

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER
AND SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

ITA No. 1176/Bang/2015
Assessment year : 2011-12

Smt. Ramya R., # 310, B. Ramaiah Building, Anandagiri Extension, 3 rd Cross, Hebbal, Bangalore – 560 024. PAN: AHKPR 3734M	Vs.	The Income Tax Officer, Ward 13(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ashok A. Kulkarni, Advocate
Respondent by	:	Shri Sunil Kumar Agarwala, Jt. CIT(DR)

Date of hearing	:	08.12.2015
Date of Pronouncement	:	28.12.2015

ORDER

Per Asha Vijayaraghavan, Judicial Member

This appeal by the assessee is directed against the order dated 14.07.2015 of the CIT(Appeals)-5, Bengaluru for the assessment year 2011-12.

2. The assessee is an individual. She filed the original return of income for AY 2011-12 on 30.07.2011 declaring income of Rs.9,61,440. Revised return of income was filed on 19.04.2012 declaring income of Rs.5,82,370. The case was selected for scrutiny and assessment completed u/s 143(3) of the Income tax Act, 1961. Deposits made in the savings bank account bearing No.20018002307 with State Bank of India during the relevant period amounting to Rs.27.91 lakhs have been added to the returned income of the assessee under the head 'Income from other sources'.

3. Aggrieved by the aforesaid order, the assessee filed appeal before the CIT(Appeals). The assessee submitted that her father was trading in raw silk, and the above mentioned bank account of the assessee was used for the purpose of his business. The amounts deposited have been immediately withdrawn by her father to rotate the funds for purchase and sale of raw silk. To this effect, the sworn affidavit of assessee's father, Shri G.K. Ramakrishna, was disregarded by the AO while concluding the assessment. It was pointed out that the AO has only taken the sum of all deposits for making addition to the total income, completely ignoring the simultaneous withdrawals made from the account. At any point of time, in the entire year, the balance remaining is less than Rs. 20,000/- and in most of the days the balance has not even crossed Rs.1,000. The assessee further submitted that similar issue came up for consideration for AY 2010-11 and the AO had accepted the assessee's contention.

4. Alternatively and without prejudice, it was submitted before the CIT(A) that only a peak credit ought to have been brought to tax. Where there are a number of credits appearing side by side with a number of debits; a credit following a debit entry should be treated as referable to the later to the extent possible; and not the aggregate but only the "peak" of the credits should be treated as unexplained.

5. The CIT(Appeals) observed that assessee furnished an affidavit dated 02/07/2015 from her father, Shri Ramakrishna G. K, wherein he has stated that he was in the trading of raw silk business for more than 25 years upto 2004 under the name 'Ramya Silk Koti' at Sathya Sai Market, Venkatarayappa Lane, Bengaluru - 2. It was further stated that he shut down the business to take care of his ailing wife and started again in the financial year 2010-11 purchasing raw material from road side on city market, Avenue road, Chickpet, from farmers on daily basis in small quantities. He further stated that the raw silk trading is done solely by him and his daughter was not aware of the business and nor enjoyed any profits. And lastly he stated that quantity of material sent was less, there was not direct contact with customers and there was no procedure of issue of invoices.

6. The CIT(Appeals) further noted that the AO during the course of assessment to verify the genuineness of the claim of the assessee, issued a summons u/s.131 of the Act to the assessee's father, Shri. G.K.

Ramakrishna to appear on 25/03/2014 for cross examination. But there was no compliance from Shri. G. K. Ramakrishna. Again vide AO's letter dated 26/03/2014; assessee was given a final opportunity to produce her father for cross examination on 27/03/1 and it was also stated that the cash deposits would be taxed in her hands as "income from other sources". There was no compliance to this letter. Therefore the AO came to the conclusion that no such business activity as claimed was carried out by assessee's father as the assessee. The explanation offered by the assessee was found not satisfactory and not acceptable. Hence, cash deposits of Rs.27.91 lakhs was treated as unexplained income and addition was made under the head income from other sources.

7. The CIT(Appeals) upheld the addition made by the AO observing as follows:-

"6. I have considered the reasons given by the Assessing Officer for making addition on account of unexplained cash deposits. The affidavit filed before me has also been examined. On verification of statement of account of the appellant, it was found that during the previous year there were cash deposits on various dates for a denomination of Rs.25000/- through the year totaling to Rs.27.91 lacs. Some of these deposits were made by certain persons like Sai Krishna, Babu, Santosh. Further, there were intercity charges debited to the bank account, which shows that those deposit are from out-station. The A.R explained further that since her father was not having any bank account and illiterate, she stated to be helping her father in getting money deposited into her account out of her father's silk trading business. In furtherance to above argument, the assessee filed affidavit from her father stating the carrying on the silk trading, business for more than 25 years by name Ramya Silk at Sathya Sai Market, Venkatarayappa lane 2, Bengaluru. However, no

traces of such business activity such as vouchers, bills or any delivery challans in support of the doing the business could be produced neither before the Assessing Officer nor before me. In these circumstances, it is very hard to believe that Shri. Ramakrishna, father of the appellant is doing any such raw silk trading.

7. I have considered the above written submission of the appellant and also gone through the assessment order of the appellant passed by the Assessing Officer. On going through the same, it is found that the Assessing Officer is correct in his observation of treating the cash deposits to the tune of Rs.27.91 lacs as unexplained since her father assumed to be deriving income from silk trading business which is not proved. On further analysis of the assessment order and written submission, it is noticed that nowhere the assessee has been able to either submit any evidence in the conduct of business in silk trading or proved that the deposits were made out of his business income/transactions. On the contrary the A. R of the appellant vide letter dated 03/07/2015 has stated that to take the peak credit of Rs.70550/- appearing as on 24/01/2011 and further, argued that section 40A(3) provides for disallowance of any expenditure in respect of which payment in a sum exceeding Rs.20000/- is made otherwise than cross cheque/draft. Here the appellant is claiming no payment is involved. Therefore, the provision of section 40A (3).is not applicable. The argument of the appellant seems to be contrary to each other and without any valid ground. The Assessing Officer has nowhere mentioned that provision of section 40A (3) is applicable in appellant's case as he has never considered that the appellant's father was doing some trading business. Whereas the Assessing Officer has rightly assessed the cash treating the same as unexplained income.

8. Further, neither the appellant nor the A.R of the appellant was able to prove the transaction of cash deposit which the appellant is treating as deposit on behalf of father's silk trading business in her account. Had there been any business activity atleast the withdrawals shown in the bank account should have been genuinely incurred for the business purpose as payments for raw silk suppliers. Even the withdrawals eventhough the provisions u/s.40A(3) not applicable as stated by the A.R, could not be proved for having incurred for the purpose of purchasing the raw silk. Therefore, the A.R's argument of taking the peak

credit and assessed in the appellant's hands has no basis. I hereby confirm the addition made by the Assessing Officer as the cash deposits made in the bank account of the appellant as unexplained.”

8. Aggrieved by the order of the CIT(Appeals), the assessee is in appeal before us on the following grounds:-

“2. The Hon'ble CIT(A) erred in upholding an addition of Rs. 27.91 lakhs as unexplained income under the head income from other sources.

3. The Hon'ble Commissioner of Income Tax (Appeals) ought to have held that the deposits and withdrawals made in the savings bank account of the appellant are in the course of the business carried on by the appellant's father.

4. The Hon'ble CIT(A) ought to have appreciated that during the material period the appellant's father was trading in raw silk and the said deposits were made by his customers from out station.

5. Alternatively and without prejudice; only a peak credit ought to have been brought to tax and not the cumulative total of the deposits amounting to Rs.27.81 lakhs which represents the turnover of raw silk business of the appellant's father.”

9. The Id. counsel for the assessee reiterated the submissions made before the lower authorities. The Id. DR relied on the orders of the revenue authorities.

10. We have heard both the parties. We note that similar issue came up for consideration in the AY 2010-11 and the AO accepted the deposits and withdrawals as that of the assessee's father and no addition was made.

The only reason for the AO to treat the income as unexplained was that the assessee failed to prove the assessee's claim that the said account was used by her father. It was pointed out before us that the very same explanation was accepted by the department on the basis of very same affidavit of the assessee's father for the AY 2010-11. We find some merit in the alternate contention of the assessee that only peak credit ought to be brought to tax and where there are a number of credits and debits are appearing, ; a credit following a debit entry should be treated as referable to the latter and only the "peak" of the credits should be treated as unexplained. Going through the bank account furnished at pages 6 to 16 of the assessee's paperbook, the peak credit on 24.01.2011 (page 13) is Rs.70,551. Hence, we direct the AO to bring the peak credit to tax and not the cumulative total of the deposits amounting to Rs.27.91 lakhs.

11. In the result, the appeal is partly allowed.

Pronounced in the open court on this 28th day of December, 2015.

Sd/-

(ABRAHAM P. GEORGE)
Accountant Member

Sd/-

(ASHA VIJAYARAGHAVAN)
Judicial Member

Bangalore,
Dated, the 28th December, 2015.

/D S/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.