

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC-A” BENCH, BANGALORE**

**Before Shri Chandra Poojari, Accountant Member**

ITA No.2559/Bang/2019 : Asst.Year 2015-2016

Sri.Krishnamurthy Narayanamurthy 90/1, Yathindralaya 7 <sup>th</sup> Main Road, Begur Road Hongasandra Bengaluru – 560 068. <b>PAN : ACUPN6583F.</b>	Vs.	The Income Tax Officer Ward 4(3)(4) Bengaluru.
(Appellant)		(Respondent)

Appellant by : Sri.Narayana Murthy, ITP  
Respondent by : Dr.Ganesh R.Ghale, Standing Council for DR

<b>Date of Hearing : 24.02.2020</b>	<b>Date of Pronouncement :27.4.2020</b>
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**ORDER**

This appeal filed by the assessee is directed against the order of the CIT(A)-4, Bengaluru dated 24.04.2019. The relevant assessment year is 2015-2016.

2. The assessee has raised following grounds:-

*“1. The order of the learned Commissioner of Income-tax (Appeals) is opposed to law, facts and weights of the evidences in this case, natural justice and probabilities.*

*2. The learned Commissioner of Income Tax (Appeals) erred in law in passing an ex parte order without verifying the service of the notice of hearing.*

*3. The learned Commissioner of Income Tax (Appeals) erred in law in confirming the assessment order dated 30.12.2017.*

*4. The learned CIT(A) erred in law in concluding that the order of the A.O. is well reasoned and is based on the records / evidence gathered by the department available before him.*

*5. The learned Commissioner of Income tax (Appeals) ought*

*to have noted that the appellant had enough cash balance available with him on the relevant dates for cash deposits as the unspent amounts out of earlier withdrawals were available for re-deposit on subsequent dates.*

6. *Th appellant objects to the levy of interest charged u/s 234A, 234B and 234C.*

7. *The appellant reserves the right to add to, modify, alter, amend or delete any of the above grounds.*

8. *For these and such other grounds as may be advanced at the time of hearing, it is prayed that the additions / disallowances made by the learned Assessing Officer be deleted and the returned income be accepted.”*

3. The facts of the case are that the assessee is an individual engaged in the business of textile and handlooms and running his business in the name and style of M/s.Murthy Enterprises. The assessee declared income from business of Rs.1,54,413, income from house property of Rs.1,26,000. During the course of assessment proceedings, the assessee was asked to explain the source of income for cash deposits made of Rs.1,06,19,947 in savings bank accounts during the financial year 2014-2015 relevant to the assessment year 2015-2016. In response, the assessee furnished copy of computation of income and copies of bank account statements and further stated the sources of cash deposits are out of hand loan received from assessee's mother, relatives and friends Muthoot loans and lease advances received during the year. The assessee had furnished details only to the extent of Rs.86,27,558 to substantiate his claim and for the balance amount of Rs.19,92,389, the assessee could not offer any convincing explanation. Accordingly, the Assessing Officer added back the amount of Rs.19,92,389 to the total

income of the assessee u/s 69A of the I.T. Act. On appeal, none appeared on behalf of the assessee, hence, the CIT(A) passed an *ex parte* order by confirming the addition made by the Assessing Officer.

4. Aggrieved by the orders of the Income Tax Authorities, the assessee is in appeal before the Tribunal. The learned AR submitted that the assessee is primarily aggrieved because of the addition to the returned income on the mistaken assumption that the entire source for the deposits in the assessee's bank account has not been explained. The assessee filed submissions dated 12.12.2017 and 18.12.2017 and offered the explanation required by the A.O. The A.O. was of the view that the assessee was able to explain the sources to the extent of Rs.86,27,558 and the balance amount of Rs.19,92,389 remained unexplained. Hence, he brought to tax the amount of Rs.19,92,389 as unexplained cash deposits. The AR submitted that the assessee had produced confirmation from relatives and agriculturists for the amounts received by him and these were accepted by the A.O. to the extent of Rs.86,27,558 and only an amount of Rs.19,92,389 remained to be unexplained. The CIT(A) did not consider the plea of the assessee that the remaining amount could be explained by the availability of cash on the days when deposits were made in the bank account. There was sufficient cash left with the assessee by way of unspent amounts out of previous withdrawals. The AR further submitted that the CIT(A) has brushed aside the assessee's plea in gross violation of the principles of natural justice and preponderance of probabilities.

Hence, the impugned order is not justifiable. As regards the *ex parte* order passed by the CIT(A), the AR submitted that the CIT(A) in his order in para 5 clearly mentioned that the assessee has been given ample opportunity to appear before him and a number of hearing notices on 25.05.2018, 02.11.2018, 13.11.2018, 30.11.2018 and 09.01.2019 were served and on these dates the assessee / AR either appeared and sought adjournment or filed a letter for adjournment, and in all the adjournment letter AR submitted that *'the above said case is posted for hearing on 25.05.2018, the appellant is in the process of collecting certain information and additional evidences to be filed, that are germane to the above appeal which is going to take a short time.'* The case was finally posted for hearing on 23.04.2019, on which the date neither the assessee appeared nor filed submission or sought for any adjournment. Therefore, the CIT(A) was of the opinion that the assessee has nothing to submit against the order of the AO. The learned AR submitted that the CIT(A) himself has noticed in his order that the assessee / AR appeared on all the earlier dates of hearing and sought adjournment. Only on the last occasion of hearing on 23.04.2019 there was no appearance by the AR, nor filing of submission and seeking of adjournment. The learned AR submitted that the notice of hearing fixed on 23.04.2019 was not served on the assessee. The only reason why the assessee failed to appear for hearing on 23.04.2019 was that the notice was not received by either by the assessee or the AR. Moreover, in Form No.35, the address to which the notices may be sent to the assessee is shown as M/s.Murthy and Co., 399, 2<sup>nd</sup> Floor,

24<sup>th</sup> Cross, Banashankari 2<sup>nd</sup> Stage, Bangalore -560 070. However, the notice was not served on this address. The learned AR further submitted that the assessee has cooperated with the Assessing Officer in providing all the relevant details relating to the availability of cash for the deposits and advanced further arguments and convincing explanation before the A.O. The CIT(A) ought to have exercised his discretionary judgment taking into considering the preponderance of probabilities and natural course of human conduct. Moreover, the availability of opening balance and unspent balances from previous withdrawals can be easily verified. The learned AR further submitted that the CIT(A) ought to have noted that the assessee had enough cash balance available with him on the relevant dates for cash deposits as the opening balance and unspent amounts out of earlier withdrawals were available for re-deposit on subsequent dates. According to the learned AR, neither the AO nor the CIT(A) had considered the availability of cash balance with the assessee on the relevant dates. The very fact that the opening cash balance as on 01.04.2014 was Rs.16,65,606 explains the major portion of the alleged unexplained cash deposits. The balance amount of Rs.3.26 lakh is easily explained as unspent balances from earlier withdrawals. The AO or the CIT(A) have not look into the cash book of the assessee in order to verify the claim made by the assessee. The learned AR thus pleaded that the addition made by the AO and confirmed by the CIT(A) may be deleted.

5. The learned Departmental Representative, on the other hand, submitted that the assessee has not cooperated with the

CIT(A) and hence, he passed the *ex parte* order confirming the addition made by the Assessing Officer. The learned DR further submitted that the assessee has also not furnished any evidence showing the opening balance available with the assessee to deposit to bank account and also the details of any earlier withdrawals available with the assessee to redeposit in the bank.

6. I have heard the rival submissions and perused the material on record. In this case, the Assessing Officer found that the assessee has deposited a sum of Rs.1,06,19,947 in the saving bank account with ICICI Bank. The assessee was able to give explanation to the source of an amount of Rs.86,27,558, however, the assessee has not led any evidence before the A.O. with regard to the balance amount of Rs.19,92,389. Before me, the learned AR submitted that proper opportunity has not been granted to the assessee to explain the source of deposit with the bank. Further, it was submitted that the A.O. has not agreed with the opening balance of cash available to deposit in the bank and the earlier withdrawals to redeposit in the saving bank account. The assessee filed day to day cash in hand position before me and submitted that earlier withdrawals were available with the assessee to deposit that amount and due credit to be given to such earlier withdrawals as available to deposit with bank account. According to the learned DR, the earlier withdrawals made by the assessee should not have redeposited with the bank account. The assessee submitted that the assessee withdrawn money from bank account for particular purposes, however, it was not kept idle and it was

redeposited to bank account. The Assessing Officer did not accept the contention of the assessee since the assessee has not filed any fund flow statement or cash flow statement before him. However, the Assessing Officer has not examined the cash book to see that any cash balance is available with the assessee to redeposit the same in the bank account. The Assessing Officer has also not brought anything on record to show that the assessee has used the earlier withdrawals for his persons purposes and not for redeposit the same in the bank account. Therefore, it has to be presumed that the assessee has withdrawn cash and the same remains to be unutilized for one reason or the other and the cash remained with the assessee and used the same to deposit in the bank account. Similar issue was considered by the Bangalore Benches of the Tribunal in case of Sri.Byarakar Manjappa Veeresh in ITA No.1723/Bang/2019. Th Tribunal vide order dated 30th January, 2020 remitted the issue to the file of the Assessing Officer with the following observations: -

*'6. I have heard the rival submissions and perused the material on record. In the present case, as per AIR information reported that the assessee has deposited cash into his saving bank account with Bank of Baroda, Peenya Branch, Bangalore totaling to Rs.27,45,300. The assessee explained that Rs.10 lakh deposited with the bank was accepted the A.O. Regarding the balance amount of Rs.17,45,300, it was claimed by the assessee that the cash deposits were out of earlier withdrawals and also claimed to have agricultural income. It was the plea of the assessee that she has made withdrawals and redeposited the amount into bank account. The assessee filed day to day cash in hand position before me and submitted that earlier withdrawals were available with the assessee to deposit that amount and due credit to be given to such earlier*

*withdrawals as available to deposit with bank account. The learned DR strongly opposed the argument of the AR and submitted that during the assessment year under consideration the assessee purchased immovable properties at No.9, Laggere village, Peenya, Bangalore at a cost of Rs.38,70,230 and the earlier withdrawals from the bank account might have been used to pay the on-money for purchase of that property. Even otherwise, he submitted that the earlier withdrawals have been made to meet particular expenditure and not for redepositing with the bank account. The assessee's main plea is that the assessee had withdrawn huge amount from the said bank account on various dates and kept the said amount idle with the assessee and redeposited the same into the bank account. To this effect, the assessee has furnished the statement showing withdrawals and cash in hands on various dates. While completing the assessment, the Assessing Officer give credit to only Rs.10 lakh and the balance amount, he disbelieved and treated the said amount of Rs.17,45,300 as unexplained income of the assessee. The Assessing Officer has not accepted the contention of the assessee, since the assessee has not filed any fund flow position of the assessee. However, the Assessing Officer did not doubted withdrawals of cash on various dates. The Assessing Officer has also no evidence to prove that the assessee has made withdrawals on various dates for any other purposes. There is also no evidence that the assessee has used this money to deposit in any bank account of him or for his household expenses. In such circumstances, it cannot be said that the withdrawals have been utilized to redeposit with the bank of the assessee. Therefore, it has to be presumed that the assessee has withdrawn cash and the same remains to be unutilized for one reason or the other and the cash remained with the assessee. In such circumstances, due credit to be given for such withdrawals of the cash by the assessee. In my opinion, similar view was taken by the Cochin Bench of the Tribunal in the case of Sri.Mathew*

*Philip v. ITO [ITA No.443/Coch/2019 – order dated 29.11.2019] wherein it was held as under:-*

*“10. We have heard the rival submissions and perused the material on record. In the present case, the dispute is with regard to cash deposit of Rs.32.5 lakhs into the various bank accounts of the assessee. The main plea of the assessee is that the assessee had withdrawn cash of Rs.50 lakhs on 26/09/2014. The assessee had withdrawn cash on various dates at Rs.68 lakhs as narrated in para 5 of this order.*

*10.1 These amounts were redeposited into Bank accounts on various dates as follows: 02/04/2014 Rs. 3,00,000/- 27/08/2014 Rs. 1,50,000/- 26/09/2014 Rs.50,00,000/-*

*11. The Assessing Officer has given credit of Rs.23.50 lakhs towards cash in hand for depositing it into Bank account of the assessee. The Assessing Officer treated Rs.28.5 lakhs as unexplained sources. Thus, he treated the following amounts as unexplained cash deposits of the assessee:Rs.3 lakhs Rs.1 lakh Rs.28.5 lakhs Total:Rs.32.5 lakhs 11.1 The assessee explained that during the assessment year 2012-13, the assessee had an ailment of cancer and he could not attend to business and financial matters and kept the cash withdrawn from Bank on 31/12/2013 for medical treatment and other expenses and deposited the amount in Bank only on 26/09/2014. In support of his claim, the assessee has produced discharge summary dated 06/11/2013 from Lourde Hospital, Ernakulam before AO. He has also produced CT Scan report dated 11/07/2013 which is not disputed by the lower authorities. The Assessing Officer has not accepted the contention of the assessee that he has kept the cash idly in his hands on the reason that he has not filed the wealth tax return showing the cash in hand. The Assessing Officer has not doubted the withdrawal of cash. However, the fact is that the assessee has withdrawn cash of Rs.50 lakhs on 31/12/2013. There is no evidence brought on record to show that these withdrawals have been used by the assessee or deposited by the assessee in any other Bank. It cannot be said that these withdrawals made from the Bank*

*account were used for household expenses or any other investment. In such circumstances, it cannot be disputed that the withdrawals have been used for redeposit into the Bank account of the assessee. In other words, the Assessing Officer has not disputed the existence of Bank accounts and withdrawal from the same. The earlier withdrawal of Rs.50 lakhs from the Bank account on 31/12/2013 or withdrawal from various Bank accounts on different dates is not disputed. The assessee might have kept the cash withdrawals with him and redeposited into various Bank accounts on a later date. It is quite possible that the assessee might have withdrawn the cash for some purpose but the same remains to be utilized for one reason or the other and the cash continues to be remained with him. Sometimes it may also happen that the cash withdrawals from Bank accounts continues to remain as cash balance with the assessee even for many months and sometimes cash withdrawn is utilized on the same day. All these probable aspects of the matter cannot simply be ignored or brushed aside but the fact remains that the cash has been withdrawn from the Bank and that is not at all disputed. In view of this, the explanation of the assessee deserves to be accepted, unless contrary is brought on record which has not been done in this case. Considering the totality of the facts and circumstances of the case and in view of the discussions above, the cash deposits made by the assessee on various dates should be reasonably presumed that it is from earlier withdrawals made by the assessee on various dates. Accordingly, we delete the entire addition of Rs.32.5 lakhs made by the Assessing Officer.”*

*7. In view of the above, I am of the opinion that the Assessing Officer has to examine the fund flow statement of the assessee and to re-examine the issue in the interest of justice. Accordingly, I remit the issue to the file of the A.O. to give due credit towards the amount withdrawn by the assessee and kept idle and redeposited by the assessee into bank accounts.’*

7. In view of the above order of the Tribunal in the case of Sri.Byarakar Manjappa Veeresh (*supra*), I am inclined to direct

the Assessing Officer to give due credit to the opening balance of the year and also towards earlier withdrawals, after verifying the books of account of the assessee. With these observations, we remit the issue to the file of the Assessing Officer for fresh consideration.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 27<sup>th</sup> day of April, 2020.

Sd/-  
**(Chandra Poojari)**  
**ACCOUNTANT MEMBER**

Bangalore ; Dated : 27<sup>th</sup> April, 2020.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-4, Bangalore
4. The Pr.CIT-4, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore