

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "SMC", HYDERABAD**

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER

I.T.A. No. 518/HYD/2018

Assessment Year: 2014-15

Upender Ganna, Income Tax Officer,
Medipally Village, Vs Ward-15(4),
Ghatkesar Mandal, Hyderabad
R.R.District
[PAN: AXMPG5005G]

(Appellant)

(Respondent)

For Assessee : Shri K.A.Sai Prasad, AR
For Revenue : Shri Nilanjan Dey, DR

Date of Hearing : 30-10-2019
Date of Pronouncement : 04-12-2019

ORDER

This appeal filed by the assessee for the AY.2014-15, is directed against the order of the Commissioner of Income Tax (Appeals)-7, Hyderabad, dated 09-01-2018.

2. Brief facts of the case are that, the assessee, an individual, engaged in the business of running a Kirana & General Stores, filed his return of income for the AY.2014-15 on 11-09-2014, admitting total income of Rs.2,29,540/-.

3. During the assessment proceedings u/s.143(3) of the of the Income Tax Act [Act], the Assessing Officer (AO) observed that the assessee is maintaining a Savings Bank A/c with Axis Bank, Nallakunta Branch, Hyderabad vide A/c No.913010029036358. On perusal of the bank account statement, the AO observed that the assessee has made cash

deposits to the tune of Rs.64,14,695/-. He also noticed that on several occasions, cash has been deposited from outstation. The assessee was therefore asked to furnish the details of the sources of funds for the cash deposits, the nature of transactions made in the SB A/c and the transaction-wise analysis of cash/cheque deposits, reflected in the bank account.

3.1. In reply, the assessee submitted that the cash deposit of Rs.9,90,000/- represented the loan taken from one Shri S.Krishnaiah and cash deposits to the tune of Rs.30 Lakhs relate to kirana business and the remaining transactions relate to the hand loans taken from friends and relatives. It was also submitted that out of the cash deposits, the assessee invested an amount of Rs.13,50,000/- in purchase of a house property. The AO, however, was not convinced with the contentions of assessee *in toto*. He therefore asked the assessee to explain why the peak credit of Rs.15,14,186/-, appearing as on 25-07-2013 in the SB A/c of the assessee should not be treated as 'un-explained cash credit' u/s.68 of the Act. Since the assessee did not offer any substantial evidence, the AO brought the same to tax u/s.68 of the Act.

3.2. Aggrieved, the assessee preferred an appeal before the CIT(A), who confirmed the addition.

4. Before the CIT(A), the assessee had also contended that the assessee has no other source of income other than Kirana business and therefore the unexplained deposits may also be

treated as receipts from Kirana business and only the profit element from such turnover be brought to tax. However, the CIT(A) did not accept this contention of the assessee and confirmed the addition made by the AO. Hence, the assessee is in second appeal before the Tribunal by raising the following Grounds of Appeal:

“1. The order passed by the learned Commissioner of Income Tax, Appeal is not correct either on facts or in law and in both.

2. The learned Commissioner of Income Tax is not justified in confirming the addition of Rs.15,14,186/- as unexplained peak cash credits in savings bank account without proper Appreciation of the facts.

3. The learned Commissioner of Income Tax failed to appreciate the fact that the peak cash credits in savings bank account is the turnover of the appellant, only net profit is to be added not the entire peak credit.

4. The appellant craves leave to add or amend or alter any of the grounds at the time of hearing of appeal”.

5. The Ld.Counsel for the assessee, Shri K.A.Sai Prasad, submitted that though the assessee had taken the contention of hand loans from friends etc., before the AO but could not substantiate his claim, before the CIT(A), the assessee has therefore offered to treat the cash deposits as the business turnover of the assessee and has offered to pay the tax only on the profit element embedded therein. He made a similar prayer before the Tribunal as well.

6. The Ld.DR, on the other hand, supported the orders of the lower authorities and also placed reliance upon the following decisions:

- i. Kale Khan Mohammad Hanif Vs. CIT (1963) [50 ITR 1] (SC);
- ii. CIT Vs. Devi Prasad Vishwanath (1969) [72 ITR 194] (SC);
- iii. CIT Vs. Maduri Rajaiahgari Kistaiah (1979) [120 ITR 294] (AP);

7. Having regard to the rival contentions and material on record, I find that in the case of Kale Khan Mohammad Hanif Vs. CIT (Supra), the assessee there-in was a trader, carrying on two businesses and he had submitted a return but as his accounts were not found to be complete and reliable, AO had assessed the Gross Profits of the business as certain percentage of total sales, which had also to be fixed by estimates. Subsequently, the AO noticed various credit entries in the assessee's books of account, which had escaped the assessment at the time of assessment. Therefore, he re-opened the assessment and brought the cash credits to tax as 'income from other sources'. The Hon'ble Supreme Court held that – *where the assessee never raised a question and never submitted that these cash credits relate to business, the AO was not precluded from treating the same as 'income from other sources'*. This view was also followed by the Hon'ble Supreme Court in the case of CIT Vs. Devi Prasad Vishwanath (supra). However, I find that in the case of Kale Khan Mohammad Hanif Vs. CIT (supra), the assessee therein had raised the contentions of business income only before the Hon'ble Supreme Court and it was in those circumstances that the Hon'ble Apex Court held that as it was a question of fact, it

could not have been raised for the first time before the Hon'ble High Court or Hon'ble Supreme Court. But, in the case before the Tribunal, the assessee has raised this ground before the CIT(A) itself, and the CIT(A) held that the claim of the assessee that the entire cash deposits represents business transaction, is not established with any documentary evidence. Therefore, the decision of the Hon'ble Supreme Court is not strictly applicable to the case on hand. I also find that the assessee has not established that the deposits are out of business transactions, but the peak cash credit added by the AO and confirmed by the CIT(A) also cannot be upheld because the assessee had declared the gross turnover of Rs.30,00,000/- which is also part of the cash deposits. Therefore, the peak credit worked out by the AO could be a receipt from business transactions also. In view of these peculiar facts and circumstances of the case, I direct the AO to treat all the unexplained cash credits also as the business turnover of the assessee and estimate the income thereon at the same rate at which the disclosed income is brought to tax.

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

Order pronounced in the open court on 4th December, 2019

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated: 04-12-2019

Copy to :

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2. Income Tax Officer, Ward-15(4), Hyderabad.

3. CIT(Appeals)-7, Hyderabad.

4. Pr.CIT-7, Hyderabad.

5. D.R. ITAT, Hyderabad.

6. Guard File.