

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC - B” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT

ITA No.1886/Bang/2019
Assessment year : 2005-06

E. Krishnappa & Company, 21 st KM, Tumkur Road, Adakamaranahalli, Makali Post, Bengaluru – 562 123. PAN: AAAFE 8076C	Vs.	The Income Tax Officer, Ward 8(4), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Balram R. Rao, Advocate
Respondent by	:	Shri Ganesh R. Ghale, Advocate & Stdg. Counsel for Dept.

Date of hearing	:	10.10.2019
Date of Pronouncement	:	16.10.2019

ORDER

This appeal by the assessee is against the order dated 13.06.2019 of the CIT(Appeals), Bangalore-12, Bangalore relating to assessment year 2005-06.

2. The only issue that arises for consideration in this appeal is as to, whether the CIT(Appeals) was justified in sustaining an addition of Rs.9,30,000 for unexplained cash introduced in the cash book as against addition of Rs.12,95,000 made by the AO.

3. The assessee is a partnership firm engaged in the business of civil construction. In the course of assessment proceedings, the AO noticed that there were following cash introduction in the cash book of assessee:-

Date	Amount (Rs.)
02.04.2004	1,00,000
05.05.2004	2,00,000
01.06.2004	65,000
08.07.2004	9,30,000
Total	12,95,000

4. The AO called upon the assessee to explain the source of funds out of which cash is deposited in the bank account. The assessee explained the cash withdrawals from the assessee's bank account No.356, Chikkabidarakallu Branch, Jindalnagar, Bangalore. The AO, however, observed in the order of assessment that there was no withdrawal in the said bank account on those dates and therefore the AO rejected the explanation of assessee and added a sum of Rs.12,95,000 as unexplained cash deposits in the bank account u/s. 69 of the Act.

5. Before the CIT(Appeals), the assessee submitted that entry in the cash book would be made when self-cheques are issued on the date mentioned in the self-cheques, but ultimately cash is withdrawn from the bank at a later date and this is the reason why the AO was unable to correlate entries of cash withdrawal from the bank account with the entries of cash deposit in the cash account. The assessee gave the following details in this regard before the CIT(Appeals):-

Date entry in the Cash book for issual of self cheque	Amount (Rs.)	Date of actual withdrawal of the self cheque	Amount (Rs)
02.04.2004	1,00,000	13.04.04	1,00,000
05.05.2004	2,00,000	15.05.04	2,00,000
01.06.2004	65,000	24.06.04	65,000
08.07.2004	9,30,000	16.07.04	9,30,000

6. The CIT(Appeals) called for a remand report from the AO and the AO in his remand report gave the following objections. He submitted that on 2.4.04, there is an entry of cash deposit in the cash account with a description of Canara Bank A/c 356 and cheque No. 008566. This cheque was presented for payment and cash withdrawn only on 13.04.04. Between the period 2.4.04 and 13.4.04, the assessee has shown cash payments in the cash book. According to the AO, if the cash was actually received only on 13.4.04, the assessee would not have been able to make payment of cash. In this regard, the assessee pointed out that if the cash payments in bank after 13.4.04 is considered, then balance available with assessee on 12.4.04 is only Rs.2,000. The AO thus pointed out that the stand taken by assessee is not acceptable and the source of cash for deposit in the bank account remains unexplained. The following is the extract of the AO's remand report:-

THE CASH DEPOSIT IN THE REGULAR BOOKS OF ACCOUNT – CASH BOOK

Date entry in the Cash book for issual of self cheque	Amount (Rs.)	Date of actual withdrawal of the self cheque	Amount (Rs)
02.04.2004	1,00,000	13.04.04	1,00,000
05.05.2004	2,00,000	15.05.04	2,00,000
01.06.2004	65,000	24.06.04	65,000
08.07.2004	9,30,000	16.07.04	9,30,000

4. As per the explanation and in particular, the reconciliation table, an amount of rupees 1,00,000/- is credits/deposited in the cash book as "Canara bank account 356 CH-No. 008566 CASH WITHDRAWN". In other words. the source for the said sum of Rs.1,00,000/-, this is credited and also disbursed as per the cash book, is withdrawal from the bank account in Canara Bank account No. 356. But the withdrawal is made by self cheque No. 8566 only on 13.04.2004 10 days after the cash is received and also disbursed as per cash book. Hence the explanation of the assessee is totally contradictory to the facts as can be seen from the documents produced by the assessee itself. Similarly is the case with

regard to the other cash deposits in the cash book as seen from the reconciliation statement furnished before the Id. CIT(Appeals). The sum of Rs. 2,00,000/- which is deposited in the cash book on 5.5.2004 is usually withdrawn only after 10 days on 15.5.2004 by cheque No.8576. which could not have been the case. The reconciliation statement also shows how other sum of Rs. 65,000/- and Rs. 9,30,000/- are deposited and also disbursed respectively on 1.6.2004 and 8.7.2004 as per the cash book, but withdrawn only on 24.6.2004 and 16.7.2004 respectively.”

7. On a consideration of the above, the CIT(Appeals) held that the assessee can get only the benefit of peak credit and therefore restricted the addition of Rs.9,30,000. The following were the conclusions of the CIT(Appeals):-

“7. I have examined the submissions of the appellant and the order of the AO. On examination of the cash book it is seen that the appellant has debited in cash book on various dates and the same is reflected in bank book on various dates as below:

Date of entry in cash book	Amount	Date of actual withdrawal (bank book)	Amount
02.04.2004	1,00,000/-	13.04.2004	1,00,000/-
05.05.2004	2,00,000/-	15.05.2004	2,00,000/-
01.06.2004	65,000/-	24.06.2004	65,000/-
08.07.2004	9,30,000/-	16.07.2004	91,30,000/-

8. It is seen that the date of debit entry in cash book is prior to that of date of withdrawal. This means that the amount is coming to the cash book of the appellant even before it is withdrawn from the bank. This clearly shows that the appellant was already having cash in hands which he introduced into the business. If seen for the first entry above, that cash introduced on 02.04.2004 is not from explained sources from 02.04.2004 till 13.04.2004. on 13.04.2004 cash is withdrawn from the bank.

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11. However, presuming that the earlier cash credit was available to the appellant for later credits, peak cash credit is worked out.

Date of entry in cash book	Amount	Remarks	Peak Cash credit
02.04.2004	1,00,000/-	Unaccounted cash introduced.	1,00,000/-
13.04.2004	1,00,000/-	Unaccounted cash taken out.	11,00,000/-
05.05.2004	2,00,000/-	Unaccounted cash introduced	2,00,000/-
15.05.2004	2,00,000/-	Unaccounted cash taken out	2,00,000/-
01.06.2004	65,000/-	Unaccounted cash introduced	2,00,000/-
24.06.2004	65,000/-	Unaccounted cash taken out.	2,00,000/-
08.07.2004	9,30,000/-	Unaccounted cash introduced	9,30,000/-
16.07.2004	930,000/-	Unaccounted cash taken out.	9,30,000/-

12. In view of this, the addition made by the AO is sustained to the extent of 9,30,000/- being the Peak Cash credit and the ground of appeal in respect of addition of Rs.12,95,000/- is partly allowed.”

8. Aggrieved by the order of CIT(Appeals), the assessee is in appeal before the Tribunal.

9. The Id. counsel for the assessee reiterated the stand of assessee taken before the CIT(Appeals). The Id. DR relied on the order of CIT(Appeals).

10. After considering the rival submissions, I am of the view that the assessee has failed to explain the source of funds in the bank account. As rightly observed by the CIT(Appeals), the monies shown as receipt in the

cash book is on the date earlier to the date of withdrawal by cheques from the bank account. Between the period of entry in the cash book of receipt of cash and the entry of withdrawal of cash from the bank account in the bank statement, the assessee has shown payments. Therefore, the conclusion of the CIT(Appeals) in para 7 of his order is that the assessee was in possession of actual cash on the date shown in the cash book is established. Keeping in view this fact in mind, the CIT(Appeals) has allowed the alternative relief of taxing only the peak credit and not each and every deposit in the bank account. The CIT(Appeals) has drawn the availability of cash from the earlier withdrawals and given due credits before taxing the peak credit. I do not find any ground to interfere with the order of CIT(Appeals). Accordingly, I dismiss this appeal by the assessee.

Pronounced in the open court on this 16th day of October, 2019.

Sd/-
(N.V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 16th October, 2019.
/ Desai Smurthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.