

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri Manjunatha, G. Accountant Member and
Shri Prakash Chand Yadav, Judicial Member

आ.अपी.सं / **ITA No.523/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2013-14)

Shri Madhava Peddy Sudhakar Hyderabad PAN:AGTPM1219J (Appellant)	Vs.	Income Tax Officer Ward 13(3) Hyderabad (Respondent)
निर्धारिती द्वारा / Assessee by:	Shri A.V. Raghuram, Advocate	
राजस्व द्वारा / Revenue by:	Shri Srinath Sadanala, DR	
सुनवाई की तारीख / Date of hearing:	12/09/2024	
घोषणा की तारीख / Pronouncement:	18/09/2024	

आदेश/ORDER

Per Manjunatha, G. A.M

This appeal filed by the assessee is directed against the order dated 28/03/2024 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2013-14.

2. The brief facts of the case are that in this case, the Assessing Officer upon verifying individual transaction details against the PAN of the assessee for the financial year 2012-13,

relevant to A.Y 2013-14, noticed that the assessee has made cash deposits of Rs.53,31,630/- in his Savings Bank Account held with Punjab National Bank. Upon verification, it was seen that the assessee has not filed the return of income for the A.Y 2011-12. Therefore, the assessment has been reopened u/s 147 of the I.T. Act, 1961 and notice u/s 148 of the Act dated 27/03/2018 has been issued by the Income Tax Officer Ward 12(2) Hyderabad. In response to the 148 notice, there was no compliance from the assessee. Subsequently, notice u/s 142(1) dated 1/11/2018 was issued and posted the case for hearing on 9/11/2018. The assessee appeared before the Assessing Officer and filed letter stating that his wife is into business and he has to file his return of income for himself and for his wife and therefore, requested to transfer the case to Income Tax Officer Ward 13(3) Hyderabad. Accordingly, the assessment records has been transferred to Income Tax Officer Ward 13(3) Hyderabad.

3. The case was taken up for scrutiny and during the course of assesment proceedings, the Assessing Officer noticed that there is a total credits in his bank account including cash deposits to the tune of Rs.79,65,164/-. The Assessing Officer called upon the assessee to explain credits found in his bank account. In response, the assessee submitted that the bank account held with Punjab National Bank is jointly operated by himself and his wife and credits found in the bank account amounting to Rs.54,57,050/- pertains to business receipts of his

wife for the relevant financial year. In this regard, the appellant has also filed return of income filed by his wife for the A.Y 2013-14 admitting gross receipts of Rs.54,57,050/- and net profit of Rs.4,36,800/-. For the balance cash deposits, the appellant explained the source out of previous bank withdrawal from very same bank and the amount transferred from his cash credit account. The Assessing Officer however, was not convinced with the explanation furnished by the assessee and according to the Assessing Officer, the assessee could not explain the relevant credits appearing in his bank account and thus,, rejected the explanation of the assessee and made addition of Rs.79,65,164/- as unexplained money taxable u/s 69A of the I.T. Act, 1961.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A), the assessee challenged the additions made by the Assessing Officer toward credits found in his bank account and argued that part of the credits is his wife's business receipts and the same has been accepted by the Assessing Officer in her assessment. The balance cash deposit of Rs.25,05,164/- has been explained out of known source of income with relevant evidences. Therefore, the assessee submitted that the addition made by the Assessing Officer should be deleted. The learned CIT (A) after considering the relevant facts and also reasons given by the Assessing Officer, rejected the explanation furnished by the assessee and sustained the additions made by the Assessing

Officer towards cash credits found in bank account as income of the assessee.

5. Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

6. The learned Counsel for the assessee referring to the ground No.2 of assessee's appeal, submitted that although notice u/s 148 of the Act has been issued to the assessee, but the said notice has been issued by non-jurisdictional Assessing Officer who is not having jurisdiction on the assessee which is evident from the subsequent transfer of case to another officer by the Assessing Officer who issued notice. Therefore, he submitted that the reopening of the assessment in absence of notice u/s 148 by the jurisdictional Assessing Officer is void, ab initio and liable to be quashed.

7. The learned Counsel for the assessee further submitted that admittedly the bank account held with Punjab National Bank is a joint bank account of the assessee and his wife. The assessee's wife is into business and filed her return of income for the A.Y 2013-14 by admitting gross receipts from her business at Rs.54,57,050/- and the same has been assessed as such by the Assessing Officer vide order passed u/s 143(3) r.w.s. 147 of the I.T. Act, 1961 on 29.01.2022. Further, the Assessing Officer has made addition towards balance credits of

Rs.25,05,164/- in the hands of assessee's wife as unexplained money. Further, the Assessing Officer had also made addition towards total credits found in the bank account in the hands of the assessee as unexplained money. Therefore, once the addition is already made in the hands of the assessee's wife, no addition can be made towards very same credits in the hands of the assessee. Therefore, he submitted that the addition made by the Assessing Officer, in the hands of the assessee should be deleted.

8. The learned DR, on the other hand, supporting the orders of the learned CIT (A) submitted that the reopening of the assessment u/s 148 is valid, because the assessee is a non-filer and therefore, based on PAN data basis, the Assessing Officer has issued notice u/s 148 of the I.T. Act, 1961. Therefore, the grounds taken by the assessee should be rejected. In respect of cash deposits in bank account, although the appellant claims that his wife had admitted part of credit in her return, but no proper evidence has been filed. Therefore, he submitted that the addition made by the Assessing Officer should be sustained.

9. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. As regards reopening of the assessment u/s 147 of the I.T. Act, 1961 is concerned, since the assessee is a non-filer of return of income and also notice has been issued by the Assessing

Officer on the basis of PAN data available with the Department, in our considered view, the appellant cannot question the jurisdiction of the Assessing Officer who issued notice u/s 148, more particularly when the appellant himself has requested for transfer of case to another Assessing Officer. Therefore, we reject the ground taken by the assessee challenging the validity of notice issued u/s 148 of the Act and consequently, assessment order passed by the Assessing Officer is upheld.

9. As regards the addition made towards credits found in Bank Account of Rs.79,65,164/- is concerned, it is an admitted fact that the bank account held with the Punjab National Bank is a joint account of the appellant and his wife and this fact has been accepted by the Assessing Officer himself and also the Assessing Officer of the wife of the appellant. Further, very same credits in bank account held with Punjab National Bank has been considered in the hands of the appellant's wife, where the appellant's wife has admitted and owned up credits to the tune of Rs.54,57,050/- as here business receipts and the Assessing Officer of the wife has accepted the said credits and assessed income from business. Therefore, out of total credits of Rs.79,65,164/-, credits to the extent of Rs.54,57,050/- cannot be assessed in the hands of the appellant, because the same has already been considered and assessed in the hands of the appellant's wife. Therefore, we direct the Assessing Officer to

delete the addition to the extent of Rs.54,57,050/- out of the total addition of Rs.79,65,164/- u/s 69A of the I.T. Act, 1961.

10. In so far as the balance addition of Rs.25,05,164/- is concerned, admittedly, the same has been added in the hands of the appellant's wife u/s 69A of the Act and also in the hands of the appellant u/s 68 of the I.T. Act, 1961. Once there is no dispute with regard to the fact that the Bank Account held with Punjab National Bank is joint account of the appellant and his wife and credits found in the said bank account has been assessed in the hands of appellant's wife, the very same credits cannot be assessed in the hands of the appellant because it amounts to taxing the income twice. Further, the appellant has also claimed to have explained the balance credit of Rs.25,05,164/- out of known source of income including proceeds of gold loan, transfer from salary OD Account etc. Further, the appeal filed by the appellant wife against her assessment is also pending before the learned CIT (A) for adjudication as claimed by the learned Counsel for the assessee. Since bank account held by the appellant and his wife is joint account and credits found in said bank account are partly assessed in the hands of the assessee's wife and fully in the hands of the assessee, in our considered view, the issue needs to be re-examined by the learned CIT (A) in light of explanation of the assessee with regard to the source for said credits. Further, it is advisable to decide this issue along with the appeal filed by the appellant's wife. Therefore, we

set aside the issue to the file of the learned CIT (A) and direct the learned CIT (A) to decide the issue of source for credits to the extent of Rs.25,05,164/- in light of explanation furnished by the assessee along with any other evidence that may be filed. We further direct the learned CIT (A) to decide this appeal along with the pending appeal filed by the appellant's wife on the very same issue of cash credits found in bank account and additions made by the Assessing Officer u/s 69A of the I.T. Act, 1961.

11. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 18th September, 2024.

Sd/-

Sd/-

(PRAKASH CHAND YADAV) JUDICIAL MEMBER	(MANJUNATHA, G.) ACCOUNTANT MEMBER
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Hyderabad, dated 18th September, 2024

Vinodan/sps

Copy to:

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2	Income Tax Officer Ward 13(3) Aayakar Bhavan, Basheerbagh, Hyderabad 500001
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order