

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI. B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

Appeal No.	Appellant	Respondent	Assessment Year
ITA Nos. 1537 to 1543/Bang/ 2016	Shri K. Nagesh Reddy, No. 162, Doddakannalli, Sarjapur Road, Carmelram Post, Bangalore – 560 035. PAN: ACLPN7942D	The Deputy Commissioner of Income Tax, Central Circle 2 (1), Bangalore.	2007-08 to 2013-14
ITA No. 1544/Bang/ 2016	Shri K. Venkataswamy Reddy, No. 162, Doddakannalli, Sarjapur Road, Carmelram Post, Bangalore – 560 035. PAN: ACLPV5757G		2007-08
ITA No. 1545/Bang/ 2016	Smt. Radhika Reddy, No. 162, Doddakannalli, Sarjapur Road, Carmelram Post, Bangalore – 562125. PAN: AKQPR9317R		2008-09
ITA No. 1546/Bang/ 2016	Shri K. Jaipal Reddy, No. 162, Doddakannalli, Sarjapur Road, Carmelram Post, Bangalore – 560 035. PAN: ADYPJ1177C		2007-08

Assessee by	:	Smt. Pooja Maru, CA
Revenue by	:	Shri Mathivanan M, CIT (DR)

Date of Hearing	:	15-12-2021
Date of Pronouncement	:	23-12-2021

ORDER

PER BENCH

Present appeals in case of all the assesseees have been passed by Ld.CIT(A)-11, Bangalore by separate orders on 25.06.2016 for Assessment Years 2007-08 to 2013-14.

Only issue that arises in all these appeals is in respect of the grievance of the assessee that cash withdrawals made by employees by Bearer Cheque has not been considered for working of peak credit. For the sake of convenience, since the facts and nature of addition is similar in all these appeals, we are considering the facts narrated in ITA No. 1537/Bang/2016 in case of Shri K. Nagesh Reddy for Assessment Year 2007-08.

2. Brief facts of the case are as under:

There was a Search & Seizure Operation under section 132 of the Income Tax Act in the case of Shri. K. Nagesh Reddy & Others on 19.10.2012. The assessee, Mr. K. Nagesh Reddy is one of the five sons of Mr. Krishna Reddy. He stays with his other four brothers. The brothers including the present assessee are actively involved as real estate commission agents and facilitators in Sarjapur area. During the course of Search action, undisclosed bank account number 1028-2014238 in Karnataka State Co-operative Apex Bank Ltd, Koramangala branch held in the name of the assessee was found.

2.1 On verification of the same, it was noticed that there were several cash deposits in the said bank account. It was also found that the assessee was not maintaining any books of accounts for the real estate business carried on by him and the cash book prepared was not considered by the Ld.AO. The seized material found during the course of Search and Seizure operation revealed that the assessee had made cash deposits to the tune Rs.1,46,50,000/- into his bank accounts during the year 01.04.2006 to 31.03.2007 relevant to assessment year 2007-08 and the peak credit was coming to Rs.88,50,000/-. The Assessing

Officer found that the income declared by the assessee is not commensurate with the credits appearing in the bank account. The assessee submitted that all the brothers stay together in the same house the surplus cash in the hand of one family member can explain the cash deposit in the hand of other family member.

2.2 The Ld.AO considered the arguments of the assessee and calculated the peak, after considering the cash deposits and cash withdrawals made by all the account holders in the above mentioned bank accounts of the family members and the bank account of the appellant. While calculating the peak credit of the family members, the following aspects were considered by the Ld.AO:

- a. The bank accounts of the appellant Shri K. Nagesh Reddy, Shri Jaipal Reddy, Shri Venkataswamy Reddy, Shri Ramesh Reddy and Smt. Radhika Reddy were clubbed to arrive at the peak credit.
- b. The cash withdrawn and the cash deposited by the account holders was merged date-wise.
- c. The cash withdrawn by the account holder is considered as the cash available with the family members for any deposits made by them subsequently.
- d. The cash withdrawn by persons other than the account holders was not considered as cash available with the family members since there was no evidence to show that the cash withdrawn by others was actually handed over to the account holders.
- e. Thus, the peak credit was arrived at after merging the bank accounts of the family members.

2.3 The Ld.AO observed that as per the bank statement, the assessee made cash deposits of Rs.1,46,50,000/- into his bank accounts during the year. Out of cash deposits of Rs.1,46,50,500/- made by the assessee into the bank account at Karnataka State Cooperative Apex Bank Ltd, Koramangala branch, the peak credit comes to Rs 88,50,000/- (as worked by Assessing Officer in his order) which could not be explained by the assessee and which is assessed u/s 68 of the Act. The Assessing Officer relied on decision of *Hon'ble Supreme Court* in the case of *Sushil Kumar Sharma (HUF) vs CIT* reported in 69 *taxmann.com* 219(SC) wherein dismissed the SLP against decision of *Hon'ble High Court* ruling that when assessee failed to give list of persons who advanced cash to him along with their confirmation in respect of huge amount of cash deposited in its bank account, the Assessing officer was justified in adding said amount to assessee's taxable income U/s 68.

2.4 The assessee had submitted that the cash withdrawn by employees should also be considered as these persons have withdrawn the cash on behalf of the family members and handed over to the concerned member. The Ld.AO discussed in his order which is as under:

"The assessee had also submitted that the cash withdrawn by the individuals as reflected in the bank statement obtained from the bank and reproduced above at page 4-7 should also be considered as the cash available on hand since these persons who had withdrawn the cash on behalf of the assessee were his employees and they had handed over the cash to him. The contention of the assessee is that the cash withdrawn by the above said persons was available with him while making the cash deposits during the year.

4.11 Vide order sheet noting dated 16.03.2015, the assessee was asked to furnish the details of the above

said persons like name, address and also to produce the said persons physically for verification on 20.03.2015. The assessee appeared on 20.03.2015 but did not produce the above mentioned persons and did not file any details of the above mentioned persons. The assessee stated that the above mentioned persons were his employees and that the assessee had withdrawn the amount by issuing bearer cheques in the name of his employees. The assessee enclosed copies of the bearer cheques and requested to consider the withdrawal made through these persons as the cash available on hand.

4.12 The assessee had not produced any evidence to show that the money withdrawn by the above persons were handed over to the assessee. Normally in the transaction involving withdrawal of huge cash from the bank, the job is entrusted to a single person who is trust worthy. In the instant case, several people were withdrawing the cash from the bank. The assessee did not produce any evidence to show that these persons were employed with him. Further, if the money has been withdrawn by the so called employees, nothing prevented the assessee from giving the details like address, etc and producing them before the undersigned for verification. Therefore, the contention of the assessee that the money withdrawn from the bank by the persons other than the assessee should also be considered as cash available on hand is rejected. Thus, the explanation offered by the assessee in respect of the cash credits to the extent of Rs 88,50,000/- in the bank account is not satisfactory.”

3. Aggrieved by the order of AO, assessee preferred appeal before Ld.CIT(A). After observing the assessment order passed, upheld the addition by observing as under:-

“Thus, it can be seen that the the only grievance of the appellant is that the cash withdrawals made by the employees by bearer cheques has not been considered for the working of peak. The appellant has not brought any fresh evidence or argument in support of his claim. Therefore, I agree with the reasoning given by the Assessing Officer. Additions made by him are, therefore, UPHELD. The appeal raised on this ground is DISMISSED.”

3.1 Aggrieved by the order of Ld.CIT(A), the assessee is in appeal before us now on following grounds.

“1. The order of the Honorable Commissioner Of Income Tax (Appeals) in so far as it is against the appellant, is

opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The Honorable Commissioner Of Income Tax (Appeals) has erred in confirming the additions for the cash deposits made to bank as unexplained cash credits.

3. The Assessing officer and the Honorable Commissioner Of Income Tax (Appeals)- has erred in not considering the withdrawals made by your appellant through bearer cheques in the name of the employees.

4. The Honorable Commissioner Of Income Tax (Appeals) has not considered the valid explanation given by your Appellant in this regard.

5. That on the facts and Circumstances of the case, the Honorable Commissioner Of Income Tax (Appeals) was not justified in adding back the cash deposits treating it as unexplained cash credits.

It is respectfully submitted that we may be permitted to add, delete and / or put forward any other grounds and fact of appeal and other related points at the time of hearing.”

4. Before us, the assessee filed additional evidence in the form of confirmations given by the employees along with their identity proof. It is submitted that the documents may be remanded for verification in the interest of justice to assessee. The Ld.AR submitted that assessee was unable to produce these evidences before the authorities below due to lack of time granted during the proceedings before the Ld.CIT(A). She thus prayed for the admission of these evidences filed before us today.

4.1 On the contrary, Ld.CIT.DR vehemently opposed the admission of additional evidence. He placed reliance on following decisions in support:-

- i) decision of *Hon'ble Madhya Pradesh High Court* in case of *CIT vs. Babulal Nim* reported in [1963] 47 ITR 864 (MP)

- ii) decision of *Hon'ble Chennai Tribunal* in case of *Kanniappan Murugadoss vs. ITO* reported in [2017] 79 *taxmann.com* 244 (*Chennai-Trib.*)

4.2 The Ld.CIT.DR submitted that sufficient time was available to assessee during the assessment proceedings however, the same was not provided. He submitted that the assessee was unable to link the cash withdrawn from the bank with the cash deposits and therefore the addition is justified.

5. We have perused the submissions advanced by both sides in the light of records placed before us.

5.1 The first issue that needs to be considered is whether the additional evidence filed by the Ld.AR today deserves to be admitted or not. In order to admit the additional evidence, as per Rule 29 of IT Rules, certain criteria needs to be satisfied. The primary requirement is, whether sufficient opportunity was granted to assessee for producing these evidences before the authorities below.

5.2 We note that the assessment order is dated 27.03.2015. Assessee was issued notice u/s. 143(2) on 01.12.2014. Assessee filed various details and replied on 11.12.2014. Thereafter vide order sheet notings dated 16.03.2015, assessee was asked to furnish the details of the persons who has withdrawn cash on behalf of the assessee and handed over the cash to assessee. The assessee was asked to produce these persons physically for verification on 20.03.2015. The details of the payments withdrawn and deposited has been tabulated by the Ld.AO on page 11 of the assessment order. Further, on an appeal before Ld.CIT(A), the notice of hearing was issued to assessee on

03.06.2016 and the impugned order has been passed on 25.06.2016. From the above dates, we note that assessee was not granted sufficient time to produce the details/confirmations/persons/evidences before Ld.AO/Ld.CIT(A).

5.3 The next requirement as per Rule 29 is whether these documents would be relevant to consider the claim of assessee.

5.4 On perusal of these documents, we note that prima facie the confirmations filed by these persons deserves verification which would help in disposing of the issue under consideration in accordance with law. We note that in the paper book that was filed before the authorities below, the assessee has given bank certificates wherein it is certified that the amounts have been withdrawn by various parties in cash. The said details forms part of the assessment order. The details / evidences now filed by assessee needs to be considered in light of the bank statements.

In our considered opinion, the evidences filed by Ld.AR before us needs to be verified in order to appreciate the claim as per law.

6. Decisions relied by Ld.CIT.DR are on different facts which are distinguishable with the present case before us. More particularly, the decision of *Hon'ble Madhya Pradesh High Court* relied by Ld.CIT.DR deals with an issue as to whether Rule 29 enables the revenue to tender fresh evidence in support of the new point was to make out a new case which, *Hon'ble Court* answer in negative.

6.1 We therefore inclined to admit the additional evidence filed by assessee and remand the same to the Ld.CIT(A). The Ld.CIT(A)

shall follow all necessary procedures to verify these documents and to consider the claim of assessee in accordance with law. Needless to say that proper opportunity of being heard shall be granted to assessee in accordance with law.

7. In respect of all other assessees before us, the grounds raised are identical and similar prayer has been raised by the Ld.AR by filing additional evidences being confirmations and identity proofs by the parties who have withdrawn cash from respective accounts. We are admitting all these documents and remand with identical directions as given in case of Shri K. Nagesh Reddy hereinabove.

8. For Assessment Year 2008-09, we note that there is an additional issue raised by assessee in ITA No. 1538/Bang/2016 in case of Shri Nagesh Reddy that reads as under.

“5. The Learned Assessing Officer has also not considered the revised return filed u/s 139(5) for the return filed u/s 153A of the act.

6. That on the facts and Circumstances of the case, the learned Assessing Officer was not justified in adding the cash deposits and Bank Interest Income of Krishna Reddy HUF treating it as personal income of the Appellant.”

8.1 It is submitted by Ld.AR that assessee filed revised return declaring interest income of Rs. 4,48,957/-. Subsequently another return was filed on 18.02.2015 declaring interest income of Rs. 2,366/- and stated that the bank account No. 2015023 with Karnataka State Co-operative Apex Bank Ltd., Koramangala branch does not belong to the assessee but to the HUF of his father Shri Krishna Reddy . The Ld.AO was of the opinion that amount of Rs. 4,46,591/- pertaining to interest income from bank account no. 5023 was not offered to tax in the revised

return dated 18.02.2015. He thus added the said amount in the hands of the assessee.

8.2 Aggrieved by the addition, assessee preferred appeal before the Ld.CIT(A). The Ld.CIT(A) confirmed the addition made by the Ld.AO.

8.3 Aggrieved by the order of Ld.CIT(A), the assessee is in appeal before us.

9. We have perused the submissions advanced by both sides in the light of records placed before us.

9.1 It is the submission of Ld.AR that the property belongs to the HUF and that assessee proceeded to complete the sale proceeds being a member of HUF. She submitted that the taxability of capital gain on sale of such property has been considered on protective basis in the assessment carried out in case of HUF. She also submitted that deduction has also been claimed u/s. 54 by the HUF. In sofaras the interest income added in the hands of the assessee is concerned, it has been stated that the bank account no. 5023 at Karnataka State Co-operative Apex Bank was mistakenly declared by assessee in the return filed on 27.10.2014. She prayed that tax is to be computed in the hands of the right person and in the present facts of the case, the capital gains and interest is to be computed in the hands of the HUF and not hands of the individual as held by the authorities below.

9.2 In our opinion, we agree with the contention of Ld.AR. It is the ratio by *Hon'ble Supreme Court* in case of *ITO vs. Ch. Atchiaiah* reported in *1996 AIR 883*.

“We are of the opinion that under the present Act, the Income Tax Officer has no option like the one he had under the 1922 Act. He can, and he must, tax the right person and the right person alone. By "right person", we mean the person who is liable to be taxed, according to law, with respect to a particular income. The expression "wrong person" is obviously used as the opposite of the expression "right person". Merely because a wrong person is taxed with respect to a particular income, the Assessing Officer is not precluded from taxing the right person with respect to that income. This is so irrespective of the fact which course is more beneficial to the Revenue.”

Accordingly, we remand these issues to the Ld.CIT(A) to be dealt with in accordance with law, without being prejudiced with the view already taken by the authorities below.

Accordingly, all the grounds raised by all the assesseees in the appeals filed before us stands allowed for statistical purposes.

In the result, all the appeals are allowed for statistical purposes.

Order pronounced in open court on 23rd December, 2021.

Sd/-
(B.R. BASKARAN)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 23rd December, 2021.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore