

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
BEFORE SHRI C.M. GARG, JM & SHRI L.P. SAHU, AM
आयकर अपील सं./ITA No.314 & 315/CTK/2018
(निर्धारण वर्ष / Assessment Year :2013-2014 & 2014-2015)

Chandramani Sahu, At: Ekasingi, PO:Mendarajpur, Via: Golanthara, Dist:Ganjam PIN-761008	Vs.	ITO, Ward-1, Berhampur
स्थायी लेखा सं./PANNo. : CETPS 0517 P		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से /Assessee by	:	Shri Girish Kumar Mahapatra, Adv.
राजस्व की ओर से /Revenue by	:	Shri S.M.Keshkamat, CITDR

सुनवाई की तारीख / Date of Hearing	:	07/11/2019
घोषणा की तारीख/Date of Pronouncement	:	19/11/2019

आदेश / ORDER

Per L.P.Sahu, AM:

These two appeals filed by the assessee against the order passed by the CIT(A)-1, Bhubaneswar, both dated 04.05.2018 for the assessment years 2013-2014 & 2014-2015.

2. Since the issues raised in both the appeals are same and identical, therefore, for the sake of convenience, both the appeals have been taken together and disposed off by this consolidated order. First we shall take up the appeal of the assessee for the A.Y.2014-2015 in ITA No.315/CTK/2018 and the grounds raised therein are as under :-

1. For that on the facts of the case the appellate order passed by the learned C.I.T.(A)-1, Bhubaneswar on dated 04.05.2018 is fully arbitrary, unjustified, against the facts of the case.

2. *For that on the facts of the case, the Appellant Sri Chandramani Sahu was an employee at R. Suvani I.M.F.L. Off Shop, Vendor Sri P. Dinabandhu during the year 2013-2014 relating to the Asst. Year 2014-2015, to substantiate the employer employee relationship the Appellant had filled all relevant documentary evidence before the learned A.O during the hearing of the scrutiny assessment proceeding.*
3. *For that on the facts of the case, the Appellant was authorised to purchase the stock from the O.S.B.C. (The Orissa State Beverages Corporation Ltd.) on behalf of his employer i.e. the licenced Vendor Sri P. Dinabandhu, R. Suvani I.M.F.L. Off Shop and for these purchases the payments were required to be made to the O.S.B.C. by Demand Drafts only. The cash purchase of Demand Drafts without transfer from any Bank Account is not permissible and since the licenced Vendor Sri P. Dinabandhu, R. Suvani I.M.F.L. Off Shop was not always available for operating the Bank account for purchase of Demand Drafts, the Appellant Sri Chandramani Sahu being the authorised person had to deposit the cash to his own Bank account for purchase of the Demand Drafts in favour of the O.S.B.C. against supply of stock. In view of the above facts, the Appellant most respectfully submits that all the cash deposits to his Bank accounts during the year are fully represented by corresponding purchase of Demand Drafts in favour of the O.S.B.C. on behalf of his employer the licenced Vendor Sri P. Dinabandhu, R. Suvani I.M.F.L. Off Shop. The appellant had filed copies of some of the money receipts issued by The Orissa State Beverages Corporation Ltd. before the learned A.O. during the hearing of the scrutiny assessment proceeding. Hence the amount of Rs. 1,23,01,780/- being the entire cash deposits for the year in to the Bank accounts of the Appellant treating it as transaction generated from running F.L. Off Shop business by the learned A.O. purely based on assumption, is fully arbitrary, unjustified and is liable to be fully deleted.*
4. *For that, the assessee has filled all the relevant documents in support of the above facts before the learned A.O during scrutiny assessment hearing which were not disputed by the learned A.O. In spite of this, the learned A.O without giving any reason treated the Cash deposits as turnover of the assessee and estimated the net profit.*
5. *That in view of the above facts, the Appellant most respectfully submits that all the cash deposits to his Bank accounts during the year are fully represented by corresponding purchase of Demand Drafts in favour of the O.S.B.C. on behalf of his employer the licensed Vendor Sri P. Dinabandhu, R. Suvani I.M.F.L. Off Shop.*
6. *The fact that the Appellant was working as an employee at R. Suvani I.M.F.L. Off Shop, Vendor Sri P. Dinabandhu is not disputed by the learned A.O.*

7. *The payment made by the Appellant out of his Bank account by Demand Drafts to M/s Orissa State Beverages Corporation Ltd., the Supplier is also not disputed by the learned A.O.*
 8. *That the appellant's name as an authorised Salesman for this year for the Shop R. Suvani I.M.F.L. Off Shop has been duly acknowledged by the E.P Holder, Mr. P. Dinabandhu & Sub inspector of Excise, Golanthara. A copy of the same has been filed before the Ld. A.O. during the scrutiny assessment proceeding.*
 9. *Further the Appellant was issued with an Identity Card along with the counter signature of the Vendor Sri P. Dinabandhu, R. Suvani I.M.F.L. Off Shop & by the Dy. Superintendent of Excise, Berhampur. In this Identity Card "Name of the person authorised to purchase stock from the O.S.B.C." for R. Suvani I.M.F.L. Off Shop, the name of the Appellant Chandramani Sahu is clearly mentioned. A copy of this Identity Card has been filed before the Ld. A.O. during the scrutiny assessment proceeding.*
 10. *The licence for operating this I.M.F.L. Off Shop actually belong to the Vendor Sri P. Dinabandhu. A copy of the Licence Renewal No.27/2013-14 issued in the name of E.P. Holder Sri P. Dinabandhu, (Employer) in which the name of the authorised Agent Sri Chandramani Sahu (Employee) has been clearly mentioned and duly certified by the Collector, Ganjam has been filed before the Ld. A.O. during the scrutiny assessment proceeding. (Annexure-1)*
 11. *Under the circumstances, treatment of Rs. 1,23,01,780/- being the entire cash deposits for the year in to the Bank accounts of the Appellant as business Turnover of the F.L Off shop belonging to the Appellant, by the learned A.O. and estimation of the net Income at Rs.9,84,142/- i.e. @ 8% u/s 44 AD of the IT. Act, 1961 is purely based on assumption, fully arbitrary, unjustified and is liable to be fully deleted.*
 12. *For that among other grounds to be urged at the time of hearing, the appellant prays for full relief in view of facts and circumstances of the case in the interest of natural justice and equity.*
3. Brief facts of the case are that the assessee is engaged in fast food business and salary from foreign liquor off-shop and filed return of income on 21.04.2015 by disclosing total income of Rs.3,45,170/-, which was processed u/s.143(1) of the Act. Subsequently, the case was selected for scrutiny and statutory notices were issued to the assessee.

During the course of assessment proceedings the documents were called for by the AO from the assessee and the AO noticed that the assessee is having a bank account with Andhra Bank maintained at Girisola Branch, Ganjam and made cash deposit of Rs.1,23,01,780/- during the year under consideration. In this regard, a show cause notice was issued to the assessee and in reply to the same, the assessee filed written explanation dated 14.12.2016 as under :-

"In course of last hearing, you had desired certain information. As instructed by my client, I am submitting the same hereunder:

1. **Total Income:** *The assessee has filled ITR -4S by showing the following income under different heads:*

(i) Income from salary, (ii) Income from business, (Hi) Income from other sources.

2. **Income from salary:** *During the Financial Year 2013-14, the assessee has received monthly Salary of Rs.3000/- from Mr. P. Dinabandhu, the proprietor of R. Subani FL off shop and the PAN of the employer is ALFPP5677A. The Assessee has worked on that shop as an Authorised Salesman.*

3. **Income from business:** *The assessee has carried out the business of Fast Food Centre. During the year under assessment the gross receipts from Fast food business along with amount received for advertising some foreign liquor and beverage at Fast Food Centre, amounting Rs. 25,92,710/- has been disclosed in the return of income and the profit was assessed @ 8% as per section 44AD of Income Tax Act.*

4. **Income from other sources:** *During the Financial Year 2013-14, the assessee has received interest on Fixed Deposit as well as interest on saving Bank account. The total interest of Rs.1,55,922/- has been disclosed as income from other sources.*

5. **Regarding cash transaction of Rs. 1,23,01,780/- at Andhra bank Girisola:**

As the Assessee is working at the Shop as a Salesmen and is involved to carry out the banking transaction hence for ease of operation cash of Rs.1,23,01,780/-has been deposited by his employer on various dates

and DD has been Drawn in favour of M/s. Orissa Beverages Corporation, on the date of deposit.

The Transactions in the account of the assessee is arose due to near employer employee relationship, the cash has been deposited on behalf of the employer (The vendor Mr. P. Dinabandhu) and the DDs has been issued in favour of the Supplier i.e. M/s Orissa State Beverages Corporation Ltd. The OSBC acknowledged the receipt by issuing authenticated Money Receipts in the name of P. Dinabandhu.

To establish the employer and employee relationship, the following documents are attached herewith for your record:

1. Copy of Licence Renewal No. 27/2013-14, in which the name of the Assessee has been submitted as the Authorized agent along with his age, Father's name Et address under the signature of the licence holder (the Employer) Mr. P. Dinabandhu which is further endorsed by Superintendent of Excise & by the Collector, Ganjam, Exhibit-1

2. List of Authorised Agent/Salesmen: In the list of Authorised Agent/salesmen, the name of the Assessee along with his age, Father's name, address, passport size photograph and signature with due attestation by the owner of the shop, Mr. P. Dinabandhu, has been included as the authorized employee of the shop and the same is identified by the Sub Inspector of Excise Golanthara, Ganjam on dated 30.03.2013. Exhibit-2

3. Identity Card: In the Identity Card issued to authorize to purchase stock from OSBC, the Assessee name with details address, photograph and signature has been attested by the employer, Mr. P. Dinabandhu Exhibit-3

Some instance of cash deposit, the concerned DD No. and Amount is given hereunder for your perusal.

No	Date of cash deposit	Amount of Cash Deposit	Date of DD	DD No	Amount of DD with	MR No. & Date of OSBC Ltd.
1	10.04.13	255500	10.04.13	600300	255000	002807/10.04.13
2	25.04.13	350000	25.04.13	600317	350000	003260/25.04.13
3	09.05.13	142000	09.05.13	600344	142000	009920/09.05.13
4	13.05.13	280500	13.05.13	600354	280000	009861/13.05.13
5	21.05.13	241000	21.05.13	600371	240000	006551/21.05.13
6	30.05.13	282500	30.05.13	600389	282000	021358/30.05.13
7	01.06.13	271000	01.06.13	600394	270000	021428/01.06.13
8	03.06.13	693000	03.06.13 03.06.13	600397 600398	600000 91200	021573/06.06.13 022155/11.06.13
9	10.06.13	240500	10.06.13 10.06.13	600414 600413	190000 50000	022097/10.06.13 022155/11.06.13
10	12.06.13	541000	12.06.13	600416	540500	022198/12.06.13
11	21.06.13	183000	21.06.13	600445	183000	025686/21.06.13

12	22.06.13	601500	22.06.13	600446	600000	025717/22.06.13
13	02.07.13	254200	02.07.13	600455	254000	025975/02.07.13
14	03.07.13	601500	03.07.13	600462	600000	034559/03.07.13
15	08.07.13	205000	08.07.13	600475	204500	034637/08.07.13
16	15.07.13	602000	15.07.13	600487	600000	034799/15.07.13
17	16.07.13	205000	16.07.13 16.07.13	600490 600491	130000 75000	034822/16.07.13
18	17.07.13	159000	17.07.13	600494	158600	034923/20.07.13
19	23.07.13	145500	23.07.13	600498	145000	034981/23.07.13
20	26.07.13	301000	26.07.13	600509	300000	023064/26.07.13
21	03.08.13	156000	03.08.13	600534	156000	023245/03.08.13
22	05.08.13	702000	05.08.13	600537	700000	023278/05.08.13
23	06.08.13	155000	06.08.13	600550	154500	023327/06.08.13
24	17.08.13	669300	17.08.13	600588	667300	041600/17.08.13
25	26.08.13	182000	26.08.13	600609	182000	038880/26.08.13
26	27.08.13	180000	27.08.13	600618	180000	039007/27.08.13

Some of the Money Receipts are enclosed here for your reference as Exhibit-4

Furthermore, as the Govt. Agency has acknowledge the receipt then it must have collected the Tax at Source from P. Dinabandhu, the vendor of FL off Shop. As per the 26AS of the assessee there no TCS in assessee's account. The 26AS is enclosed herewith as Exhibit-5.

As a law binding person, the assessee has accounted for every transaction and has disclosed all known sources of income.

The AO noticed that the assessee has not maintained any books of accounts, therefore, the AO estimated the total income of the assessee @8% u/s.44AD of the Act treating the same as total turnover of the assessee and accordingly made addition of Rs.9,84,142/-.

4. Feeling aggrieved from the order of AO, the assessee filed appeal before the CIT(A) and the CIT(A) dismissed the appeal of the assessee after observing as under :-

6. I have considered the matter with reference to the facts and materials on record. The assessee has not filed any evidence in support of his contention either before the AO at the assessment proceeding or before the undersigned in the course of appeal hearing. In the absence of the books of account of the so-called IMFL business of Sri P. Dinabandhu, it

cannot be accepted that all the cash deposits in assessee's bank accounts have come from the business of Sri Dinabandhu. In the circumstances, therefore, the action of the AO to treat the bank deposits as assessee's business turnover appears to be very liberal and judicious. The AO has estimated the profit on such business turnover at 8% which is also quite reasonable. Hence, the addition made by the AO of Rs.9,84,142/- is upheld.

Against the above findings of the CIT(A), the assessee is in further appeal before the Income Tax Appellate Tribunal.

5. Before us, ld. AR reiterated the submissions made before the lower authorities and he submitted that the assessee was an employee on behalf of Sri P. Dinabandhu against which he is getting salary of Rs.3000/- which has been shown by him as income from salary. The total DDs were made in favour of M/s Odisha State Beverages Corporation Ltd. on behalf of Shri P. Dinabandhu from cash deposited in the bank account. The assessee's bank account has only been used for a conduit of business facilitation. Therefore, the entire proceeds deposited in the bank account should not be taxed in the hands of the assessee. In support of his arguments, he stated that entire facts were submitted before the CIT(A) via e-mail which has been considered by the Tribunal in ITA No.418/CTK/2017, dated 22.03.2018.

6. On the other hand, ld. DR submitted that the orders of authorities below should not be disturbed as both the lower authorities have after considering to the cash deposited as total turnover of the assessee, rightly applied 8% profit in the case of the assessee's business. He

submitted that the AO has considered this issue very liberal and judicious manner. The assessee was also unable to substantiate that the receipts had been incorporated in the employee's account or taxed in the hands of the employer as a turnover.

7. After hearing both the sides and perusing the entire material on record along with the orders of authorities below, we noticed that the ld.AO has decided this issue in very liberal and judicious approach because the assessee was unable to prove that the entire cash deposits have been incorporated in the accounts of Shri P.Dinabandhu and the assessee has also not maintained any books of account. During the course of hearing we asked the ld. AR of the assessee that if he would prove that the receipts have been considered while computing the income of Shri P.Dinabandhu, however, ld. AR of the assessee could not prove the same before us. Considering the totality of facts and circumstances of the case, we are of the opinion that the AO has rightly considered and estimated the total income @8% of the assessee u/s.44AD of the Act on the total bank deposits for the year under consideration because the assessee could not produce books of account before the AO. Accordingly, we dismiss the grounds raised by the assessee and also dismiss the appeal of the assessee.

8. Thus, ITA No.315/CTK/2018 is dismissed.

9. Now, we shall take up the appeal of the assessee in ITA No.314/CTK/2018 for the assessment year 2013-2014.

10. In this case, the assessee was also performing similar work as was in the assessment year 2014-2015, only different of fact is that the total deposits in the bank account of Rs.1,80,42,420/- has been considered as income of the assessee for want of non-explanation by the assessee. The said amount of Rs.1,80,42,420/- was deposited in two bank accounts which is as under :-

No	Name of the Bank	Source	Financial Year	Mode of Transactions	Total Amount of Transactions
01	Andhra Bank, Girisola, Ganjam, Odisha,-761009	AIR	2012-13	Amount of Cash Deposits (More than Rs. 10,00,000/-)	Rs. 1,50,50,420/-
02	Andhra Bank, Tulu, Ganjam, Odisha,-761008	AIR	2012-13	Amount of Cash Deposits (More than Rs. 10,00,000/-)	Rs. 29,92,000/-
				TOTAL AMOUNT	Rs.1,80.42,420/-

11. Since we have decided the issue raised by the assessee for the assessment year 2014-2015 and the issue being similar, our observations made in the above appeal shall be applicable to the assessment year 2013-2014. In the assessment year 2014-2015, the AO himself has accepted the total cash deposited as turnover of the business of the assessee as per Section 44AD of the Act. The CIT(A) has decided this issue on the same date but for the assessment year 2014-2015 he has accepted the version of the AO regarding applicability of 8% net profit u/s.44AD of the Act but in this year, he has considered the total bank deposits as income of the assessee.

12. After considering the submissions of both the sides and the activities of the assessee are same for both the years under consideration, therefore, in the interest of justice, we restrict the addition made by the AO on account of unexplained source of income to 8% of the total bank deposits treating it as turnover of the assessee as held by the revenue authorities in the assessment year 2014-2015. We order accordingly.

13. In the result, appeals of the assessee i.e. ITA No.314/CTK/2018 is partly allowed and ITA No.315/CTK/2018 is dismissed.

Order pronounced in the open court on 19/11/2019.

Sd/-
(C.M.GARG)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(L.P.SAHU)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 19/11/2019

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
Chandramani Sahu,
At: Ekasingi, PO:Mendarajpur,
Via: Golanthara, Dist:Ganjam,PIN-761008
2. प्रत्यर्थी / The Respondent-
ITO, Ward-1, Berhampur
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)

आयकर अपीलीय अधिकरण, कटक /ITAT, Cuttack