

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

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

आयकर अपील सं./ITA Nos.157 & 163/Chny/2018
निर्धारण वर्ष /Assessment Years: 2011-12 & 2014-15

The Asst. Commissioner –
of Income Tax,
Central Circle-2,
No.44, Williams Road,
Cantonment,
Trichy-620 001.

(अपीलार्थी/Appellant)

v. Mr.Thiruvambalam-
Subramanaian,
Ward-27, 36
Veeramakaliyamman Kovil
Street,
Aranthangi-614 616.

[PAN: BGWPS 0913 F]
(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.161/Chny/2018
निर्धारण वर्ष /Assessment Years: 2014-15

The Asst. Commissioner –
of Income Tax,
Central Circle-2,
No.44, Williams Road,
Cantonment,
Trichy-620 001.

(अपीलार्थी/Appellant)

v. Smt.Maheswari,
No.113, Nizam Colony,
Pudukkottai-622 001.

[PAN: AAIPM 6651 M]

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.162/Chny/2018
निर्धारण वर्ष /Assessment Years: 2014-15

The Asst. Commissioner –
of Income Tax,
Central Circle-2,
No.44, Williams Road,
Cantonment,
Trichy-620 001.

(अपीलार्थी/Appellant)

v. Mr.A.Anbu Kannan,
No.19, Kasthuribai Road,
Kumbakonam-612 001.

[PAN: AGPPA 7635 L]

(प्रत्यर्थी/Respondent)

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Department by : Mr. AR.V.Sreenivasan,
Addl.CIT
Assessee by : Mr.S.Sridhar, Adv.
सुनवाई की तारीख/Date of Hearing : 09.05.2023
घोषणा की तारीख /Date of Pronouncement : 19.05.2023

आदेश / ORDER

PER MANJUNATHA.G, ACCOUNTANT MEMBER:

These four appeals filed by the Revenue are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals)-19, Chennai, all dated 16.10.2017, and pertains to assessment years 2011-12 & 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.

2. The Revenue has, more or less, raised common grounds of appeal in all appeals. Therefore, for the sake of brevity, grounds of appeal filed in ITA No.157/Chny/2018, are re-produced as under:

1. The Order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts and circumstances of the case and in law.

2. The Id. CIT(A) erred in deleting the addition of Rs.7,02,65,950/- made by the AO towards Unexplained cash deposits treated as income U/S.69A in the order passed u/s.144 r.w.s.147 of the IT Act, 1961 for the AY 2011-12.

2.1. On the facts and circumstances of the case and having regard to the reasons stated by the AO in page Nos. 5 to 9 in the assessment order for the AY 2011-12, the Id CIT(A) ought to have upheld the addition of Rs.7,02,65,950/- made towards unexplained cash credit arising from unexplained bank deposits and is not justified in holding that there is surplus amount of cash in hand with the assessee for having deposited monies in the bank accounts.

2.2. The Id CIT(A) ought to have considered the fact that, the assessee did not produce the details called for in support of the claims made in returns and the issues that arose out of scrutiny proceedings to the AO at the time of assessment, despite ample opportunity and time being given. In the absence of any books of accounts, it is the duty of the assessee to explain the sources for each of the cash deposits into bank accounts entry-by-entry, which

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according to the assessee are either cash withdrawals from bank accounts or advances received back and should have given one-to-one mapping for each entry.

2.3. The Id. CIT(A) has failed to take cognizance of the fact that during the assessment proceedings, the assessee was not willing to share the details of the debtors realized with the department, which act can only infer that such production of books before the AO could only be more detrimental to the interest of the assessee and by not providing either the books of accounts or the list of debtors realized, the assessee has effectively prevented the department from making any meaningful enquiry or verifying the veracity of the assessee's claim.

2.4. The Id. CIT(A) ought to have noted the fact that the assessee is not worried about the legal consequences of non-maintenance of records, but is fully aware of the provisions of Sec.269SS & T of the IT Act, since his AR has clearly spelled out that as lenders, the provisions do not apply to them and will apply only to the borrowers. By virtue of the assessee's statement that the sources for cash deposit into his bank account is loans collected in cash, he is consciously protecting the borrower from the rigours of Sec.269 T of the IT Act and from the applicability of Sec.269SS of the Act.

2.5. The Id. CIT(A) failed to take cognizance of the fact that the assessee has income from his money lending business (Rs.17,00,000/- for the current year) and in view of being advised by a Senior Chartered Accountant firm, could not have been unaware of the ITR form to be used (ITR-4). However, the assessee has filed ITR-2, declaring the income under the head " Other Sources" and also in the OS Schedule of the ITR-2 had very carefully filled "Money Lending Interest/Commission - Rs.17,00,000/-" which prima facie confirms the intention of the assessee and indicates an attempt to camouflage the business activities of the assessee and to avoid the rigours of Section 28 to 44 of the IT Act, 1961.

3. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

RELIEF CLAIMED IN APPEAL

The order of the learned CIT (Appeals) may be set aside and that of the Assessing Officer be restored.

3. The brief facts of the case are that the assessee is an individual, belonging to a group of persons, hailing from the same place, who are all mainly engaged in the business of money lending in a large scale on cash basis. The assessee has filed his return of income for the AY 2011-12 on 28.08.2011 declaring total income of Rs.5,95,490/-. A survey u/s.133A of the Income Tax Act, 1961 (in short "the Act"), was conducted in the case of the assessee on 25.03.2014. During the course of survey, it was found that the assessee had deposited large amount of cash into his bank account and could not satisfactorily explained those deposits with detailed source

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or material evidence. Consequent to survey, the assessment has been re-opened u/s.147 of the Act, and during the course of assessment proceedings, the AO called upon the assessee to explain source for cash deposits made into various bank accounts amounting to Rs.7,02,65,950/-. In response, the assessee submitted that he is into the business of moneylending on cash basis and source for cash deposits into bank account is mainly collection from borrowers. The AO, however, was not convinced with the explanation furnished by the assessee and according to the AO, the assessee could not produce any books of accounts and also explain source for cash deposits into bank account. Therefore, rejected arguments of the assessee and made additions towards total cash deposits into four bank accounts amounting to Rs.7,02,65,950/- as unexplained cash deposits u/s.69A of the Act.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee made an argument for adopting 'peak credit theory' to determine undisclosed income for the relevant assessment year on the ground that the source for cash deposits is out of collection from debtors from his moneylending business and assessee is not maintaining regular books of accounts. The Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of working furnished by the assessee to arrive at 'peak credit', deleted additions made towards cash deposits u/s.69A of the Act, on the ground

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that the assessee has proved sufficient source to explain 'peak credit' arrived at for the AY 2011-12, which is out of opening balance of cash brought from previous Financial Year and 'peak credit' balance assessed for the AY 2009-10. Aggrieved by the order of the Ld.CIT(A), the Revenue is in appeals before us.

5. The Id.Sr.DR, Mr. AR.V.Sreenivasan, Addl.CIT, referring to the decision of the Hon'ble Supreme Court in the case of Anantharam Veerasinghaiah & Co. v. CIT reported in [1980] 123 ITR 457 (SC) and the decision of the Hon'ble Calcutta High Court in the case of Piyush Poddar v. CIT reported in [2017] 393 ITR 381 (Calcutta) submitted that unless assessee explains the requirement of applying 'peak credit theory', the benefit of 'peak credit theory', cannot be given to the assessee. He further submitted that in order to apply 'peak credit theory', the assessee should explain with necessary evidences that there was a periodical withdrawal and deposit of cash into bank account and assessee could not explain source for credit and debit. In the present case, the assessee claims that he is into the business of moneylending, but could not adduce any evidence to prove that source for cash deposits into bank account is from collection from debtors. Therefore, the benefit of 'peak credit' cannot be allowed to the assessee. The Ld.CIT(A) without apprising relevant facts simply deleted the additions made by the AO.

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6. The Ld.Counsel for the assessee submitted that the assessee is into business of moneylending and he is not maintaining regular books of accounts for his business. There was a periodical withdrawal and deposit into various bank accounts and such deposits and withdrawals are not identifiable to a particular person. Therefore, worked out 'peak credit theory' and explained source for cash deposits into bank account. The Ld.CIT(A) after considering relevant facts has rightly accepted 'peak credit theory' and deleted additions made by the AO and their orders should be upheld.

7. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The facts borne out from the record clearly indicate that the assessee is not maintaining regular books of accounts for his moneylending business. There is no evidence with the assessee to link cash deposits into bank account to his business, because, the assessee is not maintaining regular books of accounts. But, the assessee is trying to explain such cash deposits out of withdrawals made from the same bank account and requested to adopt 'peak credit theory' for the purpose of determination of income for the relevant period. In our considered view for getting benefit of 'peak credit theory', the assessee has to admit that there is no evidence to link any particular source for cash deposits and cash withdrawals. Further, in order to apply 'peak credit', there should be a periodical and repetitive cash

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deposits and withdrawals in bank accounts and such deposit and withdrawals are not traceable from a particular source. However, it is for the assessee to make out a case for 'peak credit theory'. But, when the assessee claims that all the deposits are genuine, the benefit of 'peak' will not be available as held by the Hon'ble Allahabad High Court in the case of Bhaiyalal Shyam Behari v. CIT reported in [2005] 276 ITR 38. Similarly, in case, the assessee is not able to prove a particular withdrawal is available for re-deposit/recycling, the benefit of 'peak' will not be available. Therefore, in order to give the benefit of 'peak credit theory', it is for the assessee to explain with necessary evidences, the requirement of adopting 'peak credit theory' for determination of income for the particular period. In this case, the assessee is not made out a case before the AO why 'peak credit theory' should be adopted for determining the income for the relevant period. Therefore, we set aside the order of the Ld.CIT(A) and restore the issue back to the file of the AO in all four cases and direct the AO to re-examine the claim of the assessee in light of evidences that may be filed before the AO including relevant bank statements to decide applicability of 'peak credit theory' for the purpose of determination of income of the assessee for the relevant Financial Year. In case, the assessee is able to make out a case for 'peak credit', then the AO is directed to verify the 'peak credit' arrived at by the assessee from his all bank accounts and verify the claim with reference to method adopted for determination of 'peak credit'. In the process, the AO is also directed to verify opening cash balance

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available with the assessee and brought towards from earlier financial years. If assessee is able to prove the availability of opening cash balance with necessary evidences, then, the AO is directed to consider opening balance arrived at by the assessee for the purpose of source for said cash balance worked out for the relevant period before making any addition towards income of the assessee.

8. In the result, appeals filed by the Revenue in all four cases are allowed for statistical purposes.

Order pronounced on the 19th day of May, 2023, in Chennai.

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

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

चेन्नई/Chennai,
दिनांक/Dated: 19th May, 2023.
TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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