

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

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.48 & 49/Chny/2018
निर्धारण वर्ष /Assessment Years: 2013-14 & 2014-15

Mr.Anjaneyulu Jayapal,
Old No.2/56, New No.3/51,
TK Pattu, Gandhi Street,
Redhills, Chennai-600 052.
[PAN: AHFPJ 3481 Q]

v. The Income Tax Officer,
Non-Corporate Ward-10(2),
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.M.Murugaboopathy, Adv.

प्रत्यर्थी की ओर से /Respondent by : Mr.D.Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 11.01.2023

घोषणा की तारीख /Date of Pronouncement : 18.01.2023

आदेश / ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

These two appeals filed by the assessee are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals)-12, Chennai, both dated 24.10.2017 and pertains to assessment years 2013-14 & 2014-15. Since, the facts are identical and issues are common, for the sake of convenience, these appeals are being heard together and disposed off, by this consolidated order.

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2. The assessee has, more or less, raised common grounds of appeal for both the assessment years. Therefore, for the sake of brevity, grounds of appeal filed for the AY 2013-14, are re-produced as under:

1. *The Learned CIT (Appeals) passed order confirming the addition of Rs.1,26,39,539/- made by AO as unexplained cash credit which is contrary to law and facts.*
2. *The CIT (Appeals) failed to take cognizance of the error that AO had not found any sum credited in the books of assessee which is a precondition to treat a receipt as unexplained cash credit.*
3. *The CIT (Appeals) erred in considering receipt entries in bank statement and financial statements which are not books as envisaged by law and as settled by judicial pronouncements.*
4. *The Learned CIT (Appeals) failed to consider letter, submitted during appellate proceedings, issued by bank confirming the bank account as joint account in the names of (1) Anjaneyalu Jayapal, the appellant, (2) J. Shenbagavalli, wife of appellant and (3) J. Sriram, son of appellant.*
5. *The Learned CIT (Appeals) failed to consider the fact that the appellant proved before Learned AO, the identity of the creditor for cash deposits in the joint bank account statement by producing the depositor, J. Sriram, his son, one of the joint account holders, before Learned AO on 21.3.2016.*
6. *The Learned CIT (Appeals) failed to consider the fact that J. Sriram, the joint account holder, also accepted that the cash deposits were made only by him in the joint bank account which were cash sale proceeds and advances from customers relating to his jewellery shop M/s. Sri Lakshmi Thangamaligai.*
7. *The Learned CIT (Appeals) failed to object to the assessment order as to how the Learned AO could take an irrational view that the cash deposits in the bank account belonged to father and not to son and why couldn't it be the other way round where the account was a joint account and all the joint account holders unanimously stated that the deposits belonged to son's business and not of any other joint account holder.*
8. *Where the CIT (Appeals) has observed that the cash deposit is several times higher than business turnover as per return of appellant, he has failed to note that the cash deposit is several times lower than business turnover as per return of appellant's son, Jayapal Sriram who is a joint account holder.*
9. *The appellant craves permission to add, amend, alter or vary any grounds of appeal before the disposal of appeal.*
10. *In view of above grounds and any other ground that will be permitted to be adduced at the time of hearing, the appellant prays the Honourable Tribunal to allow the appeal and delete the tax demanded.*

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3. The brief facts of the case are that the assessee, an individual & proprietor of M/s.Jayalakshmi Bus Service, filed his return of income for the AY 2013-14 on 01.11.2014 declaring total income of Rs.4,56,880/- and for the AY 2014-15 on 07.11.2014 declaring total income of Rs.9,23,751/-. The cases have been selected for scrutiny under CASS for the reason cash deposits in Savings Bank Accounts, is more than the turnover. During the course of assessment proceedings, the AO noticed that the assessee has made cash deposits to the tune of Rs.1,11,89,539/- in Karnataka Bank for the AY 2013-14 and a sum of Rs.1,92,19,927/- for the AY 2014-15. The Ld.Counsel for the assessee, was asked to explain the source and nature of deposits found in bank account, for which, the Ld.Counsel for the assessee submitted that Savings Bank Account with M/s.Karnataka Bank Ltd., is a 'joint a/c' maintained along with his wife & son. Further, source for cash deposits into Savings Bank Account, is out of business turnover of his son, who is proprietor of M/s.Sri Lakshmi Thanga Maligai. The assessee further submitted that the turnover from the business of his son, is more than the amount of cash deposits and thus, there is sufficient source to explain cash deposits to bank account and hence, question of making addition does not arise.

4. The AO, however, was not convinced with the explanation furnished by the assessee and according to the AO, the assessee could not file any evidences to prove that the bank account, in which, cash deposits was found, is a 'joint a/c' operated along with his son Mr.J.Sriram & his wife

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Ms.J.Shenbagavalli. The AO further observed that the assessee could not furnish any evidences, including books of accounts of Mr.J.Sriram on his proprietary concern, M/s.Sri Lakshmi Thanga Maligai to prove that cash deposits found in M/s.Karnataka Bank Ltd., has been accounted as his business receipts.

5. The assessee carried the matter in appeal before the First Appellate Authority, but could not succeed. The Ld.CIT(A) for the reasons stated in their appellate orders dated 24.10.2017 for both the assessment years, has sustained the additions made by the AO towards cash deposits by holding that the assessee could not furnish any evidences to prove that source for cash deposits out of business receipts of his son & his proprietary concern. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

6. The Ld.AR for the assessee referring to Para No.5 of order passed by ITAT in Miscellaneous Application Nos.35 & 36/Chny/2020 dated 11.11.2022 submitted that the Tribunal had recorded a categorical finding that the assessee has furnished a letter from the Manager of M/s.Karnataka Bank Ltd., Anna Nagar West Branch, to prove that said bank account is a 'joint bank a/c' is held jointly in the name of assessee and his wife Ms.J.Shenbagavalli and his son Mr.J.Sriram. Further, the assessee had also filed necessary financial statements of M/s.Sri Lakshmi Thanga Maligai, to prove that business receipts of said proprietary concern is over and above the amount of income estimated on business and the same is source for

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cash deposits. The AO as well as the Ld.CIT(A) has failed to appreciate the facts in right perspective of law while making addition and thus, submitted that additions made by the AO for both the assessment years should be deleted.

7. The Ld.DR, on the other hand, supporting the order of the AO and the Ld.CIT(A), submitted that before the AO, the assessee could not file letter from the bank to prove that said bank account is a 'joint a/c' held in the name of the assessee and his wife and his son. Although, now the assessee has filed a letter and argued that said bank account is a 'joint a/c', but fact remains that assessee could not file any evidences including books of accounts of proprietary concern of Mr.J.Sriram to prove that cash deposits found in Savings Bank Account with M/s.Karnataka Bank Ltd., is considered as his business assets. Therefore, there is no merit in the arguments taken by the Ld.Counsel for the assessee that source for cash deposits is out of business receipts of M/s.Sri Lakshmi Thanga Maligai.

8. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. Admittedly, the assessee could not file any evidences, including letter from the Manager, M/s.Karnataka Bank Ltd., Anna Nagar West Branch, to prove his claim that Savings Bank Account maintained with M/s.Karnataka Bank Ltd., is a 'joint a/c'. The assessee had also not able to furnish any evidences including financial statement of his son Mr.J.Sriram and his proprietary concern M/s.Sri Lakshmi Thanga Maligai, to prove that cash deposits found in

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Savings Bank Account maintained with M/s.Karnataka Bank Ltd., is considered as his business receipts. Therefore, we cannot find any fault with the AO in arriving at a conclusion that the assessee could not able to explain the source for cash deposits found in Savings Bank Account maintained with M/s.Karnataka Bank Ltd. But, fact remains that the assessee could furnish necessary evidences including letter from Manager, M/s.Karnataka Bank Ltd., where the bank has certified that the Savings Bank Account maintained with them is held in joint name of the assessee, his wife Ms.J.Shenbagavalli & his son Mr.J.Sriram. We further noted that the assessee had also filed necessary evidences, including financial statement of Mr.J.Sriram and his proprietary concern M/s.Sri Lakshmi Thanga Maligai and argued that cash deposits found in M/s.Karnataka Bank Ltd., has been considered as business receipts of proprietary concern and also offered to tax. We find that the assessee has filed a Certificate from the bank to prove that account held in the said bank is a 'joint a/c' and also filed financial statement of his son Mr.J.Sriram, where we find that he has declared huge turnover for both the assessment years. But, fact remains that whether cash deposits found in Savings Bank Account maintained with M/s.Karnataka Bank Ltd., has been considered as his business receipts of M/s.Sri Lakshmi Thanga Maligai, is not established with necessary evidences, including books of accounts of said proprietary concern. Therefore, we are of the considered view that the issue needs to go back to the file of the AO for both the assessment years and thus, we set aside

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the issue to the file of the AO and direct the AO to re-verify the claim of the assessee in light of Certificate issued by the Manager, M/s.Karnataka Bank Ltd., Anna Nagar West Branch, and also claim of the assessee that cash deposits found in Savings Bank Account with M/s.Karnataka Bank Ltd., is considered by his son Mr.J.Sriram and his proprietary concern M/s.Sri Lakshmi Thanga Maligai.

9. In the result, appeals filed by the assessee for both the assessment years are allowed for statistical purposes.

Order pronounced on the 18th day of January, 2023, in Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(जी. मंजूनाथा)
(G. MANJUNATHA)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 18th January, 2023.
TLN

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