assessee is an LIC agent and during the assessment year the assessee filed return of income declaring total income of Rs.8,76,440/-. The Assessing Officer (AO) found that the assessee has made the deposits in the savings bank account to the extent of Rs. 40,27,000/- as under :

<u>Name of the Bank</u>	<u>Account Number</u>	<u>Amount of cash deposits</u>
(a) ING Vysya Bank Ltd.	118630	Rs.14,80,000/-
(b) South Indian Bank Ltd.	20161	Rs.25.47,000/-

The above two bank accounts are jointly held by the assessee along with Mrs Sura Venkata Vijaya Lakshmi Komali. The AO issued several notices and given the opportunities to the assessee to explain the sources of cash deposits but the assessee did not respond to the notices of the AO.

Therefore, the AO passed the assessment order u/s 144 making the addition of Rs.40,27,000/-.

3. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and filed additional evidence in the form of cash flow statement. The Ld.CIT(A) forwarded the additional evidence filed before him calling for the remand report directing the AO to verify the veracity of the claims made through the additional evidence and the admissibility of the additional evidence. The Ld.CIT(A) considered the remand report, rejoinder submitted by the assessee for the remand report and observed that the AO submitted the remand report without examining the veracity of the assessee's claim such as sources of credits and destination of the payment and simply relied on the arithmetical verification of the cash flow statement which is not correct and not acceptable. The assessee also did not explain the sources of various credits and debits in the AXIS bank and other bank accounts even at the appeal stage. Therefore, rejected the explanation of the assessee with regard to the explanation of sources as per the cash flow statement. The assessee's alternative plea to consider the peak credits as addition was considered by the Ld.CIT(A) and directed the AO to consider the peak credit of South Indian Bank and ING Vysya Bank

for the purpose of addition. Accordingly, the appeal of the assessee on this ground was partly allowed by the Ld.CIT(A).

4. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before this Tribunal. During the appeal hearing, the Ld.AR submitted that the assessee is having three bank accounts in the banks i.e. AXIS bank, South Indian Bank and ING Vysya Bank Ltd. The assessee argued that the bank accounts are considered to be declared since the assessee is not maintaining the books of accounts, thus argued that there is no bank account which is undisclosed by the assessee. The assessee has filed cash flow statement before the Ld.CIT(A) and the Ld.CIT(A) has called for the remand report and the AO submitted the remand report after examining the details properly, hence, the Ld.CIT(A) should have considered the remand report submitted by the AO. As per the remand report, the assessee did not submit the details or the supporting evidence for the sums mentioned in closing balances of the bank accounts. The AO submitted that the closing balance was not declared in the return of income. Therefore, argued that the observation of the Ld.CIT(A) that the AO has not examined the veracity of the claim made by the assessee is incorrect. The assessee is a LIC agent not maintaining the books of accounts, therefore,

requested to accept the cash flow statement and delete the addition. The Ld.AR further argued that the Ld.CIT(A) has directed the AO to consider only the bank accounts of South Indian Bank and ING Vysya Bank to ascertain the peak credit which is incorrect. The Ld.CIT(A) would have directed the AO to consider all the three bank accounts together for the purpose of considering the peak credit.

5. On the other hand, the Ld.DR supported the orders of the lower authorities.

6. We have heard both the parties and perused the material placed on record. In this case, the assessee filed cash flow statement before the Ld.CIT(A) which was considered as additional evidence and admitted by the Ld.CIT(A). Perusal of the cash flow statement reveals that the assessee has made the cash deposits and also withdrawals and stated to be made the redeposit in the bank account out of the withdrawals, without giving explanation for the source of the deposit and the destination of the withdrawal. The purpose of the withdrawal, whether the amount was spent or not? was not explained by the assessee. It is observed that the assessee claimed the source for deposits out of small amounts of

withdrawals also which is not reliable and not the practice of a customer of the bank to withdraw the small amounts without the requirement for expenditure. Therefore, the assessee required to explain the source of each credit and the destination of debit independently. Every debit cannot be taken as a source. The said details were not furnished by the assessee before the Ld.CIT(A) or before the AO, therefore, the Ld.CIT(A) has rightly rejected the claim made by the assessee with regard to the cash flow statement and explanation of the sources. We uphold the order of the Ld.CIT(A) on this issue.

7. The second issue raised by the assessee is for the purpose of considering the peak credits, all the three bank accounts required to be considered. Verification of the bank accounts shows that the assessee has made huge deposits both by cheque and cash. The sources of such deposits and withdrawals was neither explained in the cash flow statement nor explained before the AO or the Ld.CIT(A). For considering the peak credit, every debit and credit entries are required to be explained independently to hold that the withdrawal has come back as a source for the deposit. This exercise was not done either by the Ld.CIT(A) or by the AO. The assessee did not cooperate with the AO and did not furnish the details. Therefore,

we set aside the entire issue and remit the matter back to the file of the AO to reconsider the issue afresh on merits and direct the AO to consider all the bank accounts. The assessee is directed to submit the details and not to resort to the non cooperative attitude like in the original assessment proceedings. Accordingly, we set aside the issue and remit the matter back to the file of the AO for fresh consideration. It is needless to say that the AO should give opportunity to the assessee.

8. In the result, appeal of the assessee is allowed for statistical purpose.

The above order was pronounced in the open court on 19th September, 2018.

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER** लेखा सदस्य/**ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam

दिनांक /Dated :19.09.2018

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

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

1. निर्धारिती/ The Assessee- K.Subrahmanya Prasad, D.No.6-2-20, T Nagar Rajamahendravaram, East Godavari Dist.
2. राजस्व/ The Revenue –The Income Tax Officer, Ward-1(2), Rajahmundry
3. The Commissioner of Income Tax, Rajahmundry
4. The Commissioner of Income-Tax (Appeals), Rajahmundry
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM