

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 1780/CHNY/2024
निर्धारण वर्ष/Assessment Year: 2017-18

**Shri Thenmalaikhan Saboormydin
ThulkarunaiKaznavi,**
New No.7, Sullivan Street,
Santhome, Mylapore,
Chennai – 600 004.

**The Deputy Commissioner
of Income Tax,**
Vs. Central Circle -1(4),
Chennai.

PAN: AFWPK 4146R

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri P.M. Kathir, Advocate
: Shri M. Murali, CIT

सुनवाई की तारीख/Date of Hearing : 19.11.2024
घोषणा की तारीख/Date of Pronouncement : 19.11.2024

आदेश / O R D E R

PER GEORGE GEORGE K, VICE PRESIDENT:

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 25.04.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2017-18.

2. Brief facts of the case are as follows:

The assessee is an individual. A search u/s.132 of the Act was conducted in the group case of Shri Ram Prasath Reddy and others on 27.11.2020. During search, certain document and books pertaining to the assessee was also seized. Subsequently, the assessee's case was centralized and notice u/s.153C of the Act was issued. In response to notice issued u/s.153C of the Act, the assessee filed his return of income on 05.07.2022 declaring a total income of Rs.18,19,460/- (which was declared in original return filed u/s.139(1) of the Act on 31.10.2017). During the course of proceedings u/s.153A r.w.s. 153C of the Act, the AO issued show-cause notice dated 23.03.2023 directing the assessee to explain the source of cash deposits made amounting to Rs.20,30,000/- as appearing in Form No.26AS. In response to show-cause notice issued, the assessee submitted that he did not have a personal bank account with the Catholic Syrian Bank (CSB) for the year under consideration and denied entirely the cash deposits appearing in Form No.26AS. It was stated by the assessee, M/s. Tass Gas Agency in which assessee was a partner had made cash deposit of Rs.8,00,000/- in current account No.0244-00393531-195001 with Catholic Syrian Bank Ltd., and said current account does not belong to the assessee, the individual. Further, the assessee submitted

cash deposit of Rs.12,30,000/- in current account No.0244-00393992-195001 with Catholic Syrian Bank (CSB) belongs to M/s. Taas Foundation Pvt. Ltd., a company incorporated under Companies Act, in which the assessee is a director. The assessee had also submitted copies of bank statement and stated that same did not relate to him, as an individual. The AO however, rejected the submissions of the assessee and passed the assessment order u/s.153C of the Act by adding the cash deposit of Rs.20,30,000/- u/s.69A of the Act.

3. Aggrieved, assessee filed appeal before the First Appellate Authority. The CIT(A) partly allowed the appeal of the assessee. As regards to cash deposit made by M/s. Taas Gas Agency (partnership firm) amounting to Rs.8,40,000/- (reflected as Rs.8,00,000/- in Form 26AS), the CIT(A) held the cash deposits are out of business of partnership firm in running the gas agency dealership with Indian Oil Corporation and deleted the addition of Rs.8,00,000/-. As regards cash deposit amounting to Rs.12,30,000/- in bank account of M/s. Taas Foundation Pvt Ltd (company), the CIT(A) confirmed the addition made by the AO. The relevant finding of the CIT(A) confirming the addition of Rs.12,30,000/- read as follows:-

“6.4 Cash Deposit in the bank account of Taas Foundation Pvt Ltd of Rs.12,30,000/-: It is reported in the statement of financial transaction for the said FY, that there was a cash deposit of Rs,12,30,000/- in the account linked to the PAN of the appellant. During the assessment proceedings, the assessee claimed that he has not carried out any such transaction and furnished a certificate from Catholic Syrian Bank Ltd signed by the Senior Manager, Pallavaram towards the same. However, in that letter it has been mentioned that the certificate was issued without any guarantee or responsibility on the bank or any of the officers. In such a circumstance, AO had taken a stand not to consider the certificate and added as unaccounted cash deposit in the hands of the assessee.

During appellate proceedings vide his submissions the assessee reiterated that the cash deposits of Rs. 12,30,000/- belongs to M/s Taas Foundation Pvt Ltd and not to him. The appellant has furnished the bank account of the TAAS foundation Pvt Ltd in which it is observed that Rs. 7,30,000/- of cash deposits were done much before the demonetization period and an amount of Rs.5,00,000/- was deposited as cash in the bank account during demonetization period. It is observed from the ROC records that the M/s Taas Foundation private Ltd. has been struck off from the records as on date. It appears that the Taas Foundation Pvt Ltd has no active business or a dormant company with no activities for considerable time. The appellant being director has not furnished the financials of the company to prove the source of cash deposits nor the income tax returns of the company was furnished. The appellant is the director of the company Taas Foundation Pvt Ltd and is aware of the activities of the company. When such is the situation, it is incumbent upon the appellant who is also the director to explain the cash transactions with evidences with respect to the sources of cash deposits. He should have produced the accounts of the company to prove the genuineness and correctness of transactions and explained the same. The appellant has not given any evidences during the appellate stage with regard to the sources of cash deposits in the bank account of the company except stating that they did not belong to the assessee. The appellant has to explain that the cash deposits has not been made by him in the bank accounts of the company with cogent evidences. In the facts and circumstances of the case, it can be presumed that it is the appellant's own unaccounted cash which is deposited in the bank account of the company which is not active. Hence this addition of Rs.12,30,000/- made by the AO is sustained and the ground related to this addition is dismissed.

6.5 *The appellant has relied on case laws and the facts and circumstances of the appellant are different from those mentioned in the case laws. The issues in those case laws when there was an error in entry in 26AS statement and the assesseees were not the actual beneficiaries of the amounts, then the addition is not correct. However, in the instant case of the appellant, the cash deposits have been made in related bank accounts under suspicious circumstances which has to be explained by the appellant with evidences. Hence the case laws relied upon are not of benefit to the assessee.*”

4. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The grounds raised before the Tribunal reads as follows:

1.1 *The very initiation of proceedings u/s.153C of the Act against the appellant being illegal, the CIT(A) erred in failing to quash the order of assessment.*

1.2 *The cash deposits added by the AO not relating to the appellant herein, the very proceedings u/s. 153C of the Act ought to have been held illegal by the CIT(A).*

2.1 *The CITA) grossly erred in upholding the addition of cash deposits Rs.12,30,000/- to the appellant's income.*

2.2 *The cash having been deposited by the company, M/s. Taas Foundation Pvt. Ltd. in its current account, the CIT(A) has erroneously upheld the addition of the same as the appellant's income.*

2.3 *The CIT(A) erred in failing to consider the evidence submitted by the appellant establishing that the cash deposits did not relate to him at all.*

2.4 *The CIT(A) having accepted that the cash was deposited in the company's account and not the appellant's, erred in confirming the addition in the appellant's hands.*

2.5 *The addition having been made by the AO and upheld by the CIT(A) merely on presumptions and surmises, the same is to be deleted in full.*

3. *The very addition u/s.69A of the Act being illegal, the taxation of the same at higher rate u/s.115BBE of the Act is also illegal.*

4. *The AO has erred in levying interest u/ss.234A & 234B of the Act and the CIT(A) erred in upholding the same.*

5. *Any other ground raised at the time of hearing.*

5. The Id.AR reiterated the submissions made before the Income-tax Authorities. Further, the Id.AR by placing reliance on Ground No.2, submitted that there is nothing incriminating material found during the course of search relating to the addition of cash deposits made u/s.69A of the Act. The Id.AR submitted that the addition has been solely made on the basis of information available in Form No.26AS, which is not an incriminating material and the assessment having been unabated / completed assessment, the addition cannot be made in a proceedings u/s.153C of the Act. In this context, the Id.AR relied on the judgment of Hon'ble Apex Court in the case of PCIT v. Abhisar Buildwell (P) Ltd., reported in [2023] 454 ITR 212.

6. The Id.DR supported the order of the AO and the CIT(A).

7. We have heard rival submissions and perused the material on record. The undisputed facts are the additions are being made solely on the basis of information available in Form No.26AS. Therefore, additions are not based on any incriminating material. In the instant case, the assessment is unabated assessment and addition if any, in such a scenario can be based only on incriminating material. Since, there is no incriminating material warranting addition u/s.69A of the Act, we delete the addition made by the AO

and sustained by the CIT(A) to the extent of Rs.12,30,000/-. In this context, we rely on the judgment of the Hon'ble Apex Court in the case of PCIT v. Abhisar Buildwell (P) Ltd., cited *supra*. Since we have decided the legal issue in favour of the assessee, the issue on merits is not adjudicated and is left open. It is ordered accordingly.

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

Order pronounced in the open court on 19th November, 2024 at Chennai.

Sd/-

(एस.आर. रघुनाथा)

(S.R. RAGHUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 19th November, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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

Sd/-

(जॉर्ज जॉर्ज के)

(GEORGE GEORGE K)

उपाध्यक्ष /VICE PRESIDENT