



ITA No.6762/Mum/2019
Baban B. Landage
Assessment Year :2013-14

आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No 6762/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2013-14)

Baban B. Landage, D-305, MM Estate Vikram Apartment, LBS Marg, Ghatkopar, Mumbai – 400086	बनाम/ Vs.	ITO-27(1)(2), Vashi Railway Station Complex Vashi Navi Mumbai – 400703.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AAAPL-7213-L		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Bharat Kumar- Ld. AR
Revenue by	:	Ms. Kavita P. Kaushik-Ld.DR

सुनवाई की तारीख/ Date of Hearing	:	23/01/2020
घोषणा की तारीख / Date of Pronouncement	:	20/02/2020

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2013-14 contest the order of Ld. Commissioner of Income-Tax (Appeals)-26, Mumbai, [in short referred to as ‘CIT(A)’], *Appeal No. CIT(A)-26/IT/10441/2017-18 dated 04/10/2019* on certain grounds of appeal.



1.2 The Ld. Authorized Representative for Assessee (AR), at the outset submitted that only ground no. 3 of the appeal is being pressed. The same read as under: -

On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs.47,95,403/- made by the Ld. AO.

1.3 At the same time, Ld. AR pressed for additional ground of appeal filed on 03/12/2019, which read as under: -

On the facts and circumstances in the case in law, Ld. AO erred in not providing credit of TCS of Rs.2,71,726/- which is appearing in 26AS.

Since the assessee seek only a direction in the matter, the additional ground was admitted.

1.4 We have carefully heard the rival submissions and perused relevant material on record including documents placed in the paper-book. Our adjudication to the subject matter of present appeal would be as given in succeeding paragraphs.

2.1 Facts on record Facts on record would reveal that the assessee being resident individual stated to be engaged in operating wine shop, was assessed for year under consideration u/s 143(3) r.w.s. 147 on 28/12/2017 wherein the income of the assessee was determined at Rs.61.09 Lacs after sole addition of unexplained investments for Rs.49.95 Lacs as against assessed income of Rs.11.14 Lacs u/s 143(3) vide order dated 29/02/2016.

2.2 The reassessment proceedings were triggered upon receipt of certain information that the assessee made cash deposit of Rs.10 Lacs in Saraswat Bank and another cash deposit of Rs.14.10 Lacs in



Allahabad Bank. Accordingly, notice u/s 148 was issued on 02/03/2017, as per due process of law, which was followed by notices u/s 143(2) and 142(1) wherein the assessee was directed to substantiate the deposit of cash. It was found that the two accounts were not disclosed in the Balance Sheet. The copies of bank statements were obtained from respective banks. On the basis of said material, Ld. AO proceeded to add the same to the income of the assessee as unexplained investment.

2.3 During regular assessment proceedings, the assessee had given the affidavit that the said bank accounts were neither opened by the assessee nor operated by the assessee and accordingly, no additions were made in regular assessment proceedings. However, upon receipt of Bank statements from respective banks, it transpired that the assessee was having savings account with *Chembur* branch of Saraswat Bank and another account with *Ghatkopar* Branch of Allahabad Bank. The copies of statements were forwarded to assessee for explanation.

2.4 In response, the assessee vide reply dated 07/12/2007 filed documents towards supply of sugarcane to sugar factory (Vighanahar Sugar Factory) for Rs.10.60 Lacs and detail of sale of Milk amounting to Rs.4.96 Lacs to *Biroba Maharaja Milk Production Sanstha Ltd.* Vide other submissions dated 20/12/2017, the assessee submitted that the assessee's father had agricultural land and derived agricultural income by selling sugarcane, milk and other seasonal vegetables which was sold on cash basis and cash was deposited in the bank accounts. The sale of supply of sugarcane was reflected for Rs.10.60 Lacs, sale of milk was reflected as Rs.9.77 Lacs and sale of seasonal crop was reflected



as Rs.3.71 Lacs. In support, copy of 7/12 extract of agricultural land in the name of assessee was also furnished.

2.5 However, many discrepancies were noted in the documents submitted by the assessee. The certificate issue by purchasing organization was found to be undated. No supporting bills were submitted. Therefore, a conclusion was drawn that the entire exercise was a mere after thought. Finally, credit entries aggregating to Rs.49.95 Lacs was added to the income of the assessee.

3.1 Before Ld. CIT(A), the assessee, *inter-alia*, reiterated that agricultural receipts as well as capital receipts should be excluded and the taxable income should be considered by following *Peak Credit Method* after giving benefit of *telescoping*. The working of the same was provided to Ld. CIT(A) which has already been extracted at page no. 3 of the impugned order. However, Ld. CIT(A) provide relief to the extent of Rs.2.06 Lacs only and confirmed the balance additions of Rs.47.89 Lacs. Aggrieved, the assessee is under further appeal before us.

4. Before us, Ld. AR has raised similar plea of working out the additions on the basis of *Peak Credit Theory* after reducing capital receipts and non-taxable receipts. The Ld. DR has opposed the same on the plea that the bank accounts were never disclosed and the credit earned by the assessee in those accounts was rightly brought to tax. During the course of hearing, Ld. AR filed summary in respect of bank deposits as under: -



Cash Deposited in both bank statements	24,10,000/-	A
Details cash receipt during the period as under:		
Sales of sugar can of Rs.10,60,352/-		
Sales of milk Rs. 4,96,582/-		
Received from Govind Loke Rs. 76,000/-		
Received from Son-Sagar B Landge Rs.51,400/-		
Cash withdrawal re-deposited of Rs.6,25,000/-*		
Sales of seasonable crops of Rs.3,50,000/-**	26,59,334/-	B
Total Balance of cash outstanding	2,49,334/-	B-A=C
Other receipt in two Bank statements	23,79,187/-	D
1. Details of other banks receipts in Allahabad Bank as under: -		
Receipts with no narration of Rs.4,35,000/-		
Interest income of Rs.1,21,109/-		
Total other receipt in Allahabad bank	5,56,109/-	E
2. Details of other banks receipts in Saraswat Bank as under: -		
Dividend of Rs.3,200/-		
Interest of Rs.1,16,886/-		
Pay order reversal of Rs.1,895/-		
Sagar B Landge (Son) of Rs. 2,90,000/-		
Reversal by Bank of Earlier time Rs.2,63,461/-		
Miscellaneous receipt Rs.11,47,636/-		
Total other receipt in Saraswat Bank	18,23,187/-	F
Total addition confirmed by CIT(A)	47,89,187/-	G=A+D

On the basis of aforesaid tabulation, Ld. AR pleaded for exclusion of capital receipts, cash-redeposited in the bank account and exempt income.

5. After careful consideration, the undisputed position that emerges is that certain cash is found to have been deposited in two bank accounts. These accounts were not disclosed in the financial statements. Therefore, the onus was on assessee to prove that the credit entries appearing therein were not in the nature of income. It also emerges that the assessee could not file plausible explanation for credit entries before lower authorities. Many discrepancies were found in documentary



evidences submitted by the assessee in support of the fact that cash deposits were out of proceeds of agricultural produce. Similar is the position before us wherein the assessee is unable to file any additional evidence to support the said fact. The perusal of computation of income would show that the assessee has already reflected agricultural income of Rs.0.73 Lacs in the return of income. Therefore, the plea the cash deposits were sourced out of agricultural income could not be accepted.

6. Having said so, equity would demand that items which are capital in nature or the transactions which do not give rise to any taxable income should not be considered as assessee's income since only true income was to be brought to tax. Further, the benefit of cash withdrawals from the said bank accounts should be granted to the assessee. Therefore, after considering the summary of bank accounts as produced before us, we direct for exclusion of following credit entries from addition of Rs.47.89 Lacs as estimated by Ld. CIT(A): -

No.	Particulars	Amount (Rs.)
1.	Received from Govind Loke	76,000/-
2.	Amount Cash received from Son	51,400/-
3.	Cash withdrawals re-deposited	6,25,000/-
4.	Pay order reversals	1,895/-
5.	Sagar B.Landge (son)	2,90,000/-
6.	Reversals by Bank	2,63,461/-
	Total	13,07,756/-

Further entire credit received through banking channels aggregating to Rs.15,82,636/- (Rs.4,35,000/- & Rs.11,47,636/-) could not be considered as assessee's income since outward payments have also been made from the said bank accounts. It is noted that besides rental income & agricultural income, the only source of income for the assessee was earnings from shop. Considering this fact, we are of the opinion that a



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reasonable estimation of profit against these receipts would meet the end of justice. We estimate the same @10% which comes to Rs.1,58,264/-. The balance addition of Rs.20,57,059/- shall stand confirmed. The ground raised by the assessee stand partly allowed.

7. In additional ground, the assessee is seeking direction for grant of TCS credit of Rs.2,71,726/- which is reflected in Form 26AS. Accordingly, Ld. AO is directed to verify the same and grant due credit of TCS as per law. The additional ground stand allowed for statistical purposes.

8. The appeal stands partly allowed.

Order pronounced in the open court on 20th February, 2020.

Sd/-
(Mahavir Singh)
उपाध्यक्ष / **Vice President**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 20/02/2020
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.