

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./I.T.A. Nos.156, 157, 158 and 159/Chny/2020
निर्धारण वर्ष/Assessment Years: 2009-10, 2010-11, 2011-12 & 2013-14

Shri S. Prakash,
No. 10, Chellappa Puram, 5th Street,
Doomlight Ground, Tirupur,
Tamil Nadu 641 604.
[PAN:AIPPP3850L]

Vs. The Deputy Commissioner of
Income Tax,
Central Circle 1,
Coimbatore.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri I. Dinesh, Advocate
प्रत्यर्थी की ओर से / Respondent by : Shri AR V Sreenivasan, Addl. CIT
सुनवाई की तारीख / Date of hearing : 02.02.2022
घोषणा की तारीख / Date of Pronouncement : 10.02.2022

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

These four appeals filed by the assessee are directed against different orders of the Id. Commissioner of Income Tax (Appeals) 16, Chennai all dated 28.11.2019 relevant to the assessment years 2009-10, 2010-11, 2011-12 and 2013-14. All the appeals were heard together and being disposed of by this common order for the sake of brevity. The only effective ground raised in all the appeals relate to confirmation of addition made towards unexplained cash credits under section 68 of the Income Tax Act, 1961 ["Act" in short].

2. Facts are, in brief, that the assessee is a managing partner of the firm Sri Vaari Finance engaged in money lending business. A survey under section 133A of the Act was conducted in the firm on 06.03.2014. In the post search enquiries, bank account statements in the name of the assessee were obtained under section 131(1A) of the Act. On verification of the bank statement, the Assessing Officer called for source for the credits appearing in the bank accounts along with evidence. The assessee has submitted before the Assessing Officer that the credits appearing in the bank accounts are actually amounts received and withdrawn during the course of business. Since the assessee could not substantiate his claim by any evidence or proof, the entire credits appearing in the bank accounts were treated as unexplained credits and added to the total income of the assessee for all the assessment years under appeal. On appeal, after considering the submissions of the assessee as well as facts of the case, the Id. CIT(A) confirmed the additions made under section 68 of the Act for all the assessment years under appeal.

3. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the assessee is engaged in money lending business without maintaining any books of

accounts. It was submitted that the credits appearing in the bank accounts are circulating cash deposits as well as substantial withdrawals were also made from the deposits. Alternatively, the Id. Counsel for the assessee has submitted that as could be evidence from the bank statement that there are withdrawals against the deposits, it was prayed that the peak credit alone would have to be treated as unexplained by applying peak credit theory.

4. On the other hand, the Id. DR strongly supported the orders of authorities below.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including paper book filed by the assessee for all the assessment years under appeal. In this case, the assessee is engaged in money lending business and not maintained any books of accounts. It was the submissions of the Id. Counsel that the credits appearing in the bank accounts are circulating cash deposits as well as substantial withdrawals were also made from the deposits as could be evidence from the bank statements. By referring to the bank statements, the Id. Counsel for the assessee has pointed out that the withdrawals were the source for the deposits made in the bank account. Alternative plea was taken during the course of hearing that the

peak credit alone would have to be treated as unexplained. Keeping in view of the business of the assessee and as could be evidence from the bank statements that there are withdrawals and deposits made; we are of the considered opinion that the peak credit theory has to take into consideration before treating the entire cash deposits as unexplained cash credits. Accordingly, we set aside the order passed by the Id. CIT(A) for all the assessment years under appeal and remit the matter back to the file of the Assessing Officer to consider the peak credit alone as unexplained cash credit and decide the issue afresh in accordance with law after affording an opportunity of being heard to the assessee for all the assessment years.

6. In the result, all the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on 10th February, 2022 at Chennai.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 10.02.2022

Vm/-

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.