

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' SMC BENCH, CHENNAI  
श्री वी दुर्गा राव न्यायिक सदस्य के समक्ष  
Before Shri V. Durga Rao, Judicial Member

आयकर अपील सं./I.T.A. No.20/Chny/2021  
निर्धारण वर्ष/Assessment Year: 2011-12

Smt. Sekar Jayalakshmi,  
Doshi – Nakshatra-1, Old SBI Colony,  
Near RTO, 2E Swathi Block, West  
Tambaram, Tamil Nadu 600 045.  
**[PAN:AWIPJ1285G]**

Vs. The Income Tax Officer,  
Non Corporate Ward 22(2),  
Tambaram.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri M.N. Rangamani, C.A.  
प्रत्यर्थी की ओर से/Respondent by : Shri AR V Sreenivasan, Addl. CIT  
सुनवाई की तारीख/ Date of hearing : 13.12.2022  
घोषणा की तारीख /Date of Pronouncement : 21.12.2022

**आदेश /ORDER**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 10, Chennai dated 12.03.2020 relevant to the assessment year 2011-12.

2. The appeal filed by the assessee is delayed by 248 days in filing the appeal due to outbreak of Covid-19 pandemic and accordingly, the delay in filing the appeal is condoned and admitted for adjudication.

3. Brief facts of the case are that the assessee filed her return of income for the assessment year 2011-12 on 30.03.2013 returning total

income of ₹.2,35,280/-. During the course of remand proceedings relating to assessment year 2012-13, the assessee submitted certain working to show “summary for cash transaction”, “individual capital account and balance sheet” and copy of bank account statement of Tamilnad Mercantile Bank. On perusal of the bank statement, the Assessing Officer noted following credit entries:

15/10/2010	₹.	8,28,000/-
31/10/2010	₹.	3,00,000/-
31/10/2010	₹.	3,00,000/-

4. The assessee has submitted before the Assessing Officer that the 2 entries of ₹.3 lakhs each were given by her husband Shri S. Sekar, but the assessee has not supported by proof. Similarly, the source for ₹.8,28,000/- was also not given. Accordingly, the Assessing Officer reopened the assessment under section 147 of the Income Tax Act, 1961 [“Act” in short] and after following due procedures, the assessment was completed under section 143(3) r.w.s. 147 of the Act dated 29.12.2018 assessing total income of the assessee at ₹.8,35,280/- after making addition of ₹.6,00,000/- as unexplained credit in the bank account. On appeal, after considering the submissions and by invoking the provisions of section 69A of the Act, the Id. CIT(A) confirmed the addition.

5. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the Id. CIT(A) has erred in adding ₹.6,00,000/- as unexplained money under section 69A of the Act without considering the confirmation given by the assessee's husband. It was further submission that the Id. CIT(A) has not empower to assess a particular item under different provision of the Act what the Assessing Officer had done without giving a specific notice to the assessee regarding such action and prayed for deleting the addition.

6. On the other hand, the Id. DR supported the order passed by the Id. CIT(A).

7. Both the sides have been heard, perused the materials available on record and gone through the orders of authorities below including paper book filed by the assessee. In this case, the Assessing Officer made addition of ₹.6,00,000/- as unexplained credit. However, the Assessing Officer has not mentioned the relevant section under which, the addition was made, but "unexplained credit" comes under section 68 of the Act. In the appellate order, in page No. 7, para (v), the Id. CIT(A) has noted that ***"However, I am also in agreement with the appellant that the provisions of section 68 are not applicable to the appellant"***. Therefore, the Id. CIT(A) treated the addition of ₹.6,00,000/- as

unexplained money under section 69A of the Act and confirmed the addition. Section 68 of the Act deals with “unexplained Credit” in the books of the assessee and section 69A of the Act deals with “unexplained money, bullion, jewellery or other valuable article”. Both are entirely different. Though the Assessing Officer has not mentioned the section 68 of the At in his order, the very fact that he calls it “unexplained credit” and not “unexplained money” as done by the Id. CIT(A), while he invoked section 69A of the Act, it proves that the Assessing Officer invoked section 68 of the Act. I find merit into the contention of the Id. Counsel for the assessee that there is no power conferred upon the Id. CIT(A) to assess a particular item under different provision of the Act what the Assessing Officer had done without giving a specific notice to the assessee regarding such action. I am of the considered view that law does not permit for such change of provision of law. As per section 250 of the Act, the Id. CIT(A) is empowered to make further inquiry as he thinks fit or may direct the Assessing Officer to make further inquiry and report to the Id. CIT(A). As per section 251(1)(a) of the Act, in appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment, but there is no such power provided by the law that Id. CIT(A) could change the provision of law qua the item of which assessment was made. Therefore, in the absence of such power, learned

CIT(Appeals) could not have treated the addition made under section 69A of the Act. Therefore, the addition made by the Id. CIT(A) under section 69A of the Act is liable to be deleted.

8. Over and above, when the Assessing Officer found credit of ₹.6,00,000/- (₹.3.00 lakhs each) in the bank statement and the assessee's husband Shri S. Sekar has furnished confirmation by way of duly notarized affidavit, the assessee has discharged the onus cast upon her. On perusal of the orders of authorities below, both the Assessing Officer and the Id. CIT(A) failed to discharge their onus by getting the details from the bank under section 133(6) of the Act. Considering the entire facts and circumstances of the case, the addition of ₹.6,00,000/- made by the Id. CIT(A) under section 69A of the Act is deleted.

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

Order pronounced on 21<sup>st</sup> December, 2022 at Chennai.

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 21.12.2022

Vm/-

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.