

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B SMC' BENCH, CHENNAI
श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य के समक्ष
Before Shri S.S. Viswanethra Ravi, Judicial Member

आयकर अपील सं./I.T.A. No.784/Chny/2025
निर्धारण वर्ष/Assessment Year: 2016-17

Bharat Kumar,
No. 152, 10th Street, Deber Nagar,
Vyasarpadi 600 039, Chennai.
[PAN:BFHPB6487D]

Vs. The Income Tax Officer,
Non Corporate Ward 4(5),
Chennai 600 006.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri R.S. Hithesh, Advocate for
: Shri D. Anand, Advocate
प्रत्यर्थी की ओर से/Respondent by : Ms. V. Aswathy, JCIT
सुनवाई की तारीख/ Date of hearing : 02.09.2025
घोषणा की तारीख /Date of Pronouncement : 11.09.2025

आदेश /ORDER

This appeal filed by the assessee is directed against the order dated 28.02.2025 passed by the Addl/JCIT(A)-1, Bengaluru for the assessment year 2016-17.

2. The Id. AR Shri R.S. Hithesh, Advocate placed on record memo of additional ground and requested to take up the said additional ground as preliminary issue. After hearing both the parties, I am inclined to treat the additional ground as preliminary issue.

3. The Id. AR submits that the order of the Id. CIT(A) is erroneous in law and facts in sustaining the addition by changing the very nature of the

addition made by the Assessing Officer under section 69 of the Income Tax Act, 1961 ["Act" in short] as unexplained investment into one under section 68 of the Act as unexplained cash credit, thereby travelled beyond the scope of the assessment order and renders the impugned order unsustainable. The Id. AR referred to para 8.5, 8.6 and 8.9 of the assessment order and argued that the Assessing Officer proceeded to make addition on account of unexplained investment under section 69 of the Act. Further, he referred to para 5.7 of the impugned order and submits that the Id. CIT(A) travelled beyond the scope of assessment order and directed the Assessing Officer to bring the addition under unexplained cash credit under section 68 of the Act. He placed on record order of this Tribunal in the case of Smt. Sekar Jayalakshmi v. ITO in ITA No. 20/Chny/2021 dated 21.12.2022 and argued that the addition is not maintainable with reference to the para Nos. 7 & 8 of the said order of this Tribunal.

4. The Id. DR Ms. V. Aswathy, JCIT argued that the Assessing Officer did not mention any provisions of law in the assessment order as well as computation of income. The Id. CIT(A) by considering the facts and circumstances of the case, directed the Assessing Officer to treat the said addition as unexplained cash credit under section 68 of the Act taking into

account the facts and circumstances of the case. She argued that the Id. CIT(A) has ample power in directing the Assessing Officer to treat the addition under section 68 of the Act. She submits, by referring to the case law as relied upon by the Id. AR, that in the said case, the Assessing Officer clearly mentioned section 68 of the Act and the Id. CIT(A) changed the same as 69A of the Act, wherein, in the present case, no provision of law is mentioned by the Assessing Officer, but the CIT(A) clarified that the addition should be under section 68 of the Act. She vehemently argued that the order relied on by the Id. AR in the case of Smt. Sekar Jayalakshmi v. ITO (supra) is highly distinguishable and not applicable to the facts and circumstances of the present case.

5. After hearing both the parties, I find force in the argument of the Id. DR in submitting that the facts and circumstances in the case of Sekar Jayalakshmi (supra) is different from the facts and circumstances of the case in hand and accordingly, the additional ground raised by the assessee is dismissed.

6. Coming to the merits of the case, it is noted that the assessee furnished every details before the Assessing Officer in respect of the objections raised by the Assessing Officer. On perusal of the assessment order in para 3 to 8, which clearly demonstrate furnishing every details in

respect of the debtors before the Assessing Officer along with opening cash balance/interest income earned and cash withdrawals re-deposited. The Assessing Officer, to verify the genuineness of the transaction, issued notices to all the 17 parties, but, however, notices were served on 5 parties and other notices remained unserved. I find that the Assessing Officer proceeded to add the said amount for non-compliance in respect of summons issued under section 133(6) of the Act.

7. The Id. AR vehemently argued that the assessee furnished every detail before the Assessing Officer and it is the duty of the Assessing Officer to conduct enquiry in respect of the said parties. He relied on the decision of the Hon'ble Supreme Court in the case of CIT v. Orissa Corporation (P) Ltd. 159 ITR 78 (SC) and argued that the assessee discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence with reference to non-compliance of alleged debtors on the summon under section 133(6) of the Act.

8. The Id. DR by referring to para 5.4 at page 12 of the impugned order and argued that the Id. CIT(A), during the appellate proceedings, sought for information, but, nothing was furnished as per page 13 of the impugned order.

9. Upon hearing both the parties, I note that the assessee furnished every detail before the Assessing Officer, which is clear from para 3 of the assessment order. It is noted that the Assessing Officer proceeded to make the addition only on the non-compliance by the alleged debtors to the summons issued under section 133(6) of the Act. I find the principle laid down by the Hon'ble Supreme Court in the case of CIT v. Orissa Corporation (P) Ltd. (supra) is applicable considering the facts and circumstances of the case, wherein, the Hon'ble Supreme Court was pleased to hold that the Appellant-Revenue, apart from issuing notice under section 133(6) of the Act at the instance of the assessee, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. In the present case, I find that the assessee is stated to have been engaged in pawn broking and financing activities made advances to the persons, whose details are reflected in para 8 of the assessment order. I note that the assessee furnished details of such 17 persons before the Assessing Officer and in turn, the Assessing Officer issued summon under section 133(6) of the Act. As discussed above, the Assessing Officer proceeded to add the said addition on account of non-compliance of such 17 debtors. As the Hon'ble Supreme Court held that it is the duty of the

Revenue to pursue the matter in examining the source of income of the said debtors in paying interest to the assessee. Admittedly, no efforts were made by the Assessing Officer in this regard. Therefore, I am of the opinion that the assessee discharged his duty in furnishing the details of all 17 debtors and making addition in the hands of the assessee for non-compliance by the debtors to the summons issued under section 133(6) of the Act, is not justified. Accordingly, the addition made by the Assessing Officer is deleted. Thus, the ground raised by the assessee is allowed.

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

Order pronounced on 11th September, 2025 at Chennai.

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

Chennai, Dated, 11.09.2025

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.