

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER
(Through Hybrid Hearing)

आयकर अपील सं./ I.T.A. Nos. 215/Viz/2015 & 207/Viz/2017

(निर्धारण वर्ष / Assessment Years: 2010-11 & 2011-12)

Smt. Anjani Kumari Varada,
Vijayawada.

PAN: ACVPV 2970 M

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Assessee by

प्रत्यार्थी की ओर से / Revenue by

Vs. Income Tax Officer,
Ward-1(4),
Vijayawada.

(प्रत्यर्थी/ Respondent)

Sri BVS Chalapathi Rao

Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of
Pronouncement

: 18/01/2024

: 28/02/2024

ORDER

PER BENCH:

Both the captioned appeals are filed by the assessee against the orders of the Ld. Commissioner of Income Tax (Appeals), Vijayawada [Ld. CIT(A)] in appeal Nos. 109/CIT(A)/VJA/13014, dated 31/3/2015 and 277/CIT(A)/VJA/2014-15, dated 2/11/2016 arising out of the orders passed U/s. 143(3) of the

Income Tax Act, 1961 [the Act] for the AYs 2010-11 and 2011-12 respectively.

2. This is the second round of proceedings before the Tribunal. In the first round of proceedings, the appeals were heard on 30/08/2022 and since there was no representation the Tribunal passed ex-parte order dated 13/10/2022 based on the material available on the record. Thereafter, the assessee filed a Miscellaneous Petition vide MA No. 08/Viz/2023 wherein the assessee explained the reasons for non-appearance before the Hon'ble Tribunal on the date of hearing of the appeals (ie., 30/08/2022) and pleaded for recalling of the order passed by the Tribunal dated 13/10/2022. After careful perusal of the reasons advanced by the assessee as well as the submissions of the Ld. AR, the Tribunal allowed the MA filed by the assessee and recalled the Tribunal's order dated 13/10/2022 vide MA order dated 26/04/2023. Accordingly these appeals are now being disposed off in the following paras on merits.

3. Brief facts pertaining to AY 2010-11 are that the assessee is an individual, deriving income from other sources filed her return of income for the AY 2010-11 on 25/01/2012 admitting total income of Rs. 4,14,580/- and the same was processed U/s. 143(1) of the Act. Subsequently the case was selected for

scrutiny under CASS and accordingly statutory notices U/s. 143(2) and 142(1) of the Act were issued and served on the assessee. Since there was no response from the assessee to the notices and opportunity letters, summons U/s. 131 were issued to appear and furnish the required information. Even for summons, assessee did not appear and later on Mr. P.V. Bhaskar Sharma, ITP filed power of attorney before the Ld. AO and filed certain information as called for by the Ld. AO. But thereafter either assessee or her AR did not respond to the show cause letters issued by the Ld. AO proposing the additions made. Considering the assessee's no response, the assessee proceeded to complete the assessment based on the material available and the submissions made before the Ld. AO. Thus, the Ld. AO completed the assessment u/s. 143(3) and passed assessment order on 28/03/2013 wherein the Ld. AO made certain additions viz., Rs. 99,11,162/- on account of unexplained cash deposits; (ii) disallowance of claim made under Chapter-VIA amounting to Rs. 14,630/- and (iii) Rs. 9,67,000/- on account of unexplained credits aggregating to Rs. 1,08,92,792/-. Aggrieved by the additions made by the Ld. AO, the assessee filed an appeal before the Ld. CIT(A).

4. Before the Ld. CIT(A), the assessee filed certain material in the form of additional evidences which was refused by the Ld. AO. The Ld. CIT(A) called for the remand report on the additional evidence furnished by the assessee. The Ld. AO submitted the remand report wherein the Ld. AO commented that the assessee is not entitled to produce any additional evidence since he is not covered by any of the four clauses laid down in Rule 46A of the Income Tax Rules, 1961. Even then, the Ld. CIT (A) following the principles of natural justice, admitted the additional evidence filed by the assessee and based on the report submitted by the Ld. AO as well as the material available before him and considering the submissions of the assessee, the Ld. CIT(A) granted part relief and confirmed the additions to the extent of Rs. 40,15,000/-. Aggrieved by the order of the Ld. CIT(A), the assessee is in further appeal before us.

5. Before the Tribunal, the assessee filed revised Grounds of Appeal as under:

- "1. The order of the Ld. CIT(A) is contrary to law, weight of evidence and probabilities of the case.*
- 2. Under the facts and circumstances of the case, the Ld. CIT(A) erred in sustaining the addition of Rs. 6,00,000/- (out of Rs. 30,00,000/-) solely relying upon the untested deposition of one of Sri Durga Prasad as no opportunity was given to assessee to*

cross examine the said Durga Prasad which is mandating such an opportunity to an effected assessee.

3. *Under the facts and circumstances of the case the Ld. CIT(A) erred in sustaining the addition of Rs. 24,00,000/- (out of Rs. 30,00,000/-) as the concerned persons were not examined by the Ld. AO even on remand by affidavits confirming the return of amounts advanced to them.*
4. *Under the facts and circumstances of the case, since cash advances given in the earlier assessment year (that was subjected to scrutiny assessment) amounting to Rs. 30,00,000/- and duly accounted as such in the books of accounts of the assessee, the recovery of such advances and accounting for the same in the subsequent assessment year in question cannot be considered as unexplained cash credits.*
5. *Under the facts and circumstances of the case, since the amount of Rs. 10,15,000/- representing loans given to sundry debtors in the earlier assessment year (that was subjected to scrutiny assessment) and duly accounted as such in the books of accounts of the assessee, the recovery of such sundry debtors, and accounting for the same in the subsequent assessment year in question cannot be considered as unexplained cash credits.*
6. *Under the facts and circumstances of the case, since interest income from sundry debtors amounting to Rs. 3,24,850/- reported / returned on cash basis was accepted as income of the assessee, the same ought to have been considered as source for cash availability to the assessee.*

Any other ground that may be raised at the time of hearing with leave of the Hon'ble Tribunal."

6. At the outset, the Ld. AR drawn our attention to the revised grounds of appeal filed before us and submitted that the amount of Rs. 30 lakhs was deposited out of the earlier year realization / loans repayment. The Ld. AR further submitted that the Ld. AO has not considered these facts and hence rejected the plea of the assessee. Further, the Ld. AR also submitted that this amount of Rs. 30 lakhs is already included in the disallowances made on account of cash deposits made in the Savings Bank account with Tamil Nadu Mercantile Bank. The Ld. AR therefore pleaded that no separate additions can be made once again. With respect to realization of debtors even in the earlier years, the Ld. AR submitted that these amounts were shown as outstanding in the earlier years and received during the current year by the assessee and hence cannot be considered as cash credits. The Ld. AR further pleaded that the loans advanced carried the interest which was received by the assessee and disclosed while filing the return of income. The Ld. AR therefore pleaded that the additions made by the Ld. Revenue Authorities be deleted.

Per contra, the Ld. DR relied on the orders of the Ld. Revenue Authorities.

7. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. As contended by the Ld. AR, we find from the order of the Ld. CIT(A) that the assessee has made following cash deposits in the Savings Bank accounts with various banks:

Sl No	Name of the Bank	Amount (Rs.)
1.	Tamil Nadu Mercantile Bank	58,98,162/-
2.	Axis Bank	10,15,000/-
3.	Karur Vysya Bank	29,98,000/-

Out of the above cash deposits, the Ld. CIT(A) has deleted Rs. 88,000/- deposited in Tamil Nadu Mercantile Bank. Further, the Ld. CIT(A) has also given relief to the extent of Rs. 29 lakhs in Tamil Nadu Mercantile Bank which was against the cancellation of Demand Draft. Further, the Ld. CIT(A) also deleted the addition made by the Ld. AO based on the remand report for an amount of Rs. 29.98 lakhs. Thus, the Ld. CIT(A) has upheld the disallowance of Rs. 29,10,000/- in Tamil Nadu Mercantile Bank and Rs. 10,15,000/- in Axis Bank. We find that the Ld. Revenue Authorities have not twice included the sum of Rs. 30 lakhs while making the above additions as contended by the Ld. AR and hence, the Ld. AR's arguments are rejected. Further, this Bench of the Tribunal while passing the order in ITA No.215/Viz/2017,

dated 13/10/2022 has considered the written submissions made before the Tribunal and additional evidences produced before the Ld. Revenue Authorities. In the given facts and circumstances of the case, we find that it is the principle duty of the assessee to furnish cogent evidences to substantiate its claim made before the Tribunal. However, the Ld. AR reiterated the submissions made before the Ld. Revenue Authorities without providing any additional documentary evidence before us. We find from the order of the Ld. CIT (A) that the Ld. CIT(A) has in a detailed manner discussed about the evidences furnished before him and the remand report of the Ld. AO as well as the rejoinder by the assessee for the remand report and has adjudicated the issue accordingly. Under this situation, we once again reiterate that the onus is on the assessee to furnish the documentary evidence in support of her claim which the assessee has failed to do so even before us. We therefore find no infirmity in the order of the Ld. CIT(A) and accordingly the revised grounds of appeal raised by the assessee are dismissed.

8. With respect to ITA No.207/Viz/2017 (AY: 2011-12), we find that the facts involved in this appeal are identical to that of the facts of the assessee's appeal in ITA No.215/Viz/2015 (AY 2010-

11). Further, we find that the issues involved in this appeal (ITA No. 207/Viz/2017) are also identical to that of the assessee's appeal ITA No. 215/Viz/2015 (supra). Therefore, considering the identicalness of the facts as well as the issues involved in both the appeals under consideration, our decision given while adjudicating the assessee's appeal for the AY 2010-11 *mutatis mutandis* applies to the assessee's appeal for the AY 2011-12 also. Thus, the revised grounds raised by the assessee in its appeal for the AY 2011-12 are dismissed.

9. Conclusively, both the appeals filed by the assessee are dismissed.

Pronounced in the open Court on 28th February, 2024.

Sd/-

(दुव्वूरु आर. एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 28/02/2024

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Smt. Anjani Kumari Varada, D.No. 11-25-187, Samarangam Chowk, Vijayawada-520 001.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1(4), Vijayawada.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam