

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एम बाला गणेश, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2863/Chny/2018

निर्धारण वर्ष /Assessment Year: 2015-16

Shri Palanivel Sundram,
Prop: Press Form Industries,
Chennai – 600 098.

Vs. The Asst. Commissioner of
Income Tax,
Non-Corporate Circle-7(1),
Chennai.

[PAN: AASPS 4727J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri T.N.Seetharaman, Adv.

प्रत्यर्थी की ओर से /Respondent by

: Mrs. Vijayaprabha, JCIT

सुनवाई की तारीख/Date of Hearing

: 25.02.2020

घोषणा की तारीख /Date of Pronouncement

: 25.02.2020

आदेश / O R D E R

PER SHRI MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of CIT(A)-2, Chennai, in ITA No. 52/CIT(A)-7/2017-18 dated 23.08.2018. The Assessment was framed by ACIT, Non-Corporate Circle-7, Chennai for the relevant A.Y. 2015-16 vide order dated 26.12.2017 u/s. 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of the assessee against the order of CIT(A) confirming the addition made by Assessing Officer at Rs. 40,02,285/- as unexplained credit. For this the assessee raised grounds No.2 to 6 which reads as under:

"2. The Commissioner (Appeals) erred in confirming the addition of Rs.40,02,285/- (Rs.28,00,000/+ Rs.12,02,285/-) made in the assessment order as "unexplained credit" and dismissing the appeal.

3. The authorities below erred in not appreciating that the appellant is the sole proprietor of the business carried on under the trade name "Press Form "industries" and is maintaining Books of account and bank accounts separately on his personal account and for his business transactions and monies are transferred from the personal books / bank account to his capital account in the business books of account and vice versa.

4. The assessing officer/Commissioner (Appeals) failed to see that total the sum of Rs.28,00,000/- brought into the capital account in the business books of account were by way of cheques drawn on various dates on the appellant's personal bank accounts (A/c Nos. 887568610/ 504954057) with Indian Bank and were not "unexplained credits" as alleged.

5. The assessing officer / Commissioner (Appeals) further failed to see that the canteen expenses for PFI staff were paid for by the appellant and recorded in the business books of account by way of journal entries and were not "unexplained credit" as misconstrued by the authorities below.

6. The Commissioner (appeals) erred in repeating the incorrect remarks made by the assessing officer in Para 4.1 of the assessment order regarding accounting for salary (to the Proprietor), offer of salary income in the return of income, comment on the audit report and routing the payments through the P&L A/c etc and endorsing the reasons attributed by the AO for rejecting the appellant's explanation in regard to the additions disputed in the appeal."

3. Briefly stated facts are that on perusal of the balance sheet of the assessee, the Assessing Officer noted that the assessee has introduced capital of Rs. 80,67,630/- for which he called for the details

from the assessee. Finally, the Assessing Officer noted after verification of details that the remaining increase in capital amounting to Rs. 40,02,285/- remain unexplained and the same reads as under:

Sl. No.	Nature of Transaction	Description	Amount
1.	Transferred from saving a/c. for asset purchases	The saving a/c. is credited with salary from PFI, saving Interest and LIC maturity	Rs. 28,00,000/-
2.	Business exp. Payment	The amount pertaining to canteen expense is paid by Mr. P. Sundaram for PFI staff.	Rs. 12,02,285/-

4. According to Assessing Officer, the salary receipt of Rs. 7,30,000/- is used for the purchase of asset in the name of assessee's proprietary concern and further the assessee has not debited the salary in the books of accounts maintained. Even the amount pertaining to canteen expenses paid by Mr. P. Sundaram for PFI staff is also not explained properly. The assessee preferred appeal before CIT(A), the CIT(A) decided the appeal dismissing the appeal by giving following decision:

7. Decision:-

7.1 *The appellant say in the matter is considered. I find that the Assessing Officer in his order has extensively examined the issue. In the appellate proceedings also, the appellant has given the same explanation as was given before the Assessing Officer. The reasons attributed by Assessing Officer for rejecting the appellant's explanation re reproduced below:*

"4.1 As per the explanation offered in Sl. No.1, the assessee had received salary of Rs. 7,30,000/- per month from his Proprietary concern M/s. Press Form Industries and further this amount is used for purchase of asset in the name of his proprietary concerned. The explanation of the assessee is not accepted as the salary was not debited in books of account

: - 4 - :

maintained by the assessee and also there is no comment in the Audit Report. Even though the payment is reflecting the bank account of the assessee but the same was neither routed through audited profit and loss a/c. nor offered as salary income in his return of income. Hence, the explanation offered by the assessee in this regard is not accepted.

4.2 Likewise in the sl. No.2 of the assessee's explanation, it is found that Mr. P Sundaram proprietor of M/s. Press from industries paid canteen expenses from his personal account and the same was shown as additional capital. As per the assessee's explanation, the assessee is maintaining separate account for himself and for his proprietary concern. In this regard it is also to be noted that the assessee is whole and sole proprietor of the firm M/s. Press from industries and they are nto separate entity. Hence, there is no necessity to maintain separate account. However if any payment was made by the assessee on behalf of the proprietary concern the same should be shown as liability not as capital. Hence in this regard also the explanation offered by the assessee is not accepted."

7.2 In my considered view, there is no requirement for interference with the AO's findings."

5. Aggrieved, now the assessee is in second appeal before the Tribunal.

6. We have heard the rival contentions and gone through the facts and circumstances of the case. The Ld. Counsel for the assessee took us through the assessee's paper book consisting of pages No.1 to 17, wherein proprietor's capital account abstract, capital account for the period 01.04.2014 to 31.03.2015, journal vouchers for staff canteen expenses and balance sheet along with schedules as on 31st March 2015 is enclosed. The Ld. Counsel drew our attention to page No.2, wherein the details of liability payment from the period 30th April 2014 to 30th November 2014 are debited. Further, the Ld. Counsel also drew

our attention to the item of salary debited in the books of accounts w.e.f 06.05.2014 to 07.03.2015. The Ld. Counsel also drew our attention to page No.2A of the assessee's paper book, wherein the detailed explanation is given as regards to credit made in the books of accounts, which was added by Assessing Officer and confirmed by CIT(A). In view of the above, the Ld. Counsel stated that the actually nomenclature used by the assessee as salary is actually withdrawal and not salary. He has stated that the assessee could not present his case properly before the Assessing Officer as well as before the CIT(A) and he drew our attention to the order of CIT(A), which is totally non speaking order and passed a single liner. In view of the above, he stated that since all the details are available with the Tribunal, which were already available before the Assessing Officer, the matter can be decided here only.

7. On the other hand, the Ld. Sr. DR heavily relied on the order of the CIT(A). When it was pointed out to her there is no adjudication at all she could not answer our query.

8. After hearing both the sides, we noted from the facts and evidence produced before us, it seems that the assessee has a case *prima facie* but, it seems the authorities below have not gone into the details. Hence, the matter needs verification at the level of the Assessing

Officer in regard to unexplained credit of Rs. 28,00,000/- being salary debited in the chart and Rs. 12,02,285/- being liabilities debited in the chart enclosed at page No.2 of the assessee's paper book. Hence, we set aside the orders of the lower authorities and remand the matter back to the file of the Assessing Officer for fresh adjudication on this issue. Needless to say that the Assessing Officer will consider the entire evidence and then decide the issue according to law.

9. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced on 25th day of February, 2020 in Chennai.

Sd/-

एम बाला गणेश)

(M. BALAGANESH)

लेखा सदस्य /Accountant Member

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai, दिनांक/Dated: 25th February, 2020.

EDN, Sr. P.S

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF