

आयकरअपीलीयअधिकरण, 'डी' न्यायपीठ,चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, CHENNAI

श्री बी.आर. बास्करन, लेखा सदस्य एवं श्री एस.एस.गोदारा, न्यायिकसदस्य केसमक्ष

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND

SHRI S.S. GODARA, JUDICIAL MEMBER

आयकर अपील सं./ITA No.1087/Mds/2014

निर्धारण वर्ष /Assessment Year : 2009-10

Shri K.S. Sivakumar
1/26, KMG Illam,
MarappaGounder Street,
Pollachi – 642 129.

v. The Income Tax Officer,
Ward – I(1),
Pollachi.

PAN : AMDPS 3112 J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No. 1088/Mds/2014

निर्धारण वर्ष /Assessment Year : 2009-10

Shri K.S. Narendrakumar
1/26, KMG Illam,
MarappaGounder Street,
Pollachi – 642 129.

v. The Income Tax Officer,
Ward – I(1),
Pollachi.

PAN: ACJPN 7605 F

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellants by : Shri G. Baskar, Advocate

प्रत्यर्थीकीओरसे/Respondent by : Shri N. Madhavan, JCIT

सुनवाईकीतारीख/Date of Hearing : 29.01.2015

घोषणाकीतारीख/Date of Pronouncement : 04.02.2015

आदेश / O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

Both the appeals filed by the respective assesseees are directed against the separate orders, both dated 26.02.2014,

passed by Ld. Commissioner of Income Tax (Appeals)-II, Coimbatore and they relate to assessment year 2009-10. Since the issues urged in both the appeals are identical in nature, they were heard together and are being disposed of by this common order for the sake of convenience.

2. The facts relating to the cases under consideration are stated in brief. The returns of income filed by both the assesseees for the year under consideration were taken up for scrutiny by the Assessing Officer. During the course of scrutiny assessment proceedings, it was noticed that both the assesseees have made deposits by way of cash in their respective bank accounts. The maximum amount of deposit was found to have been made in July, 2008. The details of deposits made into the bank by both the assesseees are given below:-

	Name of the assessee	Aggregate amount of deposits made during the year	Aggregate amount of deposits made in July, 2008.
(1)	Sh. K.S. Sivakumar	₹ 38,51,735	₹ 23,94,000
(2)	Sh. K.S. Narendrakumar	₹ 20,56,000	₹ 11,01,000

The Assessing Officer asked the assesseees to explain these deposits. Both the assesseees submitted that they have undertaken

agricultural activities by growing coconut trees and the cash deposited into bank accounts represent advance amount received from the vendors. Both the assesseees gave names of three vendors. The Assessing Officer made enquiries from them and he found that all the three vendors are of poor means; not maintaining any books of account; do not have PAN and do not have even bank accounts. Further, these vendors stated that they were handing over money to the assesseees after the completion of sales. They further confirmed that there is no chance to get heavy income during a particular month, i.e. July, 2008. Before the Assessing Officer, the assessee later submitted the retraction letters obtained from the vendors and in that letter, they appear to have mentioned that they had given advance money to the assessee. However the Assessing Officer did not accept the same and accordingly assessed the aggregate amount of deposits made in the banks as income in the respective hands.

3. Both the assesseees had declared agricultural income of ₹18 lakhs each. The Assessing Officer took the view that the agricultural income declared by them is on the higher side. Accordingly, he determined the agricultural income, by adopting some methodology, at ₹17.29 lakhs in the hands of Shri K.S.

Sivakumar and at ₹14.99 lakhs in the hands of Shri K.S. Narendrakumar. Accordingly, the Assessing Officer assessed the difference between agricultural income declared by the assessee and that estimated by him as income under the head 'income from other sources'.

4. The Ld. CIT(Appeals) accepted the agricultural income declared by the assessees at ₹18 lakhs in the hands of each of the assessees. However, he confirmed the assessment of bank deposits by accepting the view of the A.O. that the agricultural income of the assessees cannot be considered as source for the bank deposits.

5. We heard the parties and perused the record. The main contention of Ld A.R was that these assessees are having net agricultural income of ₹18.00 lakhs each and the same should be considered as sources available with the assessee for making deposits. He further submitted that the assessing officer has given 15% deduction towards expenses, while working out the agricultural income and hence the net income of Rs.18.00 lakhs should be grossed up and the same should be set off against the bank deposits. On the contrary, the Ld D.R contended that the vendors

have clearly stated that they have not paid any advance to the assessee and hence the impugned deposits do not have link with the agricultural income. The Ld D.R further submitted that the assessees are trustees in some of the educational institutions and hence the Ld CIT(Appeals) has opined that the impugned deposits were received as part of amounts accumulated for educational activities.

6. Though the assessing officer as well as the Ld CIT(Appeals) has observed about the links of these assessees with educational institutions and further pointed out that the month of July, being the month of admission and the impugned deposits might be linked to that, yet we notice that they are only presumptions and hence we do not find it necessary to consider the said observations. The issue before us is about the sources for the deposits made into the bank account.

7. The contention of the assessees is that they have received advances from the vendors, where as the vendors have initially denied payment of any advance to the assessees. However, later they have retracted from their statements by submitting letters to the assessing officer. Hence, we are of the view that their original statement given before the assessing officer will lose its significance

considerably. At the same time, the fact that these assesseees have earned agricultural income of ₹18.00 lakhs cannot be denied. Hence, part of the said agricultural income should definitely be available for making the impugned bank deposits. We notice that the assessing officer has not brought on record any material to show that these assesseees had spent away entire agricultural income. The difficulty arises due to the fact that major portion of deposits has been found to have been made in the month of July, 2008. But we have already held that the statements given by the vendors initially have lost its significance due to their retraction. At the time of hearing, the details of income declared in the earlier years were not furnished to us. From the assessment order, we notice that the assesseees are having other sources of income. Under these set of facts, we are of the view that these assesseees could have utilized part of their regular income, agricultural income and also past savings, if any, in making the deposits. The theory of grossing up the agricultural income as advanced by Ld A.R shall not be applicable in the instant case, since it is admitted that the assesseees have not withdrawn any money by way of cash. Only if cash is withdrawn, the expenses could be incurred. Hence, we are of the view that the impugned issue shall meet the ends of justice, if

the sources available with each of the assessee for making deposits are estimated at ₹17.00 lakhs each. We order accordingly.

8. Accordingly, we set aside the order passed by Ld CIT(Appeals) in the hands of both the assessees on this issue and direct the assessing officer to allow credit of ₹17.00 lakhs in the hands of each of the assessees as sources and compute the addition accordingly.

9. In the result, the appeals filed by the assessees are partly allowed.

Order pronounced on the 4th day of February, 2015 at Chennai.

Sd/-

(एस.एस.गोदारा)

(S.S. Godara)

न्यायिक सदस्य/Judicial Member

sd/-

(बी.आर. बास्करन)

(B.R. Baskaran)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 4th February, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellants
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-II, Coimbatore
4. आयकर आयुक्त/CIT-III, Coimbatore
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.