

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.2090/Chny/2016
(निर्धारण वर्ष / Assessment Year: 2008-09)

Dr. S. Dhanalakshmi, No.33, Dhanam Clinic Opp. Govt. Hospital, Perundurai, Erode Dist. – 638 052.	बनाम/ Vs.	Income Tax Officer Ward-2(2), Erode.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AHFPD-2669-G		
(□ पीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri T.S. Lakshmi Venkataraman (FCA)- Ld. AR
प्रत्यर्थी की ओरसे/Respondent by	:	Shri P. Sajith Kumar (JCIT) –Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	14-02-2022
घोषणा की तारीख / Date of Pronouncement	:	21-02-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal is in second round of appeal before us since the matter, in the first round, was remitted back to the file of Ld. AO for fresh examination vide order dated 13.09.2013. Accordingly, the assessment has been re-framed u/s 143(3) r.w.s. 254 on 24.03.2015 wherein the additions have again been repeated as made in original assessment order dated 31.12.2010. Upon further appeal, learned Commissioner of

Income Tax (Appeals)-3, Coimbatore [CIT(A)] has dismissed the appeal vide order dated 30.03.2016 which is under challenge by the assessee before us. The ground raised by the assessee read as under: -

1. The order of the learned CIT (A) -3, Coimbatore, in dismissing the appeal of the appellant is against the facts of the case and is not legally justified.
2. The AO is not justified in not carrying out the directions of ITAT 'C' Bench, Chennai passed in ITA No.1893 and 1894/MDS/ 2012 Dt: 13.09.13. The learned CIT (A) is also not justified in confirming the additions made by the AO and dismissing the appeal of the appellant.
3. The learned CIT (A) in para 6.2 , page no 5 of his appellate order, having observed that a sum of Rs.22,26,919/-is allowed as source for cash deposits made during the financial year 2007-08, should have at least given relief lto the above extent instead of dismissing the appeal in entirety.
4. In the course of proceedings before the AO the appellant filed detailed submissions Dt: 09.01.2015 explaining the details for debits and credits in KVB SB A/c and ICICI SB A/c and also details of withdrawals which are available again for cash deposits. A copy of the above detailed submissions was also filed with the CIT (A) in the course of appeal proceedings. Both the AO and CIT (A) are not justified in not considering the above submissions in finalizing the assessment and appellate orders.
5. In para 6 of ITAT order Dt: 13.09.2013 there is a specific direction to examine the peak credit position, which exercise has not been done by the AO and CIT (A) is also not justified in upholding such action of the AO.
6. The appellant also produced evidences before the AO for having availed personal loans to an extent of Rs.21,78,734/- from GE money, India bulls and ICICI Bank Ltd which are available for cash deposits in bank SB A/c's. This aspect has not been considered both by the AO and CIT (A).
7. In view of the above grounds the additions made by the AO and sustained by CIT (A) may be deleted and justice rendered.

An additional ground of appeal has also been filed on 06.11.2021 which read as under: -

The AO is not justified in invoking the provisions of Section 68 of the Act to assess the alleged unexplained credits in ICICI Bank account to the extent of Rs.92,09,935/- and another sum of Rs.55,86,121/- when no books of accounts were maintained by the assessee.

Since the additional ground of appeal does not require appreciation of new facts, the same is admitted for adjudication on merits.

2. As evident, the assessee is aggrieved by certain addition on account of cash deposited by the assessee in various savings bank accounts.

3. The Ld. AR assailed the additions, inter-alia, on the ground that the provisions of Section 68 could not be invoked by Ld. AO since no books of accounts were maintained by the assessee. The Ld. AR also placed on record cash flow statement of this year to demonstrate that there was cash deficit of Rs.4,62,178/- only. The Ld. DR, on the other hand, submitted that the assessee could not discharge the onus of proving the source of cash deposit and therefore, the additions were justified.

Having heard rival submissions and after due consideration of relevant material on record, our adjudication would be as given in succeeding paragraphs.

4. The material facts are that the assessee is a resident individual and engaged in Medical Profession. The original return of income was filed at Rs.3.66 Lacs which was determined at Rs.153.91 Lacs in an assessment framed u/s 143(3) on 31.12.2010. In other words, the assessee was saddled with additions of Rs.150.26 Lacs which include additions of Rs.92.39 Lacs & Rs.55.86 Lacs being unexplained credit in ICICI Bank Account and Karur Vysya Bank account respectively. Another addition of Rs.2 Lacs was made being difference in Bank Loan Account.

5.1 In the set-aside proceedings, the assessee was asked to give details and evidences in support of cash transaction. However, it was submitted that in the absence of any account books, it was not possible to give details of each transaction entered into by the assessee. It was noted by Ld. AO that the assessee was engaged in medical profession

and running a clinic in Perundurai. Though a Medical Professional, the assessee did not maintain any books of accounts in connection with her profession. Therefore, the deposit of Rs.148.26 Lacs were held to be assessee's receipts from medical profession and accordingly, added to her income.

5.2 The assessee pleaded that the cash was withdrawn and re-deposited again and therefore, peak credit may be added to the income of the assessee. However, finding that opening balances, in both the bank accounts, were meager amount, it was held by Ld. AO that there was not enough balance for withdrawal. Further cash deposit in each day was followed by inward clearance i.e. payment to third persons. Therefore, the peak credit plea was also rejected. Another addition of Rs 2 Lacs stem from the fact that there was difference of Rs 2 Lacs in Car Loan Account and no explanation could be furnished by the assessee.

5.3 Though the assessee preferred further appeal, however, Ld. CIT(A) concurred with Ld. AO's stand. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

6. Upon careful consideration of factual matrix, it could be gathered that the assessee has made cash deposit in bank accounts maintained by her. The assessee is engaged in Medical Profession and obligated under law to maintain day-to-day cash book and other books. However, no such books have been maintained. The Ld. AR has pleaded that no addition could be made u/s 68 for such cash deposits since no books have been maintained by the assessee. However, this plea shall fail because of the fact that the cash deposits have been treated to be the assessee's professional receipts and not unexplained cash credit.

Secondly, the assessee was obligated to maintain books of account, which she has not. Therefore, the assessee herself is at fault and now debarred from taking this plea. Another fact to be noted is that Ld. AR has filed cash flow statement for this year which would contradict the plea that the assessee has not maintained any books of account. Therefore, this plea would have no legs to stand and we reject the same.

7. On merits of the case, upon perusal of Para 6.2 of the impugned order, it could be seen that Ld. CIT(A) has rendered a finding that the assessee has shown cash withdrawals for Rs.22,26,919/- which include personal loan of Rs.21,78,734/- as obtained from various financial institutions. Therefore, it could be said that the credit to that extent stand explained. These findings remain uncontroverted before us and therefore, the addition, to the extent of Rs.22,26,919/- could not be sustained. The balance deposit of Rs.1,25,99,137/- (Rs.1,48,26,056/- minus Rs.22,26,919/-) has been added by Ld. AO as receipts from medical professional. However, in our considered opinion, entire receipts could not be held to be the income of the assessee since the only source of income for the assessee was earnings from Medical Profession. No other source of income has been shown to us. Even if it is assumed that the deposits were nothing but professional receipts, entire deposit could not be added to the income of the assessee. Considering the fact that the assessee is a Medical professional and also in view of the fact that Ld. AR is able to produce cash flow statement before us wherein cash deficit is shown to be Rs.4,62,178/- only, we are inclined to hold that 10% of these receipts of Rs.1,25,99,137/- was to be brought to tax as unaccounted professional income. The same translates in to an addition of Rs.12,59,914/-. The balance addition stand deleted. The addition of

Rs.2 Lacs stand confirmed since no evidence could be produced by the assessee at any stage of the proceedings. The Ld. AO is directed to re-compute the income of the assessee in terms of our above order.

8. The appeal stands partly allowed in terms of our above order.

Order pronounced on 21st February, 2022.

Sd/-
(MAHAVIR SINGH)
उपअध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 21-02-2022
EDN/-

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded 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