

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri Amitabh Shukla, Accountant Member

आयकर अपील सं./I.T.A. No.1769/Chny/2024
निर्धारण वर्ष/Assessment Year: 2012-13

Chinnu Srinivasan,
9/214 C, Near Uppukinaru, Karuppur
Post, Omalur, Salem 636 012.

Vs. The Income Tax Officer,
Ward – 1(6),
Salem.

[PAN:BVBPS1595M]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri P.M. Kathir, Advocate
प्रत्यर्थी की ओर से/Respondent by : Ms. Gouthami Manivasagam, JCIT
सुनवाई की तारीख/ Date of hearing : 12.09.2024
घोषणा की तारीख /Date of Pronouncement : 25.09.2024

आदेश / O R D E R

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order dated 30.05.2024 passed by the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi for the assessment year 2012-13.

2. The assessee raised 5 grounds of appeal amongst which, the only issue emanates for our consideration as to whether the Id. CIT(A) is justified in confirming the addition made by the Assessing Officer without

considering peak credit concept in the facts and circumstances of the case.

3. At the outset, we note that the Assessing Officer examined two bank accounts of the assessee and found cash deposits to an extent of ₹.20,47,400/- in Indian Overseas Bank and Karur Vysya Bank. Further, he also observed that the assessee made withdrawals to an extent of ₹.19,95,000/-, for having not given proper explanation for the said withdrawals, proceeded to add an amount of ₹.20,34,000/- to the total income of the assessee vide his order dated 28.04.2021 passed under section 147 of the Income Tax Act, 1961 ["Act" in short]. The Id. CIT(A) confirmed the same.

4. Before us, the Id. AR Shri P.M. Kathir, Advocate, placed on record the details of peak credit working for the assessment year under consideration. According to him, peak credit as on 03.03.2020 for ₹.1,97,800/- may be taken into consideration for making addition.

5. The Id. DR Ms. Gouthami Manivasagam, JCIT opposed the same.

6. We find from the order of the Assessing Officer that the Assessing Officer himself observed that there were withdrawals from the said two bank accounts of the assessee, for having no explanation, the said

amounts were added. The Id. AR submits that the assessee is an individual, derives income from business and other sources. The AR submits that the assessee himself filed return of income declaring total income of ₹.1,74,537/- and without considering the same, the Assessing Officer for not having given explanation of the withdrawals, added entire deposits, which is not justified. We find the details of the deposits and withdrawals are before the Assessing Officer, but, however, not considered the same for the reason for not giving explanation to the withdrawals. We find that it is an established principle that entire credits cannot be added without there being giving benefit to the withdrawals. Therefore, we accept the contention of the Id. DR in restricting the addition to an extent of ₹.1,97,800/- basing on the peak credit working for the year under consideration. The Id. DR vehemently opposed that there was no details provided to the Assessing Officer with regard to the third account. The Id. AR replied that the Assessing Officer did not ask for the same as there was no deposit found in the said account. Further, the Id. AR placed on record the decision of the Hon'ble High Court of Madras in the case of PCIT v. Shri A. Anbukkannan in T.C.A. No. 216 & 217 of 2019 dated 04.03.2019, wherein, the Hon'ble High Court was pleased to uphold the order of the ITAT in adopting the method of peak credit on

account of alleged undisclosed income. The relevant part of the said order is reproduced herein below:

4. *The findings of the learned Tribunal upholding the order of the learned Commissioner of Income Tax (Appeal) in this regard are quoted below for ready reference:-*

"9. We have considered the rival contentions and perused the orders of the authorities below. It is not disputed by the Revenue that assessee had both cash deposits as well as cash withdrawals in his bank account with Axis Bank accounts with Pudukkottai and T.Nagar Branch. Though learned Assessing Officer had listed out the major transactions at paragraph 4 of the assessment order, a date wise analysis of the bank accounts were not done. Assessee can always say that cash deposits in the bank account had come out of an earlier cash withdrawal as long as the time interval between the withdrawals and deposits are not so significantly substantial to disbelieve the source. Whether the assessee was carrying on any money lending business, has no relevance when an assessment is made considering the amounts deposited in the bank accounts. However, in our opinion, cash deposits <http://www.judis.nic.in> alone cannot be the subject of an addition ignoring the cash withdrawals. Hence, finding of learned Commissioner of Income Tax (Appeals) that Peak Credit of Rs.18,12,888/- alone could have been considered for the addition cannot be faulted. In so far as transactions other than cash are concerned, it may be true that assessee was earning commission from money lending. However, the finding of the learned Commissioner of Income Tax (Appeals) that assessee was earning 1% commission of the deposits in the bank account was only a surmise. Even if there were some commission earnings it gets subsumed in the Peak Credit of Rs.18,12,888/- considered for addition. The further addition of Rs.3,67,758/- was not justified in the fact and circumstances of the case, such addition stands deleted.

10. In the result, appeal of the Revenue is dismissed whereas that of the assessee is partly allowed."

5. *Having heard the learned counsel for the Revenue, we are satisfied that no substantial question of law arises in the present Appeals filed by the Revenue and we are of the considered opinion that only if the Assessee has <http://www.judis.nic.in> failed to explain the entries in bank account, then the additions made by the Authorities under the Act on the basis of Peak Credit can be adopted to remove the cascading effect of the unexplained credit entries in the bank account. The assessee had both cash deposits and cash withdrawals in his bank account with the same bank. Therefore, the method*

of 'Peak Credit' was rightly adopted for addition of the alleged undisclosed income of the Assessee and this is a well settled and common principle so adopted. The finding of facts of the Authorities below cannot be said to be perverse or illegal in any manner.

7. Respectfully following the above decision, we restrict the addition to an extent of ₹.1,97,800/- as against the addition of ₹.20,34,000/-. Thus, the ground raised by the assessee is allowed.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 25th September, 2024 at Chennai.

Sd/-
(AMITABH SHUKLA)
ACCOUNTANT MEMBER

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Chennai, Dated, 25.09.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.