

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

श्री जी मंजूनाथा, लेखासदस्य, एवं श्री राहुल चौधरी, न्यायिक सदस्य के समक्ष
BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER AND
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A No.: 2876/CHNY/2018
निर्धारण वर्ष/Assessment Year: 2011 - 2012

Smt. S. Bagavathi Rajam,
Phase 2, Villa 17, Chettinad Enclave,
Pallikaranai, Chennai - 600100
PAN: AWHPS2925B

अपीलार्थी/Appellant

.....
Vs.

The Income Tax Officer,
Non Corporate Circle 23(1),
Tambaram

.....
प्रत्यर्थी/Respondent

Appearances:

For the Appellant/Assessee : Shri M. Karunakaran, Advocate
For the Respondent/Department : Shri G Johnson, Addl. CIT

Date of conclusion of hearing : 02.06.2022
Date of pronouncement of order : 26 .08.2022

आदेश / ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant/Assessee has challenged the order, dated 02.07.2018, passed by the Learned Commissioner of Income Tax (Appeals)-10, Chennai [hereinafter referred to as the 'the CIT(A)'], partly allowing the appeal against the Assessment Order, dated 27.03.2014, passed under Section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] for the Assessment Year 2011-12.
2. The Appellant has raised 8 grounds of appeal all directed against the order of CIT(A) confirming the addition of INR 12,00,000/- made by the Assessing Officer under Section 68 of the Act.
3. The relevant facts are that the Appellant filed return of income for the Assessment Year 2011-12 on 12.07.2011 declaring income of INR

8,75,000/- which was selected for scrutiny and assessment under Section 143(3) of the Act was framed on the Assessee by the Assessing Officer at an income of INR 25,67,770/- after making, inter alia, an addition of INR 12,00,000/- under Section 68 of the Act. The Appellant carried the issue in appeal before the CIT(A). The CIT(A) rejected the ground raised by the Appellant on this issue. Now the Appellant is in appeal before us.

4. The Learned Authorised Representative for the Appellant appearing before us submitted that the Appellant had deposited INR 1,50,000/- on eight occasion in his bank account with UCO Bank. The aforesaid deposits were made out of the earlier withdrawals made by the Appellant. Statement showing cash flow was submitted before the Assessing Officer and CIT(A). However, the same was rejected on the ground that the Appellant was not carrying out any business and was not maintaining books of accounts or cash book. He further submitted that the provisions of Section 68 would not be attracted in the present case as Section 68 requires that the amount should be credited in the books of accounts whereas in the present case the amount is debited to the pass-book which cannot be regarded as books of accounts of the Assessee. As regards withdrawals made by one Sh. VTM Ganesh, he further submitted that the husband of the Appellant had taken loan from Sh. VTM Ganesh and to repay the same cheques were issued which were encashed by VTM Ganesh. Since the Appellant had transacted with Sh. VTM Ganesh more than 4 years ago, the Appellant did not have his contact address or details during the assessment proceedings. Therefore, no adverse inference can be drawn against the Appellant. He further submitted that, in any case, the fact that after the deposits were made amounts were withdrawn is irrelevant for deciding the issue of source of deposits. Referring to Details of Cash Deposits made in the Bank Account placed on record the Learned Authorised Representative for the Appellant submitted that the Appellant had withdrawn INR 9,00,000/- on 25.09.2010 which constituted source of deposits made on 9.10.2010 (INR 1,50,000), 22.10.2010 (INR 1,05,000/-), 23.10.2010

(INR 45,000), 9.11.2010 (INR 1,50,000) 01.12.2010 (INR 1,50,000) 18.12.2010 (INR 1,50,000) 30.12.2010 (INR 1,50,000) and 13.01.2011 (INR 1,50,000) in the bank account maintained with UCO Bank. Further, the Appellant had withdrawn INR 2,50,000/- from bank account maintained with Canara Bank on 03.01.2011 which constituted source of deposit of INR 2,50,000/- made on 28.01.2011 in the bank account maintained with UCO Bank. This was substantiated by the bank statements of Canara Bank and UCO Bank placed on record. Relying upon the decision of Delhi Bench of the Tribunal in the case of ACIT Vs. Baldev Raj Charla: 121 TTJ 366 (Delhi), he submitted that the explanation furnished by an assessee cannot be rejected merely because there was a time gap between withdrawals and deposits. In addition to the above, he submitted that the Appellant had also received advance of INR 7,70,000/- on 20.10.2010 which was available with the Appellant to make the deposits.

5. The Learned Departmental Representative submitted that the Appellant has failed to explain and provide reasons for deposit of cash and withdrawals made immediate thereafter. During the assessment proceedings the Appellant has stated that he was not maintaining any books of accounts. But when asked to explain the source of cash, the Appellant furnished ledger extract of the cash book. The Appellant has failed to establish the source of the cash deposited. Immediately after deposits have been made by the Appellant, cash has been withdrawn by one Sh. VTM Ganesan and the Appellant has failed to produce him and/or provide his contact details/ address. The CIT(A) has rightly held that the submission of the appellant that the amounts withdrawn by Sh. VTM Ganesan were repayment of loan taken by her spouse does not meet the test of human probabilities as the Appellant herself had sufficient cash with her at the relevant time.
6. We have considered the rival submission and perused the material on record. While the Appellant has raised technical/legal pleas, we deem it appropriate to examine the issue on merits. We note that the details of cash withdrawals and deposits that was furnished by the Appellant

during the assessment proceedings reconciles with the bank statements of Canara Bank and UCO Bank placed on record. The aforesaid bank statements reflect that withdrawal of INR 9,00,000/- and INR 2,50,000/- were made by the Appellant on 25.09.2010 and 03.01.2011, respectively. Further, while examining the accrual of capital gains income in the hands of the Appellant, the Assessing Officer has noted that the Appellant had deposited cash of INR 5,50,000/-. A perusal of the copy of the bank statement of UCO Bank shows cash deposit of INR 5,50,000/- on 13.09.2020 followed by cash withdrawals of INR 100,000/- and 4,50,000/- by the Appellant on 15.09.2010 and 17.09.2010, respectively. Thus, by furnishing the aforesaid details and supporting the same by the bank statements, the Appellant had discharged the onus cast upon the appeal in terms of Section 68 of the Act by identifying the source of cash deposits. However, the Assessing Officer rejected explanation offered by the Appellant regarding source of cash on the ground that the Appellant had, on one hand, taken a stand that the Appellant was not maintaining any books of accounts, while on the other hand, the Appellant was relying upon statement of cash withdrawal and deposits to explain the availability of cash for making deposits in the bank account. In appellate proceedings, the CIT(A) looked into the statement of cash withdrawal and deposits as well as bank statements filed by the Appellant but rejected the explanation offered by the Appellant as the CIT(A) was swayed by the fact that the deposits were followed by withdrawals by Sh. VTM Ganesan. While rejecting the explanation of the Appellant that the deposits were sourced from funds withdrawn from bank account, the CIT(A) had made observation that in case the Appellant had sufficient funds, as was claimed by the Appellant, there was no need for loan being taken by the spouse of the Appellant from Sh. VTM Ganesan. In our view, the aforesaid observation can, at best, constitute surmise as no inquiry/examination in this regard was undertaken during assessment proceedings. We note that Sh. R. Sakthivel the spouse of the Appellant, who also happened to be her employer at the relevant time, had appeared before the Assessing Officer in response to summons issued under Section 131 of

the Act, however, no inquiry regarding loan taken by him from Sh. VTM Ganesan and/or repayment thereof was made by the Assessing Officer. While the fact that deposits made by the Appellant were followed by withdrawals can be one of the relevant factors, it cannot be the sole factor to reject the explanation offered by the Appellant about the source of cash deposits in the facts and circumstances of the present case. The Appellant has disclosed the source of cash deposits by showing nexus between withdrawals and deposits by furnishing the statement of cash withdrawals & deposits supported by bank statements, whereas the Assessing Officer and the CIT(A) have simply rejected the same based upon conjuncture and surmise. We are, therefore, of the view that the authorities below were not justified in making/sustaining addition of INR 12,00,000/- under Section 68 of the Act. Accordingly, we set aside the order passed by the CIT(A) on this issue and delete the addition of INR 12,00,000/- made by the Assessing Officer under Section 68 of the Act.

7. In result present appeal is allowed.

Order pronounced in the court on 26.08.2022 at Chennai.

Sd/-

Sd/-

(जी.मंजूनभाट)
(G. MANJUNATHA)
लेखासदस्य/ACCOUNTANT MEMBER

(राहुल चौधरी)
(RAHUL CHAUDHARY)
न्यायिकसदस्यएवं /JUDICIAL MEMBER

चेन्नई/Chennai,
दिनांक/Dated, the 26th August, 2022

Alindra, PS

आदेशकीप्रतिलिपिअग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF