

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.Nos.2716 to 2718/Chny/2018

(निर्धारणवर्ष / Assessment Years: 2009-10 to 2011-12)

Smt. Sridevi Ravi, 1, Srinivasa Pillai Street, West Mambalam, Chennai-600 033.	Vs	The Income Tax Officer, Non-Corporate Ward-14(2) Chennai.
PAN: AQBPS9220K		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. B.Ramakrishnan, FCA
प्रत्यर्थीकीओरसे/Respondent by	:	Mr.G.Chandrababu,Sr.AR

सुनवाईकीतारीख/Date of hearing	:	02.12.2020
घोषणाकीतारीख /Date of Pronouncement	:	15.12.2020

आदेश / ORDER

PER BENCH:

These three appeals filed by the assessee are directed against separate, but identical order of the learned CIT(Appeals)-14, Chennai all dated 25.07.2018 and pertain to assessment years 2009-10 to 2011-12. Since, the facts are identical and issues are common, for the sake of convenience, they were clubbed, heard together and disposed of by way of this consolidated order.

2. The assessee has more or less raised common grounds of appeal for all the assessment years, therefore, for the sake of brevity, grounds of appeal filed for the assessment year 2010-11 in ITA No.2017/Chny/2018 are reproduced as under:-

“1. For that the order of the Learned Commissioner of Income Tax (Appeals) is contrary to law, facts, and circumstances of the case.

2. For that the Learned Commissioner of Income Tax (Appeals) having accepted that the appellant is engaged in civil works contract and the income derived from the said business is taxable @ 8% u/s 44AD of the Income-tax Act, 1961, erred in directing the Assessing Officer to include peak credit on the total deposits in the appellant's bank account amounting to ₹ 20,56,013/-in computing the assessed income.”

3. Brief facts of the case are that the assessee is an individual deriving income from salary, income from house property and income from other sources filed her return of income for the assessment year 2010-11 on 11.10.2010 declaring total income of ₹ 14,03,558/-. The assessment has been, subsequently reopened u/s.147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for the reasons recorded, as per which income chargeable to tax had been escaped assessment on account of non-disclosure of certain savings bank account maintained with Bank of India, West Mambalam branch, and accordingly, notice u/s.148 dated 30.03.2015 was served on the assessee. In response to the notice, the assessee vide her letter dated 26.08.2015 stated that return originally filed on 11.10.2010 may be treated as return filed in response to notice issued u/s.148 of the Act. Simultaneously, the assessee also sought for reasons recorded for reopening of

assessment and the same was furnished. Thereafter, the case has been selected for scrutiny and notices u/s.143(2) and 142(1) along with questionnaire were issued vide office letter dated 28.01.2015. In response, Authorized Representative appeared from time to time and filed various details called for.

4. During the course of assessment proceedings, the Assessing Officer noticed that assessee has maintained savings bank account vide no.802910110001466 with the Bank of India, West Mambalam branch and deposited huge cash on various dates amounting to ₹ 1,27,36,473/- and, therefore called upon the assessee to explain the source of income for cash deposits. The assessee vide letter dated 06.10.2015 has filed various details including cash flow statement and submitted that cash deposits found in her bank account was explained and source of such cash deposits were out of business receipts from civil contract work, interior decorations and has also an amount of ₹ 25.00 lakhs, being amount received from parties on cancellation of sale agreement. The Assessing Officer after taking note of various details filed by the assessee has accepted the assessee's explanation with regard to cash deposit of ₹ 25.00 lakhs out of advance received from certain parties for

cancellation of agreement. However, in respect of remaining cash deposits of ₹ 81,20,460/-, the Assessing Officer was of the opinion that although the assessee claimed to have been explained cash deposits found in bank account as business receipts, but the said cash deposit receipts were not offered to tax, accordingly worked out peak credit of cash deposits in the bank account of ₹ 21,16,013/- on 03.12.2010 and the same has been brought to tax as unexplained investments u/s.69 of the Act. Further out of total cash deposit of ₹ 81,20,460/- after allowing peak credit of ₹ 21,16,013/-, balance amount has been treated as receipts from business and has estimated 8% net profit under section 44AD of the Act and made addition of ₹ 6,49,637/-.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee has filed detailed written submissions along with certain additional evidences and argued that cash deposits found in her savings bank account maintained with the Bank of India, West Mambalam branch has been explained with known source of income . However, the Assessing Officer has rejected the explanation offered by the assessee and has made addition towards

peak credit on the ground that assessee has failed to explain source of income for cash deposits. The Assessing Officer also made further addition towards 8% profit on balance cash deposits found in her bank account under the provisions of Section 44AD of the Act, even though the assessee explained source for cash deposits. He further argued that once the Assessing Officer himself had admitted the fact that assessee has received cash from her civil contract business and has estimated profit from said business by applying presumptive taxation rate applicable u/s.44AD of the Act, he ought to have considered total cash deposits found in her bank account as receipts from business and has estimated the profit of 8%. During the course of appellate proceedings, the learned CIT(A) has forwarded additional evidences to the Assessing Officer for his comments. In response, the Assessing Officer filed a remand report dated 13.10.2017 and commented upon the admissibility of additional evidences filed by the assessee under Rule 46A and also commented upon veracity of additional evidences filed in light of cash deposits found in her bank account.

6. The learned CIT(A), after considering relevant submissions and also taken note of various evidences filed by the assessee has admitted the additional evidences on the ground that when

assessee could not file certain evidences before the Assessing Officer, then the same can be filed before the appellate authority and the appellate authority having concurrent jurisdiction with the Assessing Officer can very well admit the additional evidences, if those evidences are relevant to decide the issues on merit and accordingly, admitted the additional evidences filed by the assessee. As regards additions made by the Assessing Officer towards cash deposits found with the bank account of the assessee, the learned CIT(A) observed that the Assessing Officer has arrived at peak credit out of the cash deposits found in her bank account after giving reasonable opportunity to the assessee to explain cash deposits with necessary evidences. When the assessee has failed to explain cash deposits found in her bank account through known source of income, the Assessing Officer has chosen to estimate the income by applying one of the possible methods of arriving at peak credit and hence, there is no error in the findings recorded by the Assessing Officer in arriving at peak credit of cash deposits made in her bank account and made addition u/s.69 of the Act. As regards estimation of further income @8% profit u/s.44AD of the Act, on balance cash deposits, the Assessing Officer after considering necessary facts including the evidences filed by the assessee has come to a right

conclusion that balance cash deposits found in her bank account is out of contract business, which is liable to be taxed under presumptive rate of tax as prescribed u/s.44AD and accordingly upheld the estimation 8% profit on balance cash deposit u/s.44AD of the Act. Being aggrieved by the CIT(A) order, the assessee is in appeal before us.

7. The learned AR for the assessee submitted that learned CIT(A) has erred in sustaining the additions made by the Assessing Officer towards peak credit on account of cash deposits found in her bank account without appreciating the fact that once bank credit is accepted as turnover from her business and profit has been estimated on presumptive basis u/s.44AD of the Act, then there is no reason to accept part cash deposits as business receipts and part as unexplained investments. In this regard, he relied upon certain judicial precedents including the decision of Bangalore Bench of this Tribunal in the case of Mr. Girish V.Yalakkishettar vs. ITO, Hubli in ITA No.354 & 355/Bang/2019.

8. The learned DR, on the other hand, submitted that the Assessing Officer as well as learned CIT(A) have brought out facts

clearly that the assessee has failed to explain source of income for cash deposits found in her bank account and accordingly has arrived at unexplained investments by estimating peak credit method for part of the cash deposits and the remaining cash deposits has been accepted as contract receipts and estimated 8% profit by applying the provisions of section 44AD of the Act. Therefore, there is no error in the findings recorded by the authorities below to estimate income out of unexplained cash deposits found in the assessee's bank account, hence their orders should be upheld.

9. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. The undisputed facts emerge clearly indicate that the assessee has not disclosed her savings bank account maintained with Bank of India, West Mambalam branch. Further, when the case has been taken up for reassessment, the assessee has come out with explanation that cash deposits found in her bank account is out of contract receipts which was not disclosed to income-tax purpose, however, admitted before the Assessing Officer that net profit may be estimated by applying provisions of section 44AD of the Act. The Assessing Officer has accepted the explanation furnished by the

assessee in part and accordingly divided cash deposits found in her bank account into two parts, i.e one from unexplained investments and the other from out of business receipts. Insofar as unexplained investments, the Assessing Officer has arrived at peak credit on a particular date and made addition u/s.69 of the Act as unexplained investments. The balance amount of cash deposits has been accepted as business receipts and has estimated 8% net profit by applying presumptive profit u/s.44AD of the Act. It was the contention of the assessee that once bank credit is accepted as turnover from her business on presumptive basis u/s.44AD of the Act, there is no reason to treat the remaining amount of cash deposits as unexplained investments which is to be taxed u/s.68 or 69 of the Act. We find merit in the arguments taken by the assessee for the simple reason that Assessing Officer himself has admitted the fact that assessee has receipts from her business of civil contract and the same has to be taxed at 8% on presumptive basis u/s.44AD of the Act. Once part of bank credit is accepted as turnover on presumptive basis and has taxed accordingly by applying the provisions of section 44AD of the Act, then there is no reason for the Assessing Officer to take a different view for remaining part of cash deposits found in the same bank account

and treat the same as unexplained investments to be taxed u/s.69 of the Act, because it is admitted that the assessee has proved with necessary evidences that she has received cash from business activity of civil contract and interior decoration work. It is also admitted fact that said activity has not been disclosed in income-tax return filed for relevant year and the assessee has not maintained regular books of account for the said activity. The Assessing Officer having accepted the explanation furnished by the assessee regarding her business activity and source of income for cash deposits found in her bank account, he ought to have accepted the explanation furnished by the assessee towards total cash deposits found in her savings bank account.

10. In this case, the Assessing Officer has accepted part of cash deposits as out of her business receipts and part of cash deposits as her unexplained investments, without brought on record any cogent reasons to justify different view taken on cash deposits found in her bank account during the same financial year. The learned CIT(A) has also simply upheld the findings of the Assessing Officer without assigning any reason why explanation furnished by the assessee regarding source of income for cash deposits found in

her bank account was accepted in part, cannot be accepted for remaining cash deposits found in the same bank account. Therefore, we are of the considered view that Assessing Officer as well as learned CIT(A) were erred in assessing part of cash deposits as unexplained investments to be taxed u/s.69 of the Act and part of cash deposits as receipts from business liable to be taxed u/s.44AD of the Act. Hence, we direct the Assessing Officer to treat the total cash deposits found in her bank account maintained with Bank of India, West Mambalam branch as receipts from her civil contract business and estimate 8% net profit on total receipts as per the provisions of section 44AD of the Act. In the result, the appeal filed by the assessee for the assessment year 2010-11 is partly allowed.

ITA No.2716/Chny/2018(AY 2009-10):

11. The facts and issues involved in this appeal are identical to the issues considered in preceding paragraphs in ITA No.2717/Chny/2018 for the assessment year 2010-11. The slight difference in facts of this case is additions made by the Assessing Officer regarding cash deposits found in the bank account. For the impugned assessment year, the Assessing Officer has made additions towards total amount of cash deposits

found in her bank account as unexplained investments u/s.69 of the Act. The learned CIT(A) by following his findings recorded for the assessment year 2010-11, has directed the Assessing Officer to make additions towards cash deposits found in her bank account by applying peak credit theory and for remaining balance amount found in her bank account, direct the Assessing Officer to treat the same as receipts from her contract business and estimate 8% net profit by applying the provisions of section 44AD of the Act.

12. We have considered identical issue for assessment year 2010-11 and for the reasons stated therein, we direct the Assessing Officer to treat the total cash deposits found in her SB account maintained with Bank of India, West Mambalam branch, as her receipts from contract business and estimate 8% net profit by applying the provisions of section 44AD of the Act. The facts in the present year are *pari materia* with the facts which we have considered for the assessment year 2010-11. Therefore, for similar reasons recorded in preceding paragraphs in ITA No.2717/Chny/2018, we direct the Assessing Officer to treat the total cash deposits found in her bank account maintained with Bank of India, West Mambalam branch, as receipts from her civil contract

business and estimate 8% of net profit on presumptive basis by applying the provisions of section 44AD of the Act.

ITA No.2718/Chny/2018(AY 2011-12):

13. The facts and issues involved in this appeal are also identical to the facts which we have considered in appeal in ITA No.2717/Chny/2018 for the assessment year 2010-11, except to the extent of difference in treatment of cash deposits found in her bank account, inasmuch as the Assessing Officer has treated total cash deposits found as unexplained cash deposits to be taxed u/s.68 of the Act. The learned CIT(A) by following his order for assessment year 2010-11, has directed the Assessing Officer to estimate income towards cash deposits found in her bank account by applying theory of peak credit and for the balance cash deposits as receipts from contract business liable to be taxed @ 8% on net profit on presumptive basis under the provisions of section 44AD of the Act.

14. We have considered identical issue under identical set of facts for assessment year 2010-11 and for the detailed reasons stated in the preceding paragraphs, we direct the Assessing Officer to treat the total cash deposits found in her SB account maintained with Bank of India, West Mambalam branch, as her receipts from

contract business and estimate 8% net profit by applying the provisions of section 44AD of the Act. The facts for the year under consideration are *pari materia* with that of facts considered by us for the assessment year 2010-11. We, therefore, for similar reasons recorded in preceding paragraphs in ITA No.2717/Chny/2018, direct the Assessing Officer to treat the total cash deposits found in her bank account maintained with Bank of India, West Mambalam branch, as receipts from her civil contract business and estimate 8% of net profit on presumptive basis by applying the provisions of section 44AD of the Act.

15. In the result, the appeals filed by the assessee for all assessment years are partly allowed.

Order pronounced in the open court on 15th December, 2020

Sd/-

(वी. दुर्गा राव)

(V.Durga Rao)

न्यायिक सदस्य /Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 15th December, 2020

DS

Sd/-

(जी.मंजुनाथ)

(G.Manjunatha)

लेखा सदस्य / Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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