

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI**

श्री जी मंजूनाथा, लेखा सदस्य के समक्ष, श्री अनिकेश बनर्जी, न्यायिक सदस्य एवं
**BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A No.:1640/Chny/2019
निर्धारण वर्ष /Assessment Year: 2014 - 2015

Shri. N. Ramu,
No.158, P Block,
Agathiyar Block, Villivakkam,
Chennai – 600 049

The Income Tax Officer,
Non-Corporate Ward – 10(5),
Vs. Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Chennai – 600 034.

PAN : AHUPR 2613M

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Mr. G. Baskar, Advocate
: Mr. G. Johnson, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 23.05.2022
घोषणा की तारीख/Date of Pronouncement : 27.05.2022

आदेश /O R D E R

PER ANIKESH BANERJEE, JM:

The instant appeal was filed by the Assessee against the order of the learned Commissioner of Income Tax (Appeals)-12, Chennai {in brevity the CIT(A)} bearing Appeal No.ITA No.19/CIT(A)-12/2017-18; dated 26.03.2019 passed u/s.250(6) of the Income Tax Act, 1961, (hereinafter for brevity the Act). The impugned appeal order was raised from the order of the learned Income Tax Officer,

Non-Corporate, Ward-10(5), Chennai-600034 by order dated 28.12.2016 passed u/s.143(3) of the Act.

2. The grounds are raised by the Assessee which are as follows:

“Against order of CIT(A)-12 in I.T.A. No.19/2017-2018, dated 26.03.2019)

1. The order of the Commissioner of Income Tax (Appeals) is opposed to law and contrary to the facts and circumstances of the case.

2. Violation of the Principles of natural justice:

2.1. The order of the CIT(A) is erroneous and illegal insofar as the AO and CIT(A) has not provided copies of statement obtained from the customer of the Appellant in the remand proceedings and not provided opportunity to cross examine them but places reliance on the same to reject the claim of the Appellant.

2.2. The Assessing Officer grossly erred in not furnishing the statement and not providing opportunity to cross examine four persons whose statements were relied on in the remand report dated 16.01.2019.

2.3. The CIT(A) failed to furnish the copies of the statement recorded from the four persons in the remand report dated 16.01.2019 of the assessing authority before relying on the same for passing the appeal order.

2.4. The CIT(A) ought to have appreciated that the adverse material should be provided to the appellant before placing reliance on the same, failing which the order of the appellate authority is in violation of principle's of natural justice.

2.5. The CIT(A) failed to see that violation of the principles of natural justice renders the entire order a nullity in the eyes of law.

3. Addition of cash deposit (Rs.78,40,000/-):

3.1. The CIT(A) erred in upholding the addition of cash deposits in bank account by observing

- that the appellant has not satisfactorily explained the source.
- 3.2. The CIT(A) ought to have deleted the addition u/s.68, since the appellant has explained the source of deposit in the bank account.
 - 3.3. The CIT(A) ought to have in the alternate, restricted the addition by estimating peak credit.
 4. The Appellant craves leave to file additional grounds of appeal at or before the time of hearing.

During the appeal proceedings, the learned Counsel of the Assessee, Mr. G. Baskar, Advocate filed a petition for admission of the additional evidence under Rule 29 of the ITAT Rules, 1963. The additional evidence is as follows:

"1. It is submitted that the above appeal is preferred by the Petitioner / Appellant against the Order of the CIT(A)-12 in I.T.A. No.19/2017-18; dated 26.03.2019.

2. The Assessee, a retired technician (Grade - 1) from Integral Coach Factory, Chennai who hails from a very poor family is now deriving income from stationary and Milk Business. The Assessee and his family are solely dependent on the sale of milk, ghee, curd to the locals and tea shops located nearby. The nature of business demands cash collection as well as payment to fulfill the daily needs. The Assessee being an illiterate couldn't maintain the accounts of the business properly. The cash deposits in the bank accounts maintained by the Assessee totaling to Rs.74,80,000/- are treated as unexplained u/s.69A of the Income Tax Act, 1961 and the Assessing Officer completed the assessment vide an order dated 28.12.2016. The CIT(A) sought for a remand report wherein the Assessing Officer summoned a list of customers out of which three customers deposed statements which were neither produced before the Assessee nor an opportunity of cross examination was provided. The CIT(A) confirmed the order of assessment.

3. Subsequently, after the Order of the CIT(A) was passed, the Assessee with the help of the Chartered Accountant prepared a cash-flow summary along with the monthly cash-flow and statement of receipts and payments to co-relate the same with the cash deposits in the bank accounts. It is submitted that these cash flow summary statements are relevant to the issue on hand. Hence, the same are submitted before this Hon'ble Tribunal."

3. The brief facts of the case is that the Assessee deposited cash in the bank accounts amounting to Rs.78,40,000/- which was treated by the Id AO as unexplained deposit u/s.69A of the Act and the same was added back to the total income of the Assessee. The Assessee was a Government Serviceman and after his retirement from service started a business of milk selling to various parties. As per the assessee, the cash was deposited in the Bank account by selling of milk. During the assessment, the Assessee explained the source of cash deposited in the bank accounts but the learned Assessing Officer added back the amount to the total income of the Assessee. Aggrieved Assessee filed an appeal before the learned CIT(A) against the order of the Id AO. A remand report was called for in appeal proceeding. After considering the remand report, the learned CIT(A) upheld the order of the learned AO.

4. Aggrieved Assessee filed an appeal before the Income Tax Appellate Tribunal [ITAT]. At the time of hearing before the Bench, the learned Counsel of the Assessee, Mr. G.Baskar pointed out that

the Assessee deposited cash in different dates but in the month of October and February the cash collection was higher while considering to the other months, i.e. Rs.35,41,572/- in the month of October and Rs.16,94,184/- in the month of February. The learned Counsel for the Assessee submitted the cash-flow statement as an additional evidence which is annexed in Page No.73 of the paper-book.

5. The learned Departmental Representative pointed out that during the appeal proceedings, the remand report was called for wherein the Assessee submitted six names for verification who purchased the milk from the assessee. Out of the six names, three persons had denied the transaction & confirmation letters. One party confirmed that he purchased the milk only two liters. All four parties made contradictory statements in relation to submission of assessee. Hence, the source of the cash was not having any evidentiary value. Accordingly, the learned Departmental Representative relied on the appeal order, Point No.6 at Page No.10 which is reproduced as below:

"6. I have examined the facts of the case, the reports of the AO and submissions of the AR. The Appellant has failed to satisfactorily explain the source of cash deposits and the same deserves to be assessed for the following reasons:

1. The Appellant has failed to submit any accounts to show the day-to-day revenue and expenditure from the business. Cash generated from the business is not recorded on daily or weekly basis in any ledger or even in a petty notebook or in

any loose sheets. The amount was not deposited in the bank accounts on a regular basis. There is no link to show that the deposits made are related to the milk business.

2. If the Appellant's argument that the deposits in the bank accounts represent milk business regularly done by the Appellant, the same pattern should have been reflected in the periodicity of cash deposits. Analysis of bank accounts show that substantial deposits were made only in the month of October, November and January. In fact, in the month of October alone the cash deposit of Rs.27,77,000/- were made. There are many months where there were no cash deposits. However, there was no satisfactory explanation for the above.
3. Though the Appellant's case was taken for scrutiny and explanations were called for by the AO and hearings were conducted on 16.06.2016 and 23.06.2016, 17.11.2016 and 23.11.2016, the AR did not explain the source as income from milk business or stationery trading. Only on the subsequent date 26.12.2016, the AR for the first time explained the source of cash deposits as income from milk business and stationery trading. This shows that the above claim is clearly an afterthought.
4. In remand proceedings, the AO conducted cross verification to examine the veracity of the claim in respect of all the six customers as per the list and confirmation letters submitted by the Appellant during the appeal proceedings. Out of the six customers, three customers, viz. Shri Mohd. Ali, Shri M. Gopalakrishnan and Shri. C.K. Ashokan appeared and deposed on oath before the AO that they did not issue any confirmation letter to the Appellant and the said letter filed by the Appellant is not genuine. Shri Gopalakrishnan deposed that he has purchased only two litres of milk per day on an average from the Appellant during the Financial Year 2013-2014 and Shri Mohd. Ali deposed that he has purchased only five litres of milk per day on an average from the Appellant during that year. The third customer, Shri Ashokan deposed that he stopped purchasing milk from the Appellant since 2012, Smt. Leela, another customer stated to the AO that due to

health reasons she can't appear before the AO but informed in writing that she had not purchased milk from the Appellant for herself or for the tea stall. In one case, the summons returned unserved and in the last case none appeared in response to the summons. From this inquiry made by the AO during the remand proceedings, it is clear that the Appellant's explanation that he received money from the above six customers for milk supply and the same were deposited in the bank account is false. The meager amount confirmed by two customers is insignificant and cannot be explained even a minor part of the cash deposits. However, for this also there is no credible evidence to link the receipts to the cash deposits.

5. The Appellant submitted confirmations in one sentence from the above mentioned six persons as a reply to the remand report. However, it is seen that these are made in uniform format and signatures of two persons vary (Ashokan and Leela) from their statement or communication to the AO in response to the summons. The above letters do not contain any details of the transactions with the Appellant and the period and details of payment, etc. It is clear from these letters that they are not reliable and deserve to be not accepted as evidence in support of the source of huge cash deposits in the bank accounts of the Appellant.
6. The Appellant has not been able to establish that the withdrawals made are re-deposited in the bank accounts. There is no clear link between the above. This is not a case where peak credit can be estimated for the purpose of assessment.

In the above facts and circumstances, as the Appellant failed to satisfactorily explain the source of cash deposits with credible evidence in support of the claim of source of income, the addition of Rs.78,40,000/- made in the Assessment Order is confirmed."

6. The learned Counsel for the Assessee, Mr. Baskar mentioned that the statements of the parties are contradictory in nature in

relation to forming the evidences. He further mentioned that the learned Assessing Officer did not allow the assessee for cross-verification related to the statements of the parties. The natural justice was denied for the acceptance of the statements by the learned Assessing Officer. He further pointed out that the order of the Id. CIT(A) mentioned that in October, November and January, substantial deposits were made. In the cash book the substantial cash is available which the source of deposit of cash is.

7. We heard the rival submissions, considered the documents available in the records. The learned CIT(A) took cognizance of the remand report without allowing the Assessee for cross-examining the four statement whose statement are contradictory with the Assessee's submission. Further, we accepted the additional evidence. Accordingly, the cash-flow statement should be verified by the Revenue authorities. Prima facie, it is accepted that, maintaining of cattle and generation of the milk and also selling the same for earning is primarily accepted. There is no question about the existence of the business. The only issue is the cash generation for depositing in the bank account. It is to be directed that the issue should be further re-examined by the learned CIT(A) taking cognizance of the documents filed by the Assessee and a reasonable opportunity be allowed for cross-examinations related to the four parties. Thus, we direct to set aside the matter before the learned

CIT(A) *de novo* for further consideration of the issue. Furthermore, a reasonable opportunity should be given to the Assessee for his contention.

8. In the result, the appeal of the Assessee in I.T.A No.:1640/Chny/2019 is allowed for statistical purposes.

Order pronounced in the court on 27th May, 2022 at Chennai.

Sd/-

(जी मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(अनिकेश बनर्जी)

(ANIKESH BANERJEE)

न्यायिक सदस्य एवं / JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 27th May, 2022

IA, Sr. PS

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