

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

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **3153/Chny/2019**

निर्धारण वर्ष / Assessment Year: 2009-10

Mr. Pechimuthu Karuppiah, The Income Tax Officer,  
No.3/27, Thiruvalluvar Street, v. Ward 2(2),  
Kumaresapuram, Koothaipar Trichy.  
Post, Trichy – 620 013.

**[PAN: AAMPK-5734-D]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. K. Ravi, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 30.11.2022

घोषणा की तारीख/Date of Pronouncement

: 07.12.2022

**आदेश / O R D E R**

**PER G. MANJUNATHA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-1, Trichy, dated 16.09.2019 and pertains to assessment year 2009-10.

2. The assessee has raised the following grounds of appeal:

*"1., The Order of the Learned Commissioner of Income Tax (Appeals) is contrary to the law, facts and circumstances of the case.*

*2. The assessing officer has noted that he has re-opened the assessment for verification of source of cash deposits. It has been held by various courts that re-opening can be resorted only when the assessing officer records his belief that income has escaped assessment and cannot be re-opened for verification.*

*Without prejudice to the above,*

*3. The Commissioner of Income Tax(Appeals) erred in ignoring the confirmation letter produced by the appellant in making the addition in respect of cash deposits made in the bank account.*

*Without prejudice to Ground 3,*

*4. The appellant had returned an income of Rs. 1,86,000/- This income is earned in cash. Credit must be given for this sum before treating the cash deposits as unexplained income.*

*5. For these and such other grounds that may be permitted to be raised during the hearing of the appeal."*

3. The brief facts of the case are that, the assessee is an individual and is retired employee of BHEL, Trichy. The assessee was retired as a Deputy Manager, from M/s. BHEL on 23.08.1999 and got certain retirement benefits. The assessee is a non-filer and for the impugned assessment year, he did not filed his return of income. The assessment has been re-opened u/s. 147 of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), for

the reasons recorded, as per which income chargeable to tax had been escaped assessment, on account of cash deposits into bank account and consequently notice u/s. 148 of the Act dated 13.03.2015 was served to the assessee. In response to the notice u/s. 148 of the Act, the assessee had filed his return of income on 07.01.2016. The case was taken up for scrutiny and during the course of assessment proceedings, the AO noticed that the assessee has made cash deposits to the tune of Rs. 14,19,000/- in the savings bank account maintained with BHEL Employees Co-op Bank Ltd, Trichy branch. The AO called upon the assessee to explain the source for cash deposits. In response, the assessee submitted that, out of retirement benefits of Rs. 8,50,000/- along with sum of Rs. 3,50,000/- out of his savings, he had given loan of Rs. 12,00,000/- to his brother-in-law in the year 1999 as hand loan, for the purpose of construction of house. His brother-in-law has repaid a sum of Rs. 13,50,000/- in the financial year relevant to assessment year 2009-10 and said amount has been deposited into his savings bank account. The AO, however was not convinced with explanation furnished by the assessee and according to the Assessing Officer, the assessee

could not satisfactorily explain source for cash deposits found in his bank account and thus, made addition of Rs. 14,19,000/- as unexplained investment.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee has agitated addition made towards cash deposits primarily on the ground that this is a case of loan given to relative and not of a commercial transaction and said loan has been received back during the impugned assessment year. The Ld. CIT(A) after considering relevant submissions of the assessee and also taken note of various reasons given by the AO, rejected arguments of the assessee and sustained addition made towards cash deposits on the ground that, the assessee could not file necessary evidence to prove source for cash deposits found in his bank account. Aggrieved by the Ld. CIT(A), the assessee is in appeal before us.

5. The Ld. Counsel for the assessee, submitted that the sole basis for the AO to reopen the assessment is to verify the source for huge cash deposits in the savings bank account and

from reasons given by the AO, it is abundantly clear that the AO has not formed reasonable belief of escapement of income, except stating that in order to verify the source for cash deposits. Therefore, he submitted that the re-opening of assessment should be held as void-ab-initio. He, further referring to the assessment order dated 03.03.2016 and also copy of reasons recorded for re-opening of assessment furnished by the Id. DR submitted that, there is no difference between reasons with regard to re-opening of assessment as per reasons furnished by the Ld. DR and reasons stated by the AO in the assessment year. Therefore, submitted that the AO cannot abandon the reasons which was recorded for re-opening of assessment and make assessment on different reasons. In this regard, he relied upon the decision of Hon'ble Bombay High Court in the case of Nivi Trading Ltd vs Union of India (2015) 64 Taxmann.com 92 (Bombay) and also the decision of Hon'ble Bombay High Court in the case of PCIT vs Sheetal Dushyant Chaturvedi (2022), 134 Taxmann.com 327 (Bom). The Ld. Counsel for the assessee also relied upon the decision of the Supreme Court in the case of PCIT vs Sheetal Dushyant Chaturvedi (2022) 134 Taxmann.com 328 (SC). The

Ld. Counsel for the assessee, on merits of the issue submitted that the assessee has explained source of cash deposits out of re-payment of loan by his brother-in-law and for this purpose furnished a confirmation letter from the party. But, the AO has made additions by stating that the assessee could not file necessary evidences, even though, the assessee has filed confirmation letter from the party. He further submitted that when the assessee has furnished certain evidences including confirmation from the party, it is the duty of the Assessing Officer to verify the confirmation letter filed by the party by exercising his power including powers conferred u/s. 131 of the Act. Since, the AO has failed to discharge his duty in examining the issue with necessary enquires, addition made by the AO cannot be sustained.

6. The Ld. DR, on the other hand referring to reasons for re-opening of assessment submitted that, the AO has formed reasonable belief of escapement of income on the issue of cash deposits found in the bank account of the assessee, when the assessee was not able to furnish necessary evidence to prove cash deposits. Further, before issue of notice u/s. 148 of the

Act, the AO has called upon the assessee to explain source for cash deposits as reported in AIR information. Since, the assessee could not explain the source for cash deposits, the AO was of the opinion that there is a reasonable belief that income chargeable to tax had escaped assessment, and thus, there is no merit in the arguments of the assessee that the re-opening of assessment is void-ab-initio. As regards addition made towards cash deposits, the Ld. DR submitted except date of retirement, the assessee could not establish loan given to his brother-in-law in the year 1999 and return of said loan by his brother-in-law in the impugned assessment year. Therefore, the AO has rightly made addition towards cash deposit and their order should be upheld.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The assessee has questioned legality of re-opening of assessment in light of reasons recorded for re-opening of assessment. The Ld. Counsel for the assessee referring to the assessment order dated 03.03.2016 argued that the AO has re-opened assessment in order to verify source for cash

deposits, which is not permissible under law. We find that the Id. DR has furnished copy of reasons recorded for re-opening of assessment and as per said reasons before issue of notice u/s. 148 of the Act, the AO has called upon the assessee to explain source for cash deposits found in his bank account. Since, the assessee could not able to explain source for cash deposits with necessary evidences, the AO was of the opinion that there is reason to believe that there is escapement of income chargeable to tax. Therefore, we are of the considered view that from the reasons recorded for re-opening of assessment, there is a reasonable belief of escapement of income for the AO to re-open assessment. Therefore, the argument of the assessee that re-opening of assessment is void-ab-initio is devoid of merits. In so far as, various case laws relied upon by the assessee including Hon'ble Bombay High Court in the case of Nivi Trading Ltd vs Union of India (Supra), there is no doubt with regard to ratio laid down by the Hon'ble Bombay High Court that for verification of an issue, re-opening of assessment cannot be made. But, in the present case if you go through reasons for re-opening of assessment, there is a reasonable belief of escapement of

income on the basis of fresh materials which suggest escapement of income. Further, at the stage for issuance of notice, what is to be seen is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. In this case, there is a new material with the AO to form a reasonable belief of escapement of income. Therefore, we are of the considered view that there is no merit in arguments taken by the Ld. Counsel for the assessee on legality of re-opening of assessment, and thus, we reject ground taken by the assessee on re-opening of assessment.

8. Having said so, let us come back to addition made by the AO on cash deposits. The assessee has made cash deposits of Rs. 14,19,000/- in his saving bank account maintained with BHEL Employees Co-op Bank Ltd. The assessee claims that source for cash deposits is out of his retirement benefits received from BHEL in the year 1999. The assessee further claimed that out of his retirement benefits of Rs. 8,50,000/- along with another amount of Rs. 3,50,000/- out of his

savings, he had given a sum of Rs. 12,00,000/- hand loan to his brother-in-law for the purpose of construction of house. It was further claimed that his brother-in-law had returned a sum of Rs. 13,15,000/- in cash in November, 2008 and this amount was deposited in savings bank account maintained with BHEL Employees Co-op Bank Ltd. To support his arguments, the assessee had also furnished confirmation letter from his brother-in-law. We have gone through reasons given by the AO to make addition towards cash deposits, in light of arguments of the Id. Counsel for the assessee and we find that the AO has not disbelieved claim of retirement benefits of Rs. 8,50,000/- received by the assessee in the year 1999. The AO had only disbelieved the version of the assessee that he had given loan to his brother-in-law in the year 1999 and the same has been returned back in the year 2008. In other words, source available for the assessee to the extent of a sum of Rs. 8,50,000/- out of retirement benefit is not in dispute. In our considered view, when the assessee has claimed source of Rs. 8,50,000/- out of his retirement benefit, the AO ought to have verified the claim of the assessee in light of confirmation letter filed by his brother-in-law to ascertain the version of the

assessee. Since, the AO has failed to carry out necessary enquiries to ascertain the transaction between the assessee and his brother-in-law, we are of the considered view that a benefit of doubt should be given to the assessee to the extent of sum of Rs. 8,50,000/- that the assessee had given loan to his brother-in-law and the same has been returned back by his brother-in-law in the year 2008. Therefore, we are of the considered view that the assessee could not be able to explain source for cash deposits to the extent of Rs. 8,50,000/-. In so far as, balance amount of Rs. 5,69,000/-, no proper explanation was furnished by the assessee which can be considered as acceptable. Although, assessee claims that he had given loan to his brother-in-law out of his past savings amounting to Rs. 3,50,000/-, no credible evidence was with the assessee to justify his case. Therefore, we are of the considered view that the assessee could not be able to explain source for cash deposits of Rs. 5,69,000/- and thus, we are of the considered view that there is no error in the reasons given by the Assessing Officer to make addition towards cash deposit to the tune of Rs. 5,69,000/-. To sum up, out of cash deposits of Rs. 14,19,000/-, the assessee could not be able to explain source to the

extent of Rs. 8,50,000/-, out of his retirement benefits. Therefore, we direct the AO to delete addition to the extent of Rs. 8,50,000/- towards cash deposit and for balance amount of Rs. 5,69,000/-, no proper explanation was furnished and thus, addition made by the AO is sustained to the extent of Rs. 5,69,000/- only.

9. In the result, appeal filed by the assessee is partly allowed

Order pronounced in the court on 07<sup>th</sup> December, 2022 at Chennai.

**Sd/-**  
(वी दुर्गा राव)  
**(V. DURGA RAO)**  
न्यायिकसदस्य/**Judicial Member**

**Sd/-**  
(जी. मंजुनाथ)  
**(G. MANJUNATHA)**  
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 07<sup>th</sup> December, 2022

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT     | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF             |