IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

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

I.T.A. No. 174/HYD/2018
Assessment Year: 2009-10

Chaya Devi Velaga, HYDERABAD **[PAN: AFEPV9765N]**	Vs	Income Tax Officer, Ward-6(4), HYDERABAD
(Appellant)		**(Respondent)**

For Assessee : Shri Md. Afzal, AR
For Revenue : Shri D.J.P. Anand, DR

Date of Hearing : 15-10-2018
Date of Pronouncement : 09-11-2018

O R D E R

PER S. RIFAUR RAHMAN, A.M. :

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)–6, Hyderabad, dated 17-11-2017, for the AY. 2009-10.

2. Brief facts of the case are that the assessee filed her return of income for the AY. 2009-10 on 24-03-2010, declaring total income of Rs. 7,61,990/-. The case was taken up for scrutiny and issued notice u/s. 143(2) of the Income Tax Act [Act], which was served on the assessee on 28-09-2010. During the scrutiny proceedings, Assessing Officer noticed that assessee has made cash deposits into her bank account

to the extent of Rs. 2,50,000/-, said to have received from Mr. Rama Krishna and the assessee deposited into Bank Rs. 2,00,000/- on 08-04-2008 and Rs. 50,000/- on 02-08-2008. Since the assessee has not brought on record the identity, genuineness and creditworthiness of the person, from whom the assessee received the above loan, accordingly the addition was made. Aggrieved with the above order, assessee preferred an appeal before the CIT(A).

3. After considering the submissions of the assessee that the cash deposits made in the bank account which is in the name of the assessee, but the same is held in the name of the company i.e., M/s. Destiny Overseas Pvt. Ltd., Chandigarh. After verification of the same, Ld.CIT(A) found that the submissions of the assessee are correct. Accordingly, he deleted the above said addition. However, he noticed that there are certain cash deposits in the personal account of the assessee i.e., Rs. 1,00,000/- cash deposited on 09-04-2008 and Rs. 10,090/- on 08-04-2008. Ld.CIT(A) after giving opportunity of being heard to assessee, confirmed the addition of Rs. 1,10,090/-. Aggrieved with the above order, assessee preferred an appeal before us, raising the following Grounds of Appeal:

"1. The order of the learned Commissioner of Income Tax (Exemptions) is against law, weight of evidence and probabilities of the case.

2. The learned Commissioner of Income Tax erred in making an addition of Rs.1,10,090/- which has already been examined and accepted by the Assessing Officer.

3. The learned commissioner erred in stating that he is inclined to confirm the addition by the Assessing Officer to the extent of Rs.1,10,090/- in place of Rs.2,50,000/- made by the Assessing Officer as both are independent transactions.

4. The learned Commissioner ought to have appreciated that the cash book of the assessee was produced before the Assessing Officer and he has accepted the sources of cash deposits in respect of all the entries, after making proper enquiries.

5. The learned Commissioner's action of making addition of Rs. 1,10,090/- is beyond the powers of Appellate Commissioner as provided u/s. 251 of the IT Act, as the transaction was accepted by the Assessing Officer and therefore, which is not subject matter of appeal before the CIT.

6. The appellant craves leave to add to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary".

4. Ld.AR submitted that the Assessing Officer found that assessee has made cash deposits in the bank account, which was held by the assessee in the name of the company and Ld.CIT(A) has rightly deleted the same. At the same time, Ld.CIT(A) found new cash deposits in the personal account of the assessee. According to him, these two transactions are independent. Ld.CIT(A) cannot add or enhance anything which is not before him. In that process, he relied on the following case law:

i. Hon'ble High Court of Kerala in the case of CIT Vs. Shri B.P. Sherafuddin, Hotel Gazala Inn in ITA No. 881 of 2009;

ii. Hon'ble High Court of Delhi in the case of CIT Vs. Union Tyres [240 ITR 556] (Delhi);

iii. Hon'ble High Court of Delhi (FB) CIT Vs. Sardarilal & Co., [251 ITR 864];

and raised the query that whether it is within the powers of the Ld.CIT(A) to enhance something which is fresh finding of the Ld.CIT(A) and the transaction is independent in nature. He should not have made the addition on fresh findings emanating from him.

5. Ld.DR relied on the orders of the Revenue authorities and submitted that it is not enhancement, but the findings are within the same source i.e., cash deposits, so there is no fresh finding or independent transaction.

6. Considered the rival submissions and material on record. We noticed that the assessee was holding two separate accounts – one in the name of the company and another is personal A/c (Savings Bank A/c). Assessing Officer noticed that some cash deposits in the accounts of the company which was held in the name of the assessee. Ld.CIT(A) accordingly found this to be proper and accordingly deleted. However, Ld.CIT(A) noticed the other two cash deposits in the personal savings account of the assessee, accordingly, he made the addition. The question before us is only whether the additions made by Ld.CIT(A) are of the transactions independent in

nature or whether they are the same transactions on which Assessing Officer made the addition. Ld.AR relied on the following decisions, which are extracted below:

6.1. Hon'ble High Court of Kerala in the case of CIT Vs. Shri B.P. Sherafuddin, Hotel Gazala Inn in ITA No. 881 of 2009;

"48. The principle emerging from various pronouncements of the Supreme Court, Union Tyres observes, is that the first Appellate Authority is invested with very wide powers under Section 251(1)(a) of the Act and once an assessment order is brought before the authority, his competence is not restricted to examining only those aspects of the assessment about which the assessee makes a grievance and ranges over the whole assessment to correct the Assessing Officer not only regarding a matter raised by the assessee in appeal but also regarding any other matter considered by the Assessing Officer and determined in assessment.

49. There is a solitary but significant limitation, according to Union Tyres, to the power of revision: It is not open to the Appellate Commissioner to introduce in the Assessment a new source of income and the assessment must be confined to those items of income which were the subject-matter of the original assessment.

50. In course of time, Union Tyres was doubted. In CIT v. Sardari Lal & Co. the same issue-whether the appellate authority has the power under section 251 to discover a new source of income-was referred to a Full Bench. After examining, the authorities holding the fielding on that issue, the learned Full Bench has held that the inevitable conclusion is that whenever the question of taxability of income from a new source of income is concerned, which had not been considered by the assessing officer, the jurisdiction to deal with the same in appropriate cases may be dealt with under section 147, or section 148, or even section 263 of the Act if requisite conditions are fulfilled. It is inconceivable, according to Sardari Lal, that in the presence of such specific provisions, a similar power is available to the first appellate authority. Eventually, Sardari Lal upheld the decision in Union Tyres.

51. Undeniably, the precedential position on the powers of the first appellate authority under section 251 undulates. There are seeming

contradictions. But, as held by Union Tyres, and as affirmed on reference by Sardari Lal, there is a consistent judicial assertion that the powers under section 251 are, indeed, very wide; but, wide as they are, they do not go to the extent of displacing powers under, say, sections 147, 148, and 263 of the Act.

52. Therefore, we are in respectful agreement with the view taken by the Full Bench of the High Court of Delhi in Sardari Lal. As a corollary, we hold that the Tribunal's deleting the enhancement of Rs. 22,15,116/- and canceling the order of the CIT (A) on that issue call for no interference".

6.2. The Hon'ble High Court of Delhi in the case of CIT Vs. Union Tyres [240 ITR 556] (Delhi) has held as under:

"The first appellate authority is invested with very wide powers under s. 251(1)(a) and once an assessment order is brought before the authority, his competence is not restricted to examining only those aspects of the assessment about which the assessee makes a grievance and ranges over the whole assessment to correct the AO not only with regard to a matter raised by the assessee in appeal but also with regard to any other matter which has been considered by the AO and determined in the course of assessment. However, there is a solitary but significant limitation to the power of revision, viz. that it is not open to the AAC to introduce in the assessment a new source of income and the assessment has to be confined to those items of income which were the subject-matter of original assessment. Applying the above well settled principles of law to the facts of the instant case, the Tribunal was justified in holding that in calling for a remand report on the four points the AAC had exceeded his jurisdiction. While computing the total business income of the assessee, the AO had estimated the sales at an enhanced figure and had applied a higher rate of gross profit. Thus, the only matter dealt with by the AO in the assessment order was the estimation of profits and gain of the business of the assessee. None of the four points raised in remand report had any bearing on the question of estimation of either the sales or the gross profit rate. It is evident that the AAC had his doubts about the capacity of the assessee to raise finances for the purchase of goods and show a huge turnover in the very first year of his business. In other words, the enquiry ordered by the AAC was to satisfy himself about the source of investment by the assessee. It is axiomatic that failure to prove the sources of investment will result in addition in the hands of the assessee under

a different provision of law and will not have much relevance in the estimation of sales and gross profit rate adopted by the AO. Any addition on account of unexplained investment would constitute a new source of income which was not the subject-matter of assessment before the AO and, therefore, it was not open to the first appellate authority to direct the AO to conduct enquiry on the said four points.—CIT vs. Shapoorji Pallonji Mistry (1962) 44 ITR 891 (SC) : TC 7R.576 and CIT vs. Rai Bahadur Hardutroy Motilal Chamaria (1967) 66 ITR 443 (SC) : TC 7R.590 applied".

6.3. In the case of CIT Vs. Sardarilal & Co., [251 ITR 864], the Hon'ble High Court of Delhi (FB) has held as under:

"The Appellate Assistant Commissioner, on an appeal preferred by the assessed, had jurisdiction to invoke, for the first time, the provisions of rule 33 of the Indian Income Tax Rules, 1922 (hereinafter referred to as 'the Rules'), for the purpose of computing the income of a non-resident even if the Income Tax Officer had not done so in the assessment proceedings. But, in Shapoorji Pallonji Mistry's case [supra), this court, while considering the extent of the power of the Appellate Assistant Commissioner, referred to a number of cases decided by various High Courts including the Bombay High Court judgment in Narrondas' case (supra) and also the decision of this court in McMillan and Co.'s case (supra) and held that, in an appeal filed by the assessed, the Appellate Assistant Commissioner has no power to enhance the assessment by discovering new sources of income not considered by the Income Tax Officer in the order appealed against. It was urged on behalf of the 7 revenue that the words 'enhance the assessment' occurring in section 31 were not confined to the assessment reached through a particular process but the amount which ought to have been computed if the true total income had been found. The court observed that there was no doubt that this view was also possible) but having regard to the provisions of sections 34 and 33B, which made provision for assessment of escaped income from new sources, the interpretation suggested on behalf of the revenue would be against the view which had held the field for nearly 37 years." (Emphasis, here italicised in print, supplied).

4. Looking from the aforesaid angles, the inevitable conclusion is that whenever the question of taxability of income from a new source of income is concerned, which had not been considered by the assessing officer, the jurisdiction to deal with the same in appropriate

cases may be dealt with under section 147/148 of the Act and section 263 of the Act, if requisite conditions are fulfilled. It is inconceivable that in the presence of such specific provisions, a similar power is available to the first appellate authority. That being the position, the decision in Union Tyres' case (supra) of this court expresses the correct view and does not need reconsideration. This reference is accordingly disposed of.

4. Looking from the aforesaid angles, the inevitable conclusion is that whenever the question of taxability of income from a new source of income is concerned, which had not been considered by the assessing officer, the jurisdiction to deal with the same in appropriate cases may be dealt with undersection 147/148 of the Act and section 263 of the Act, if requisite conditions are fulfilled. It is inconceivable that in the presence of such specific provisions, a similar power is available to the first appellate authority. That being the position, the decision in Union Tyres' case (supra) of this court expresses the correct view and does not need reconsideration. This reference is accordingly disposed of."

7. Considered the rival submissions and material on record. By referring to the above ratios, we respectfully agree with the findings of respective courts that the first appellate authority has wide powers but he cannot make addition on the independent source of income, when the same independent source of income can be brought to tax by the AO by invoking the other provisions of the Act like Sections 147/148 or 263. We carefully analysed the facts before us. Assessing Officer made addition of unexplained cash deposits in the bank account maintained by assessee. But the assessee has two bank accounts, one in the name of company and another in her personal name. Assessing Officer noticed the cash deposits in the account maintained on behalf of the company and failed to notice the cash deposits in the personal account. But according to AR, this was disclosed before the Assessing

Officer and Assessing Officer has accepted it after verification. We observe, Assessing Officer has not discussed anything in his order about the existence of second account in ICICI bank. Assessing Officer has verified only two bank accounts viz., Karur Vysya Bank and ICICI Bank. There was no discussion about second account with ICICI Bank. In our view, the second account was not brought to the notice of the Assessing Officer. However, this is irrelevant at this point of time. Whether this transaction is independent or same transaction of deposits in bank account. In our view, it is one transaction. The deposits in the bank account which belongs to the company account irrelevant to the assessee but the deposits in the personal account of assessee is relevant for this assessment and the Assessing Officer intended to make addition in her personal bank account and the same was made by the Ld.CIT(A). Therefore, this addition is nothing but coming out of same addition and not independent. Therefore, the ground raised by assessee is dismissed.

8. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 9th November, 2018

Sd/-	Sd/-
(P. MADHAVI DEVI)	**(S. RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Hyderabad, Dated 9th November, 2018

TNMM

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2. The Income Tax Officer, Ward-6(4), Hyderabad.

3. CIT(Appeals)-6, Hyderabad.

4. Pr.CIT-6, Hyderabad.

5. D.R. ITAT, Hyderabad.

6. Guard File.