

**आयकर अपीलीय अधिकरण “ए” न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“A” BENCH, CHENNAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**आयकर अपील सं. ITA No.1218/Chny/2023**  
**(निर्धारण वर्ष / Assessment Year: 2021-22)**

<b>DCIT</b> Central Circle-2(1), Chennai.	<b>बनाम/ Vs.</b>	<b>Shri Amit Kumar Kothari</b> New No.35 to 41 Old No.28 EVK Sampath Salai, Vepery, Chennai-600 007.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>ADYPA-1209-N</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकी ओरसे/ <b>Appellant by</b>	:	Shri AR V Sreenivasan (Addl.CIT) -Ld. Sr. DR
प्रत्यर्थीकी ओरसे/ <b>Respondent by</b>	:	Shri R. Venkat Raman (CA)- Ld.AR

सुनवाईकी तारीख/ <b>Date of Hearing</b>	:	04-07-2024
घोषणाकी तारीख / <b>Date of Pronouncement</b>	:	08-08-2024

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2021-22 arises out of an order passed by Learned Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] on 08-09-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s 143(3) of the Act on 28-12-2022. The grounds taken by the Revenue read as under:

1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.
2. The Ld.CIT(A) erred in directing the assessing officer to assess Rs.2,00,90,000/- as business income as against the addition made by the assessing officer u/s.69 r.w.s 115BBE.

2.1 The Ld.CIT(A) failed to appreciate that the entries found in the seized note books have not been accounted in regular books of accounts. The claim of the assessee that the entries represent the receipt and repayment of loans was not substantiated by filing the details of persons who have received or repaid such loans.

2.2. The Ld.CIT(A) failed to appreciate that the assessee was unable to furnish the details of persons for verification, hence the assessing officer accepted peak credit theory to quantify the undisclosed income. It cannot be said that peak credit represents business income.

2.3 The Ld.CIT(A) failed to appreciate that the explanation offered by the assessee about the nature and source of investment was not substantiated or explained to the satisfaction of the assessing officer. Hence, the assessing officer rightly made addition u/s.69 r.w.s115BBE of the Income tax Act.

3. The Ld.CIT(A) erred in deleting the addition of Rs.1,69,12,000/- and Rs.9,98,800 made towards unaccounted interest income and Misc. receipts as quantified from the seized note books.

3.1 The Ld.CIT(A) failed to appreciate that the peak credit method was adopted to quantify the unexplained investment only. The interest income and misc. income arising out of the reported loan transactions are required to be brought to tax as income of the relevant assessment year.

3.2 The Ld.CIT(A) ought to have appreciated that the entire credits have not been brought to tax as income and only the peak credit is determined as income for this AY. Hence, the addition made towards interest income and misc. receipts would not amount to double taxation.

As is evident, the revenue assails the impugned order which has granted certain relief to the assessee while assessing the income on the basis of peak credit working.

2. The Ld. Sr. DR advanced arguments and supported the working of Ld. AO whereas Ld. AR supported the workings made by Ld. CIT(A) in the impugned order. The Ld. AR placed on record peak credit working to support the submissions. Having heard rival submissions and upon perusal of case records, the appeal is disposed-off as under.

### **Proceedings before lower authorities**

3.1 The assessee being resident individual is stated to be engaged in real estate funding. The assessee was subjected to search on 23-09-2021 and accordingly, impugned assessment was framed against the assessee. The assessee admitted income of Rs.268.50 Lacs in the

return of income. The same include additional business income of Rs.200 Lacs earned on account of finance business.

3.2 During search, some notebooks were found and seized. Upon perusal of the same, it transpired that the assessee along with others advanced loans from FYs 2018-19 to 2021-22. A sum of Rs.24.30 Crores was advanced during this year. The assessee stated that he did not receive any loans or advanced any loans. The entries were notings about funds given by the lender to the borrower directly in which the assessee acted as a mediator. Those entries do not reflect the income of the assessee. However, rejecting the same, entire advances were treated as loans advanced by the assessee. Considering the fact that the notebooks contained entries of inflow as well as outflow, the assessee pleaded for application of peak credit theory while arriving at unexplained income. The assessee submitted peak working for this year which came to be Rs.339.69 Lacs and the assessee worked out unaccounted income at Rs.200.90 Lacs. Since the assessee had offered additional business income of Rs.200 Lacs, the same was reduced from total income and the amount of Rs.200.90 Lacs was separately added as unexplained investment u/s 69 which would be subjected to tax u/s 115BBE.

3.3 The Ld. AO also assessed interest and commission separately and quantified the same at Rs.169.12 Lacs. There were certain misc. receipts also for Rs.9.98 Lacs which were separately added as income from other sources. Both these additions were also subjected to higher rate of taxes u/s 115BBE.

### **Appellate Proceedings**

4.1 During appellate proceedings, the assessee submitted that returned income was inclusive of Rs.200 Lacs admitted as business

income which was worked out on the basis of peak credit by considering all the payments and receipts whatsoever. The same would be assessable as business income only considering the ratio of various decisions of Tribunal. The assessee assailed separate addition of interest / commission and misc. receipts under these circumstances.

4.2 The Ld. CIT(A) concurred that the assessee admitted unaccounted business income of Rs.200 Lacs in the return of income. The Ld. AO accepted peak working of the assessee which came to be Rs.200.90 Lacs. The same was worked out by considering all the receipts and payments made during the course of finance business. The fact that the assessee's only source of income was income from finance business was not under dispute. There was no incriminating material indicating that the assessee had another source of income. Therefore, the said income was to be assessed as business income only. Further, since peak working was computed by considering all the receipts and expenditure whatsoever, separate addition of interest / commission income and misc. receipts would amount to taxing the same income twice and therefore, these additions were deleted. Aggrieved as aforesaid, the revenue is in further appeal before us.

### **Our findings and Adjudication**

5. It is crystal clear that the impugned additions are made on the basis of certain notebooks found during the course of search. These notebooks exclusively contain the receipts and expenditure of finance business as carried on by the assessee. It is quite apparent that the assessee has no other source of income since there is no material to that effect on record. On the basis of notings made in the notebook, the assessee worked out peak credit and computed undisclosed income of

Rs.200.90 Lacs. The assessee has already offered additional business income of Rs.200 Lacs in the return of income. By considering the undisputed fact that the only source of income for the assessee is income from finance business, the said peak credit has to be treated as business income only and the same could not be assessed as income from other sources u/s 69. Therefore, we concur with the finding of Ld. CIT(A) that the amount of Rs.200.90 Lacs would be considered as business income only. The impugned order, to that extent, stands confirmed.

6. It is another fact that the peak credit has been worked out by considering all the transactions of receipts and expenditure whatsoever including interest income, commission income and misc. receipts and therefore, separate addition thereof would amount to taxing the same amount twice. The Ld. Sr. DR has asserted that interest income has to be separately assessed and the same would not form part of peak credit working. To controvert the same, the Ld. AR placed on record peak credit working by excluding these receipts and demonstrated that if these items are excluded, there would, in fact, be no peak credit and the additions as sustained in the assessment order would be much more than interest / commission income and misc. receipts of Rs.169.12 Lacs. The same was confronted to the revenue and Ld. AO, vide letter dated 21-05-2024, has reiterated that interest / commissions income and misc. receipts are to be brought to tax separately. Even if this stand of revenue is to be considered then these items are to be excluded from peak credit working and in such a case, there would be no peak credit and the impugned additions would only be Rs.169.12 Lacs which are much less

than the addition of Rs.200.90 Lacs as made in the assessment order. Therefore, we confirm the stand of Ld. CIT(A) in deleting these additions.

7. In nutshell, the income of Rs.200.90 Lacs would be sustained as business income. The separate addition on account of interest / commission income and misc. receipts has rightly been deleted. The adjudication of Ld. CIT(A) does not require any interference on our part.

8. In the result, the appeal stands dismissed.

*Order pronounced on 8<sup>th</sup> August, 2024*

*Sd/-*  
**(MAHAVIR SINGH)**  
उपाध्यक्ष / **VICE PRESIDENT**

*Sd/-*  
**(MANOJ KUMAR AGGARWAL)**  
लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated :08-08-2024

*DS*

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Chennai.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF