

यकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1294/Chny/2024  
निर्धारण वर्ष/Assessment Year: 2010-11

Mrs. Muthusamy Kannammal, 4/11, Kadakal Pudhur, Vittamanaickkenpatti Veesanam, Namakkal-637 405.	<b>v.</b>	The ITO, Ward-2, Namakkal.
[PAN: APAPK 4456 K]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.T.S. Lakshmi – Venkatraman, FCA
प्रत्यर्थी की ओर से /Respondent by	:	Dr. Samuel Pitta, JCIT
सुनवाईकीतारीख/Date of Hearing	:	21.08.2024
घोषणाकीतारीख /Date of Pronouncement	:	23.10.2024

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "the Ld.CIT(A)"), Delhi, dated 16.04.2024 for the Assessment Year (hereinafter in short "AY") 2010-11.



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**2.** The main grievance of the assessee is against the action of the Ld.CIT(A) confirming the addition of Rs.24,26,960/- made by the AO. The assessee has raised the legal issue of service of notice u/s.148 of the Act on 03.04.2017 as barred by limitation. The Ld.CIT(A) has noted that the notice u/s.148 of the Income Tax Act, 1961 (hereinafter in short "the Act") was issued on 31.03.2017 which was the last day for validly issuing notice u/s.148 of the Act. Since the AO had issued the notice u/s.148 of the Act on 30.03.2017 and there is no evidence to prove that the same has been issued after 31.03.2017, and even if the assessee received the notice only on 03.04.2017, according to us, it would not vitiate the notice issued u/s.148 of the Act; and in the absence of any evidence to show that the notice has been issued after 31.03.2017, we are not inclined to accept such a plea and reject the same being devoid of merit.

**3.** Next ground of appeal is also a legal issue raised by assessee against the action of the Ld.PCIT granting approval for re-opening of assessment. According to the Ld.AR, the Ld.PCIT has granted sanction/ approval for 172 cases on a single day which vitiates the approval granted. In this regard it is noted that the assessee didn't file any return of income (RoI) for AY 2010-11 and the AO had re-opened the assessment taking note of the information he received about cash deposits made by assessee amounting to Rs.17,36,000/- in his savings bank a/c maintained with ICICI Bank Ltd., Namakkal during the relevant



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Assessment Year. Since the assessee didn't file any RoI, the AO re-opened the assessment to verify the source of the deposits. Therefore, the action of the AO to re-open the assessment can't be faulted as such; and it is further noted that like assessee, department flagged the cases of 172 similar persons who all didn't file any return of income for the year under consideration and similarly deposited cash in their respective bank account, therefore, the AO in order to verify the nature and source of the cash deposit, has consolidated the cases for approval of the Ld.PCIT to reopen which was granted by Ld.PCIT, which action cannot be faulted. It is further noted that the AO in this case has given the reasons for reopening in the format on 27.03.2017, which proposal was put up before the JCIT who gave his recommendation on 29.03.2017 and the Ld.PCIT granted approval on 30.03.2017 and pursuant thereto, the AO had issued notice u/s.148 of the Act on 31.03.2017 which action can't be faulted on the peculiar facts and circumstances of the case. Moreover, explanation-2(a) of section 147 of the Act, aids in reopening which reads as under:

Explanation 2.-For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :-

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;

**4.** Coming to the next issue which is regarding action of the Ld.CIT(A) confirming the addition of Rs.24,26,960/-. The brief facts are that the



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AO noted that there was cash deposits amounting to Rs.17,36,000/- in his savings bank account maintained with ICICI Namakkal during the relevant AY 2010-11. According to the AO, despite notices the assessee didn't give any explanation regarding the nature & source of the deposits. Therefore, he was pleased to add the entire amount deposited in the bank to the tune of Rs.24,26,960/- u/s.144 of the Act (best judgment assessment) u/s.69 of the Act. From the perusal of the Assessment Order, it is noted that the assessee has returned an income of Rs.2,47,280/- and since, the assessee didn't participate during the course of assessment proceedings, the AO has added the entire deposits made in the assessee's bank account.

**5.** The Ld.AR has filed a Paper Book which contains the Assessment Order passed in the assessee's own case for AYs 2011-12 & 2012-13. And the relevant AY before us is AY 2010-11. From a perusal of the Assessment Order for AY 2011-12 u/s.143 read with section 147 of the Act dated 13.12.2019, the AO noted that the assessee is a widow and is doing the business of money-lending; and that the assessee frequently deposited and withdraws money from her bank account for the purpose of lending money to her customers; and the AO after taking into consideration, the business of assessee has accepted that her income is interest derived from lending of money and the AO has accepted the return filed by the assessee to the tune of Rs.1,79,430/- [pursuant to the



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notice u/s.148 of the Act]. And likewise for AY 2012-13, the AO vide order dated 13.12.2019 on similar facts has accepted the return filed by the assessee to the tune of Rs.2,19,610/- [in response to notice u/s.148 of the Act]. However, the AO for AY 2010-11 vide order dated 26.12.2018 departed from the aforesaid action and added the entire deposit in the bank account to the tune of Rs.24,26,960/- by passing an *ex parte* order *qua* assessee. The assessee has filed the copy of the bank statement [Corporation Bank SB A/c No.01664010] from 01.04.2009 to 31.03.2010 as Annexure-IV. A perusal of which reveals that the assessee frequently deposit and withdraw money from the bank and since this is only bank account of the assessee, we note the peak-credit in the bank was to the tune of Rs.5,66,533/-. Considering the overall facts and circumstances of the case as discussed, and the action of AO for subsequent assessment years as noted (*supra*) we are of the considered opinion that the peak-credit need only be added rather than the entire deposit made by the AO.

**6.** Further, the assessee has brought to our notice the bank statement from 01.04.2009 to 31.03.2010 which reveals that the peak-credit is to the tune of Rs.5,66,533/- as on 26.03.2010. And the assessee brought to our notice the opening balance as on 01.04.2009 was Rs.54,526/- and when that amount is reduced from the figure of Rs.5,66,533/-, the peak amount which can be brought to tax is only Rs.5,12,007/-. We find force in the submissions of the Ld.AR and note that there is frequent deposit



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and withdrawal of amount/cash from assessee's bank account, then in such cases, the highest bank balance in the bank during '365' days of the undisclosed assessee's money is the peak-credit in respect of the undisclosed bank account maintained by the assessee. Since the bank account maintained in Corporation Bank has not been disclosed by the assessee to the department, and the assessee has owned up the money deposited and withdrawn as her own money, the highest bank balance in the bank during the relevant year under consideration is deemed to be undisclosed money of the assessee. The Hon'ble Allahabad High Court in the case of Bhaiyalal Shyam Behari v. CIT reported in [2005] 276 ITR 38 (All.), observed that the assessee was entitled to take up the plea of the addition of the peak credit which only need to be treated as the income of the assessee. In order to make a plea of peak credit, the assessee has to lay down the factual foundation that all cash credit entries in the books of accounts belongs to the assessee i.e. it is the assessee's own money. Then only the question of peak credit can be validly raised. In the present case, the assessee has owned up the cash which was deposited & withdrawn as her own money, and therefore, the plea of the assessee that the peak-credit need to be only taken into consideration as her income in the facts and circumstances of the case needs to be accepted especially considering the fact that the AO for AYs 2011-12 & 2012-13 has accepted the RoI filed by the assessee to the tune of



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Rs.1,79,420/- and Rs.2,19,610/- and finding that the peak-credit in the bank is to the tune of Rs.5,66,533/- and taking opening balance as on 01.04.2009 i.e. Rs.54,526/-, the maximum highest balance in the bank during '365' days in respect to AY 2010-11 is found to be Rs.5,12,007/- and the assessee returned income is Rs.2,47,280/-, balance amount of Rs.2,64,727/- is directed to be sustained and the balance amount to be deleted [i.e. assessee gets a relief of Rs.26,74,240 minus 2,64,727 = Rs.24,09,513/-].

**7.** In the result, appeal filed by the assessee is partly allowed.

Order pronounced on the 23<sup>rd</sup> day of October, 2024, in Chennai.

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

**Sd/-**  
**(एबी टी. वर्की)**  
**(ABY T. VARKEY)**  
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 23<sup>rd</sup> October, 2024.

**TLN. Sr.PS**

**आदेश की प्रतिलिपि अग्रेषित/Copy to:**

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