

**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC, "C" BENCH : BANGALORE**

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER

ITA No.2267/Bang/2019
Assessment year : 2015-16

V.S Venkatesh Puttadasu Street, J.C Extension, Kanakapura Taluk, Ramanagara District-562 117. PAN – AQRPV 4055 B	Vs.	The Income-tax Officer, Ward-1, Ramnagar.
APPELLANT		RESPONDENT

Appellant by	:	Shri H Guruswamy, I.T.P
Respondent by	:	Shri Ganesh R Ghale, Advocate Standing Counsel to Dept.

Date of hearing	:	28.11.2019
Date of Pronouncement	:	03.12.2019

ORDER

Per B.R Baskaran, Accountant Member

The assessee has filed this appeal challenging the order dated 11-09-2019 passed by Ld CIT(A)-3, Bengaluru and it relates to the assessment year 2015-16. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition of Rs.26.28 lakhs, being peak credit of cash deposits made in bank account of the assessee.

2. The facts relating to the issue are that the assessee had maintained three bank accounts, one each with Andhra Bank, State Bank of India and IDBI bank. As per AIR information, the assessee

has deposited cash into these bank accounts to the tune of Rs.47,06,700/-, Rs.21,000/- and Rs.10,46,700/- respectively. The assessee is a commission agent and trader in agricultural produce. He had filed his return of income declaring a total income of Rs.2,67,460/-. When the cash deposits made by the assessee was brought to the notice of the assessee, he submitted that they represented his business receipts and accordingly offered income @ 8% of the aggregate amount of deposits u/s 44AD of the Act. The AO analysed the business results and came to the conclusion that the above deposits could not be the business receipts of the assessee. Accordingly he proposed to assess peak credit balance of Rs.26,28,222/- as income of the assessee.

3. Before the AO, the assessee claimed that his father had agreed to sell agricultural lands to two persons named Paramesh and Chandru. It was further submitted that the father of the assessee had received advance from them and the said advance was given to the assessee. The AO called for confirmations and the credit worthiness of the proposed buyers. He was not satisfied with their capacity to purchase lands and accordingly rejected the said claim. Accordingly he completed the assessment by making addition of Rs.26,28,222/-.

4, Before Ld CIT(A), the assessee submitted that he has deposited a sum of Rs.8,62,500/- by way of cheque and the same was considered as cash deposit. He submitted that the above said sum represented sale proceeds of land sold by him. He further reiterated his stand that the father of the assessee has also given money to

him, which was received from Paramesh and Chandru by way of advances. The Ld CIT(A) was not convinced with the contentions of the assessee and accordingly dismissed the appeal of the assessee.

5. The Ld A.R submitted that the receipts claimed by the assessee, viz., sale value of Rs.8,62,500/- and advances received from Paramesh and Chandru, represents amount received by way of sale proceeds/advance against sale agreement. He submitted that these receipts are supported by sale deed and sale agreement. He submitted that the tax authorities have rejected the above said claims only for the reason that the assessee has not proved the credit worthiness of the buyers of land. He submitted that the assessee has received these amounts as consideration of sale of land and hence the requirement of proving credit worthiness does not arise. He further submitted that the AO has rejected the confirmation letters furnished by Paramesh and Chandru without examining them. Accordingly he submitted that the tax authorities are not justified in not giving credit to the above said receipts.

6. On the contrary, the Ld D.R submitted that the assessee has not proved the credit worthiness of the alleged payers of money.

7. I have heard rival contentions and perused the record. It is the contention of the assessee that he has received moneys on sale of agricultural land by way of cheque and moneys from his father by way of cash. His father, in turn, has claimed to have received money as advance against sale of agricultural land. According to Ld A.R, these receipts are supported by sale deed/sale agreements.

When it was specifically asked as to whether the lands were subsequently sold to Paramesh and Chandru by the father of the assessee, the Ld A.R submitted that the possession of land has already been given. He further submitted that the same may be proved on the basis of revenue records. He also prayed that the AO should have allowed opportunity to explain this claim further.

8. In respect of receipt of Rs.8,25,000/- referred above, the assessee's claim is that the same is received by way of cheque on sale of land on 05-02-2015. If it is correct, then the above said receipt need not be included while working out peak credit balance. However it is not clear as to whether the AO has included the above said amount while working out peak credit balance. If it is included, then the claim of receipt of Rs.8,25,000/- by way of cheque on sale of land needs to be verified. Accordingly I restore this issue to the file of the AO.

9. With regard to the claim of receipt of money by way of cash from the father of the assessee, I am of the view that the said claim also requires fresh examination, as the assessee claims that the was received against sale agreement. Accordingly I restore this issue also to the file of the AO.

10. In view of the above, I set aside the order passed by Ld CIT(A) and restore the issues to the file of the AO to examine it afresh by examining the above said claims of the assessee. After affording

adequate opportunity of being heard, the AO may take appropriate decision in accordance with law.

11. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on **3rd December, 2019.**

**Sd/-
(B.R Baskaran)
Accountant Member**

Bangalore,
Dated, the 3rd December, 2019.

/Vms/

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Dictation note enclosed
10. Date on which order goes for Xerox & endorsement.....
11. Date on which the file goes to the Head Clerk
12. The date on which the file goes to the Assistant Registrar for signature on the order
13. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
14. Date of Despatch of Order.
14. Dictation note enclosed