

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./I.T.A. Nos.1119 & 1117/Chny/2022
निर्धारण वर्ष/Assessment Years: 2012-13 & 2013-14

The Assistant Commissioner of
Income Tax, Central Circle 2,
No. 44, Williams Road, Contonment,
Trichy 620 001.

Vs. Shri T. Subramaniam,
Ward 27-36, Veerakaliyamman Koil
Street, Aranthangi 614 616.

[PAN:BGWPS0913F]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri D. Hema Bhupal, JCIT
प्रत्यर्थी की ओर से/Respondent by : Shri S. Sridhar, Advocate
सुनवाई की तारीख/ Date of hearing : 14.09.2023
घोषणा की तारीख /Date of Pronouncement : 27.09.2023

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

Both the appeals filed by the Revenue are directed against the common order of the Id. Commissioner of Income Tax (Appeals) 19, Chennai, dated 02.11.2022 relevant to the assessment years 2012-13 and 2013-14.

2. 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 assessment

year 2012-13 on 13.10.2012 declaring total income of ₹.13,31,210/-. 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 or material evidence. Consequent to survey, the assessment has been re-opened under section 147 of the Act, and during the course of assessment proceedings, the Assessing Officer called upon the assessee to explain source for cash deposits made into various bank accounts amounting to ₹.4,50,31,050/-. There was no response from the assessee against the notice issued under section 148 of the Act dated 27.03.2017. Further, a notice under section 142(1) of the Act calling for a return of income was issued on 24.05.2017. The assessee has submitted a copy of the return of income on 09.06.2017. Further notice under section 142(1) r.w.s. 129 of the Act was issued to the assessee on 03.08.2017 requesting the assessee to submit the books of accounts, etc. and subsequently, reminder letter was also issued on 13.09.2017. However, there was no response from the assessee. From the bank statements gathered by the department and furnished by the assessee, the Assessing Officer has noted that the assessee has made cash deposits into various bank account during the assessment year

2012-13 to the extent of ₹.4,96,26,050/-. The AR of the assessee appeared before the Assessing Officer on 23.10.2017 and submitted that that the assessee was engaged into the business of money lending on cash basis and source for cash deposits into bank account was repayments received from various persons to whom the assessee had lent money. It was further submitted that these amounts were already accounted for, as they represent the amounts that are only getting recycled, as they have been received back from borrowers and the same was used to further lending to other persons. However, the Assessing Officer has not convinced with the explanation furnished by the assessee. Since, the assessee could not produce any books of accounts and also explain source for cash deposits into bank account with documentary evidence to substantiate sources of such cash deposits, the Assessing Officer treated the entire amount of ₹.4,96,26,050/- as undisclosed income of the assessee under section 69A of the Act and brought to tax.

3. Similarly, for the assessment year 2013-14, the Assessing Officer made addition of ₹.6,78,39,410/- under section 69A of the Act.

4. The assessee carried the matter in appeal before the Id. 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 years on the ground that the source for cash deposits are out of collection from debtors from his money lending business and assessee was not maintaining regular books of accounts. After considering the submissions of the assessee and also taken note of working furnished by the assessee to arrive at 'peak credit', while sustaining the addition of ₹.10,64,952/-, the Id. CIT(A) deleted the addition to the extent of ₹.4,85,61,098/- towards cash deposits under section 69A of the Act, on the ground that the assessee has proved sufficient source to explain 'peak credit' arrived at for the assessment year 2012-13, which was out of opening balance of cash brought from previous Financial Year and 'peak credit' balance assessed for the AY 2009-10.

5. Similarly, for the assessment year 2013-14, the Id. CIT(A) deleted the addition of ₹.6,53,51,950/-.

6. Aggrieved, the Revenue is in appeal before the Tribunal for both the assessment years under consideration. By relying upon the decision in the case of *Bhaiyalal Shyam Bihari v. CIT* 276 ITR 38 (All), the Id. DR has submitted that the benefit of peak credit can be given only when the assessee owns up all the cash credits in the books of accounts. 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 was into the business of money lending, 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.

7. On the other hand, the Id. Counsel for the assessee has submitted that the assessee was into business of money lending and he was 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 Id. CIT(A) after considering relevant facts has rightly accepted 'peak credit theory' and deleted additions made by the Assessing Officer and prayed for confirming the order passed by the Id. CIT(A).

8. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. We find that similar issue on identical facts was subject matter in appeal before the Tribunal in assessee's own case for the assessment years 2011-12 &

2014-15 and vide order in I.T.A. Nos. 157 & 163/Chny/2018 dated 19.05.2023, wherein, the Coordinate Benches of the Tribunal has observed and held as under:

7. *We have heard both the parties, perused the materials available on record and gone through the 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 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 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.”

9. Respectfully following the above decision of the Coordinate Benches of the Tribunal in assessee's own case, we set aside the orders of the Id. CIT(A) for both the assessment years and remit the matter back to the Assessing Officer to decide the issue afresh by following the directions given by the Tribunal in assessee's own case for the assessment years 2011-12 and 2014-15 after affording reasonable opportunity of being heard to the assessee.

10. In the result, both the appeals filed by the Revenue are allowed for statistical purposes.

Order pronounced on 27th September, 2023 at Chennai.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 27.09.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.