

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

श्री वी दुर्गा राव न्यायिक सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos.522 & 523/Chny/2019
निर्धारण वर्ष /Assessment Years: 2003-04 & 2004-05

Shri A. Natarajan,
No.125/3, Sankagiri Main Road,
Nethimedu, Salem-636 002.
[PAN: AESPN 1974Q]
(अपीलार्थी/Appellant)

The Income Tax Officer,
Ward-I(2),
Vs. Salem.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Mrs. S. Sriniranjani, Advocate
: Mr. P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 09.11.2021

घोषणा की तारीख /Date of Pronouncement

: 09.11.2021

आदेश / ORDER

Per V. Durga Rao, Judicial Member:

These two appeals filed by the assessee are directed against the orders of the Learned Commissioner of Income Tax (Appeals), Salem in Appeal Nos.E-21/2017-18 & E-25/2016-17 dated 31.12.2018 relevant to the Assessment Years 2003-04 & 2004-05 respectively.

ITA No.522/Chny/2019 for Assessment Year 2003-04:

2. The brief facts of the case are that in the Assessment Year 2003-04, the Assessing Officer (AO) has made addition of Rs. 4,47,732/-. In the assessment order, the A.O has noted that with regard to the claim

of cash deposits in the bank account, out of borrowals made by the assessee of Rs. 2,50,000/- from money lending firms. The assessee submitted copies of promotes and daybooks of the firms evidencing the borrowals by the assessee on various dates and the assessee borrowed money in the second and third quarter of the financial year. However, the cash deposit in the bank accounts were made in the last quarter of the financial year i.e. in Account No 2992, the cash deposit of Rs 2,72,000/- was made on 10th and 13th of March 2003 and in Account No.3652 the cash deposit of Rs. 1,00,000/- was made on 20th March, 2003. There is substantial time gap between the borrowals and deposits. Therefore, the element of use of the borrowed amounts for the purpose of other than for the cash deposit cannot be denied. Accordingly, out of the total borrowals of Rs.2,50,000/- the amount of Rs 2,00,000/- is accepted as used for cash deposit in the bank. On appeal, the Ld. CIT(A) has confirmed the order of the A.O.

3. The Id. counsel for the assessee has submitted that the assessee has filed all the details of cash deposits and withdrawals. The A.O has not accepted the amount of Rs. 50,000/- for the reason that there is a delay in the deposits.

4. On the other hand, the Id. Departmental Representative relied on the orders of the authorities below.

5. I have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The A.O accepted the cash deposit to the extent of Rs. 2,00,000/-. So far as Rs. 50,000/- is concerned, the A.O denied on the ground that there is a time gap between the borrowals and deposits. We find that simply because there is a time gap, it cannot be disbelieved that cash deposits made by the assessee is not from the sources as explained by the assessee already for an amount of s. 2,00,000/-. In view of the above, we are of the view that the addition made by the A.O cannot survive.

6. In so far as interest on capital of Rs. 4.5 lakhs is concerned, the assessee has submitted before the A.O that he has closed his business and amount due from debtors were collected in September, 2002 and other in February, 2003 and submitted that the claim of the assessee may be accepted. The A.O has denied the explanation given by the assessee and the same is added to the total income on the ground that no evidence has been produced. Accordingly, the A.O has charged interest on Rs. 4.5 lakhs @ 12% and the same is assessed to tax. The case of the assessee before us is that once interest is charged, the capital realized by the assessee has to be accepted.

7. On the other hand, the Id. Departmental Representative relied on the orders of the authorities below.

8. Both the parties have been heard, perused the materials available on record and gone through the orders of the authorities below. The case of the assessee is that he has closed the business and collected amount from the various debtors. The A.O not accepted the claim of the assessee. However, the A.O has taxed interest @ 12% on Rs. 4.5 lakhs as an interest income earned out of the interest business of the assessee. We find that once the A.O has charged the interest on amount of Rs. 4.5 lakhs, he cannot deny that the claim of the assessee has realization of the assessee's capital. In this case, the A.O has accepted for the purpose of charging the interest of Rs. 4.5 lakhs is the assessee's capital and when he has explained the source for the above amount, the A.O has denied that no evidence is produced and therefore, the claim is not accepted. The finding of the A.O is not correct therefore, the addition made by the A.O cannot survive. Hence, all the additions made by the A.O are deleted and the appeal filed by the assessee is allowed.

9. In the result, the appeal filed by the assessee in ITA No.522/Chny/2019 for Assessment Year 2003-04 is allowed.

ITA No.523/Chny/2019 for Assessment Year 2004-05:

10. In the assessment order, the A.O has noted that the assessee has made huge deposits in Indian Bank and Punjab National Bank. On verification of the ledger copies of the share broker concerns, it is seen that the assessee had received the amount only by way of cheques from the share broking concerns as the source for these amounts are established and the same money had been used again for the share trading business, the profit / loss from these share trading has been arrived at as above at para No.3. The remaining portion of the deposits are treated as unexplained deposits and assessed to tax. In this regard, the assessee's Authorized Representative has furnished the copy of above Bank statements along with a list of withdrawals made from both banks. Further, the A.R has filed a letter dt. 11.11.2016, stating that the withdrawals made from bank to be treated as available sources for re-deposits, and requested to consider the same as the source of deposits. The submission filed by the AR has been perused, and the withdrawals made from the bank statements were examined. After perusal of the submissions filed and discussions with the AR, considering the facts and circumstances of the case, the withdrawals made from the Indian Bank of Rs.29,25,500 and Punjab National Bank of Rs.6,02,000/- are taken for consideration and the unexplained deposits are worked out as under:

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|--|------------------------|
| <i>Deposited in Indian bank and Punjab National Bank</i> | <i>Rs. 58,87,997/-</i> |
| <i>Less: Withdrawals made from both banks on various dates</i> | <i>Rs. 32,27,500/-</i> |
| <i>Balance Deposits</i> | <i>Rs. 23,60,497/-</i> |

11. On appeal, the Ld. CIT(A) has confirmed the order of the A.O.

12. The Id. counsel for the assessee has submitted that the A.O himself has accepted that the assessee has made huge deposits on various dates and also withdrawn the same deposits and re-deposit the same. Under these circumstances, the assessee has requested that peak balance in the assessee's bank account to be considered while computing the taxable income instead of gross deposits.

13. On the other hand, the Id. D.R relied on the orders of the authorities below.

14. Both the parties have been heard, perused the materials available on record and gone through the orders of the authorities below. The assessee has made huge deposits in Indian Bank and Punjab National Bank. The A.O has noted that the total deposits made by the assessee at Rs. 58,87,997/-. The withdrawal made by the assessee on various dates is at Rs. 32,27,500/-. So far as an amount of Rs. 23,60,497/-, the assessee has submitted that the peak balance may be considered

computing in the taxable income instead of gross deposits neither the A.O nor the Ld. CIT(A) has accepted. When the assessee has deposited huge amount on various dates, the assessee is not able to explain some of the deposits. The A.O ought to have considered peak balance for computing the taxable income and even the Ld. CIT(A) also not considered. By considering these facts and circumstances, I am of the opinion that peak balance has to be considered for the purpose of computing taxable income. Accordingly, I direct the A.O to consider the peak balance accordingly peak credit may be taken into consideration for the purpose of taxable income. Hence, this ground of appeal raised by the assessee is partly allowed.

15. In so far as closing stock of shares is concerned, according to the A.O the value of the closing stock of the assessee is at Rs. 5,78,426/-. The A.O has assessed the above amount as unaccounted investment made by the assessee during the financial year 2003-04. When the A.O has asked the assessee to explain, the assessee has submitted before the A.O that the total figure calculated by the A.O i.e., M/s. S.S.K.I at Rs. 3,51,725/-, M/s. Motilal Oswal Securities at Rs. 2,26,701/- is not correct and the total closing stock on the share only Rs. 2,78,426/- instead of Rs. 5,78,426/-. The A.O without considering

the explanation given by the assessee, simply addition was made at Rs. 5,78,426/- and the same is confirmed by the Ld. CIT(A).

16. The Id. counsel for the assessee has submitted that we have specifically submitted before A.O as well as Ld. CIT(A) that closing stock of shares only Rs. 2,78,426/- not for Rs. 5,78,426/-, which is pointed out from the paper book page No.44 filed by the assessee. We have gone through the assessment order and also paper book filed by the assessee, there is a specific plea taken before the A.O and also before Ld. CIT(A) that the only closing stock of Rs. 2,78,426/- not the amount adopted by the A.O of Rs. 5,78,426/-.

17. It is found that when the assessee himself has pointed out that the amount taken by the A.O is not correct, the A.O should have been given reasons for how he taken is correct, without making such an attempt simply addition was made. Therefore, the addition made by the A.O is restricted to Rs. 2,78,426/- instead of Rs. 5,78,426/-. Hence, this ground of appeal raised by the assessee is partly allowed.

18. In the result, the appeal filed by the assessee in ITA No.523/Chny/2019 for Assessment Year 2004-05 is partly allowed.

19. In the result, the appeal filed by the assessee in ITA No.522/Chny/2019 for Assessment Year 2003-04 is allowed and the appeal in ITA No.523/Chny/2019 filed by the assessee for Assessment Year 2004-05 is partly allowed.

Order pronounced on 09th November, 2021 in Chennai.

Sd/-

(वी दुर्गराव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai, दिनांक/Dated: 09th November, 2021.

EDN/-

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