

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC - A” BENCH : BANGALORE**

BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT

ITA No.23/Bang/2022
Assessment Year : 2016-17

Shri. Konenki Vijay Kumar, No.47, 4 th Cross, 1 st Main, Brindavan Layout, Dr. AMC Road, Kavalbyrasandra, Bengaluru – 560 032. PAN : AFCPV 8596 H	Vs.	CIT(Appeals) - 12, Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Ms. Reshma Marathi, CA
Revenue by	:	Shri. Ganesh R Ghale, Standing Counsel for Department.

Date of hearing	:	27.07.2022
Date of Pronouncement	:	10.08.2022

ORDER

This is an appeal filed by the assessee against the order dated 12.11.2021 of CIT(A) - 12, Bengaluru, relating to Assessment Year 2016-17.

2. The assessee is an individual (non-resident). He filed return of income for Assessment Year 2016-17 declaring 'Nil' income. He had during the relevant previous year deposited in his bank account a sum of Rs.13,10,000/-. To verify the source of cash deposited in the bank account, the case of the assessee was selected for Scrutiny Assessment. According to the AO, the assessee did not participate in the assessment proceedings and therefore the AO passed an order under section 144 of the Income Tax

Act, 1961 (hereinafter called 'the Act'), making an Ex-parte Best Judgment Assessment treating the cash deposited in the bank account as unexplained and added the said sum to the total income of the assessee.

3. Before the CIT(A), the assessee pointed out that he was a non-resident residing permanently in West Germany. His parent live in Bangalore and they deposited the cash out of previous withdrawal from the same bank account, agricultural income of parents and their past savings. The assessee pointed out that the AO was not justified in passing an ex-parte order of assessment because the assessee filed letter dated 16.11.2018 electronically explaining the source of cash deposits along with supporting evidence. It was explained that the said Bank Account in which Cash Deposits was a Jointly held Saving account of the Assessee with his Parents in India. It was explained that the Cash Deposits of Rs.13.10,000/-were made to meet the Assessee's Sister's Marriage Expenses and the source of the said Deposits was explained as follows:-

<i>Sl. No.</i>	<i>Amount Deposited</i>	<i>Explanation</i>
1.	Rs.4,20,000/-	<i>Cash withdrawn in the earlier week was redeposited into the Bank Account. Refer Withdrawal transactions dated 31.07.2015 and 06.08.2015</i>
2.	Rs.8,90,000/-	<i>Joint Account Holders, Parents of the Appellant have earnings from the Agricultural Land in Andhra Pradesh. Income accumulated from earlier years and earnings during FY 2015-16 were deposited into the Bank Account to meet the Marriage</i>

		<i>expenses of the Appellant's Sister.</i>
--	--	--

The following supporting documents were filed by the Assessee :-

- a. Tax returns of the Assessee filed in Germany for Fiscal Year 2016.
- b. Statement of SBI Account regarding past withdrawals.
- c. Agricultural Income Certificate for FY 2015-16 of both the Parents with the Agricultural Land Ownership documents duly certified by the Village Revenue Office.

4. The CIT(A) accepted explanation to the extent of Rs.4,20,000/- being past cash withdrawals from the same bank account but confirmed addition of Rs.8,90,000/- for the following reasons:

- “7. *The bank account details submitted by the assessee are also seen. It is seen that the appellant had indeed withdrawn an amount of Rs. 4,20,000/- one month prior to the deposit of cash during August 2015. To this extent the assessee is able to explain the cash deposit to the extent of Rs. 4,20,000/-.*
8. *The appellant has claimed that his parents hold agricultural land in Andhra Pradesh and all the income accumulated from earlier years to the extent of Rs 890000 was also deposited in the bank account. The transactions in the said bank account prior to this date do not reflect any such possibility. The parents of the appellant are pretty old and are residing in Bengaluru. The agricultural land is situated in Kurnool district and is also dry land in nature. The appellant is a non-resident staying in Germany. It would be farfetched to imagine that appellant living in Germany of his parents living in Bengaluru were able to cultivate any lands in Kurnool and were able to have any accumulated earnings there from. Any absentee venture of this nature could have only yielded further loss of income. It appears that the assessee is not revealing the true nature and source of*

Rs. 8,90,000/- For lack of any credible explanation or for fear of incomes being taxed under any other source, the appellant appears to have claimed accumulated agricultural earnings as the source for this amount of Rs.8,90,000/-. The explanation filed by the assessee is bereft of any credibility, supporting evidence or reasonableness The explanation is rejected and this amount of Rs.8,90,000/- is sustained to be taxed out of the total amount of Rs.13,10,000/- brought to taxation. Assessee gets relief to the extent of Rs. 4,20,000/-.”

5. Aggrieved by the order of the CIT(A), the assessee is in appeal before the Tribunal. Apart from the evidence filed by the assessee before CIT(A), certain additional evidence was also filed before the Tribunal, which I am of the view shall be admitted for consideration, considering the fact that these documents are necessary for adjudication of the dispute in this appeal.

6. I have heard the rival submissions. The learned AR drew attention to evidence filed before CIT(A) and additional evidence filed before the Tribunal and submitted that the assessee has explained source of cash deposit while the learned DR submitted that the assessee failed to prove agricultural operations, expenses for agriculture, how produce was sold and other evidence and therefore the plea of the assessee is not acceptable.

7. I have considered the rival submissions. The assessee's mother's name is Mrs. Krishnaveni. She owns land of an extent of 5 Acres and 86 Cents in village Kundanagurthy, Kurnool District, Chippagiri Taluk of Andhra Pradesh State, as evidenced by the Tahsildar Certificate, copy of which is in Page 31 of the assessee's Paper Book. A certificate of "Raitu

Bharosa Kendram”, Kurnool has been filed in which it has been certified that assessee has been cultivating Bengal Gram over the lands owned by her. A certificate from the Village Revenue Officer that in Financial Year 2015-16, Mrs. Krishnaveni was earning a sum of Rs.3,00,000/- has also been filed. Similar documents evidencing ownership of land by Mr. K. Jayaprakash Chowdary, father of the assessee, owning 12 Acres and 31 Cents of land in Beldona Village, Chippagiri Taluk and certificate of crops grown therein and income certificate of Rs.7 lakhs has also been filed.

8. Evidence of past savings by the assessee’s parents from Agricultural income from FY 2012-13 to FY 2015-16, has also been the summary of which is as follows:

Statement of Bank Deposits from Agricultural Income from Parents of the Appellant						
Period : FY 2012-13 to FY 2015-16						
Appellant : Vijay Kumar Konenki						
Period of Deposit	Nature of Deposit	Amount in INR				Total
		SBI Joint Account with Parents	Mother's Single Account in Canara Bank	Mother's Single Account in ADC Co-op Bank	Father's Single Account in ADC Co-op Bank	
FY 2012-13	Agri Income - Crops Sale Agri Income - Crops Sale Deposits Redeemed	Rs.6,05,000		Rs.2,00,000		Rs.8,05,000
FY 2013-14	Agri Income - Crops Sale Deposits Redeemed Agri Income - Crops Sale Agri Land Lease Rent	Rs.3,90,000	Rs.10,000	Rs.2,00,000	Rs.2,40,000	Rs.8,40,000
FY 2014-15	Agri Income - Crops Sale Agri Land Lease Rent Paid on monthly	Rs.40,000	Rs.26,500 Rs.51,600			Rs.1,18,100

FY 2015-16	Agri Income - Crops Sale	Rs.8,90,000	Rs.24,000	Rs.21,000	Rs.5,000	Rs.9,67,000
	Agri Income - Crops Sale part of 11,00,000 deposit					
	Agri Land Lease Rent Paid on monthly		Rs.27,000			

Extracts of Bank Statements for the above-mentioned period was also enclosed as Annexures IA, IB, IC and ID

Annexure	Bank Account	Account Holding Status
IA	<i>State Bank of India, Sultanpalya, Bengaluru</i>	<i>Joint - Appellant and Parents of the Appellant</i>
IB	<i>Canara Bank, Guntakal FY 2014-15 to FY .2015-16</i>	<i>Sole - Mother of the Appellant</i>
IC	<i>Anantapur District Central Co-op Bank Ltd, Guntakal</i>	<i>Sole - Mother of the Appellant</i>
ID	<i>Anantapur District Central Co-op Bank Ltd, Guntakal</i>	<i>Sole - Father of the Appellant</i>

9. In the light of the aforesaid evidence, I am of the view that the assessee has satisfactorily explained the source of funds out of which, cash was deposited in the Bank A/c. The assessee has also demonstrated the purpose of deposit in the Bank A/c with the intention of performing assessee's sister's marriage which was scheduled to be held on 23.04.2016 (copy of invitation at Page 49 of the assessee's Paper Book). I am of the view that the CIT(A) ought to have accepted the explanation of the assessee and had drawn conclusions based on his perception that lands in Kurnool are dry lands and absentee landlord cannot get any income from Agriculture. On a preponderance of probability, I accept the plea of the assessee and hold that the source of deposit has been satisfactorily

explained by the assessee and hence the addition sustained by the CIT(A) is also directed to be deleted.

10. In the result, appeal by the assessee is allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(N. V. VASUDEVAN)
Vice President

Bangalore,
Dated: 10.08.2022.
/NS/*

Copy to:

- | | |
|---------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.