

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND SHRI O.P. MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A. No. 841/Ind/2016

निर्धारण वर्ष /Assessment Year: 2011-12

Income Tax Officer 2(4)

Bhopal

:: अपीलार्थी /Appellant

Vs.

Smt. Manju Raj

Bhopal

PAN – AIZPR 9785-N

:: प्रत्यर्थी /Respondent

राजस्व की ओर से/Revenue by	Shri Mohd. Javed - DR
निर्धारिती की ओर से/Assessee by	None
सुनवाई की तारीख Date of hearing	20.3.2017
उद्घोषणा की तारीख Date of pronouncement	21.3.2017

आदेश / O R D E R

PER SHRI C.M. GARG, JM

This appeal has been filed by the Revenue against the order of the learned CIT(A)-II, Bhopal, dated 26.5.2016 in First Appeal No. CIT(A)-BPL-227/2014-15 for the assessment year 2011-12.

2. This appeal was initially fixed for hearing on 29.11.2016 for which notice of hearing was sent to the assessee at the address

given in Form No. 36 but the assessee refused to receive the notice. Thereafter, the case was again fixed for hearing on 30.1.2017 but the case was adjourned to 20.3.2017 for which date the notice for hearing was again sent through ITO 2(4), Bhopal, but the same was returned unserved with the remark "*Not in Gulmohar, hence returned.*" At the time of hearing, there was neither any written submission nor any-body appeared before the Tribunal. The learned Departmental Representative (for short 'DR') was heard.

2. The only ground taken by the revenue is that the learned CIT(A) was not justified in restricting the addition of Rs. 40,98,050/- made by the Assessing Officer on account of unexplained deposits in bank account to Rs.3,00,000/- thereby granting relief of Rs.37,98,050/- to the assessee holding that only peak credit balance of Rs.3,00,000/- should have been added to the income of the assessee.

3. Briefly stated, the facts of the case are that the assessee furnisher her return of income declaring total income of Rs. 2,26,000/-. The case was selected for scrutiny through CASS. Accordingly notice u/s 143(2) was issued on 10.9.2012 which was duly served upon the assessee. During the course of assessment

proceedings notices u/s 142(1) of the Act have been issued at the addresses available on record. Another notice was also sent on 6.3.2014 at Shahjapur Petrol Pump fixing the date of hearing on 10.3.2014 but neither any compliance was made by the assessee nor any-body attended the assessment proceedings.

4. The Assessing Officer received AIR information to the effect that the assessee had deposited cash amounting to Rs.40,98,050/- in her bank account maintained with Bank of India, TT Nagar Branch, Bhopal. Since the assessee did not comply with the above notices, therefore, vide notice u/s 142(1) of the Act dated 12.3.2014 the assessee was specifically asked to furnish source of cash deposited in the bank account along with documentary evidence. The assessee furnished copy of bank account only. Vide order sheet entry dated 24.3.2014 the assessee was asked to furnish reply on 26.3.2014 of the balance queries as also source and nature of the amount deposited in the bank account. The assessee did not furnish the required information but sought for adjournment and at the request of the assessee the Assessing Officer again fixed the case for hearing on 27.3.2014. On this date also neither the assessee attended nor any written reply was furnished. In this

scenario, the Assessing Officer was left with no option but to presume that the assessee has no explanation to offer in respect of the source of the cash deposited as also other deposits in her bank account. From the above conduct of the assessee, the Assessing Officer came to the conclusion that *“it is clear that the assessee has failed to furnish documentary evidences in respect of deposition of cash amounting to Rs.40,98,050/- in her bank account, therefore, the amount of Rs. 40,98,050/- remain unexplained as per the provision of section 69 of Income Tax Act, 1961”*. The Assessing Officer, therefore, added Rs.40,98,050/- to the total income of the assessee u/s 69 of the Act.

5. Being aggrieved with the addition made by the Assessing Officer, the assessee preferred first appeal before the learned CIT(A). The learned CIT(A) after considering the submissions of the assessee, restricted the addition to Rs.3,00,000/- with the following observations :-

“7.4 I have considered the facts of the case and the written submissions of the appellant. While the appellant argued for total deletion of the addition of Rs.40,98,050/-

he also alternatively argued that the A.O. has erred in taking into account only the cash deposits and not considering the cash withdrawals being made at the same time. He should have taken the cash withdrawals into account and only the peak of the cash credits should have been brought to tax.

It is seen that the A.O. has treated the entire receipts of Rs.1,41,57,362/- as business turnover of the assessee and assessed N.P. @ 8% thereon. Having included the cash credits of Rs.40,98,050 in the business turnover, there was no rationale to again add the sum to the total income of the assessee as unexplained cash credit. There is merit in the submission of the assessee that in view of the facts of the case and the repeated cash deposits and withdrawals made from the bank account, only the peak credit balance should have been added to the income of the assessee. Accordingly, the peak cash credit of Rs.3,00,000/- (deposited on 22.11.2010) is directed to be

added to the income of the assessee. The addition of Rs.40,98,050 is restricted to Rs.3,00,000/-.”

6. Against the above order of the learned CIT(A), the revenue has come up before the Tribunal.

7. When the case was called for hearing, neither the assessee nor her representative attended the proceedings and there was no application or request for adjournment. However, on perusal of appeal record and CIT(A) order along with the order of the Assessing Officer, we find it appropriate to decide the appeal in the absence of the assessee after hearing the arguments of the learned DR. We proceed accordingly to decide the appeal.

8. Before us, the learned DR submitted that as is evident from the assessment order, inspite of providing adequate opportunities, the assessee failed to furnish source of cash of Rs. 40,98,050/- deposited in the bank account along with documentary evidence before the Assessing Officer. In such a situation, the Assessing Officer had no alternate but to add Rs. 40,98,050/- to the total income of the assessee as unexplained income under section 69 of the Act. The learned DR further submitted that even before the

learned CIT(A), the assessee failed to submit any evidence in support of deposit of Rs.40,98,050/- in the bank account and as such the learned CIT(A) was totally unjustified in restricted the addition to Rs. 3 lacs. The learned DR, therefore, prayed that the order of the learned CIT(A) deserves to be annulled and that of the Assessing Officer restored.

9. From the order of the learned CIT(A) it is observed that the learned counsel for the assessee submitted that the learned Assessing Officer was not justified in taking into account only the cash deposits and not considering the cash withdrawals made at the same time. Then learned counsel for the assessee, therefore, submitted before the first appellate authority that only the peak credit balance should have been added to the total income of the assessee.

10. On careful consideration of the above submissions of the parties in the wake of the facts of the case, we are of the considered view that the Assessing Officer has made the addition on account of net profit rate of 8% of entire receipts treating the same as business turnover of the assessee which includes the impugned cash

deposits/credits of Rs.40,98,050/-. In this factual situation, when the cash credits/deposits have been treated as turnover of the assessee then the addition of the same amount would amount to double addition which is not permissible as per the provisions of the Act. We further observe that the learned CIT(A) by taking a justified and correct approach, added the peak cash credit amount of Rs.3 lacs as on 22.11.2010 and restricted the addition to Rs. 3 lacs. In view of the above, we are inclined to hold that the amount of cash credits which have already been considered as turnover of the assessee for calculating net profit @ 8% of the turnover then the addition of the same amount cannot be held as sustainable and the learned CIT(A) while restricting the addition to Rs. 3 lacs, has rightly picked up the amount of peak cash credit. In view of the above, we are unable to see any valid reason to interfere with the order of the learned CIT(A) and there is no ambiguity, perversity or any other reason to interfere with the same and, hence, we uphold the same. The sole ground of the revenue, being de void of merit, is dismissed.

11. In the result, the appeal of the revenue stands dismissed.

The order has been pronounced in open Court on 21st
March, 2017.

Sd/-
लेखा सदस्य
(O.P.Meena)
Accountant Member

sd/-
न्यायिक सदस्य
(C.M. Garg)
Judicial Member

March 21st 2017.

Dn/