

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

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA No. 910/Bang/2017
Assessment year : 2011-12

Shri Rangarao Kamineni, Flat No. 209, Tirumala Sai Residency, Mess Road, Cowl Bazaar, Bellary – 583 103. PAN: AIPK 9496D	Vs.	The Income Tax Officer, Ward – 2, Bellary.
APPELLANT		RESPONDENT

Appellant by	:	Shri B.S. Balachander, Advocate
Respondent by	:	Shri M.K. Biju, JCIT

Date of hearing	:	24.05.2017
Date of Pronouncement	:	07.06.2017

ORDER

Per Vijay Pal Rao, Judicial Member

This is an appeal by the assessee directed against the order dated 23.02.2017 of CIT(A) for the assessment year 2011-12. The assessee has raised the following grounds:

“1.The order of the lower authority is contrary to law, evidences and facts on record and is not maintainable in law in so far as the addition of Rs. 13,00,000/- is concerned.

2.The learned lower authorities erred in making and confirming the addition of Rs. 13,00,000/- on assumptions and presumptions contrary to the evidences on record.

3.The learned lower authorities failed to appreciate the evidences and law in the facts of the case in the right perspective as pointed out in “the case of the appellant before Honorable ITAT under statement of facts”.

4.The action of the assessing officer is bad in law since the AO could have cross verified the confirming party in person if he had doubt about the transaction that had taken place.

5.For these are any other grounds of appeal that may be urged at the time of hearing it is prayed that this Honorable Tribunal may be pleased to allow this appeal in the Interest of Equity and Justice.”

2. The only issue arises from the grounds of the assessee is regarding the addition made by the AO of Rs. 13 lakhs on account of deposits made in the bank account. While completing the assessment u/s. 143(3) the AO made an addition of Rs. 13 lakhs as unexplained cash deposits in the bank account out of the total deposits of Rs. 42,83,188/-. The assessee challenged the action of the AO before the CIT(A) but could not succeed.
3. Before the Tribunal, the ld. AR of the assessee has submitted that out of Rs. 42,83,188/- the AO accepted the source of deposit to the extent of Rs. 29,83,188/- and rejected the source of the balance amount of Rs. 13 lakhs. He has referred to the confirmation filed by the assessee regarding the source of Rs. 13 lakhs from his mother and brother as this

amount was paid by the assessee to the other family members during the year 2004-05 and was received back by the assessee during the year under consideration. He has further submitted that the assessee wanted to take ancestral property situated at Kopperapadu village, Ballikurava Mandal, Prakasam District, Andhra Pradesh and it was agreed among the family members that the assessee would purchase the said ancestral property for which the assessee paid Rs. 13 lakhs during the financial year 2004-05. Subsequently the father and the brother of the assessee passed away in the year 2006 and due to the employment reasons the assessee shifted to Bellary. Because of the subsequent death of the family members and the assessee settled down at Bellary the assessee decided to purchase the residential house at Bellary and therefore the said amount was of Rs. 13 lakhs was received back. The Id. AR has submitted that the AO has rejected the confirmation filed by the assessee on the ground that the stamp paper used for confirmation was purchased on 28.02.2014 whereas the amount was claimed to have received during the month of April 2010. Further the advance was claimed to have been given by the assessee during the Financial Year 2004-05 which was received back during the Financial Year 2010-11. Therefore the genuineness of the transaction was doubted by the AO. The Id. AR has referred the assessment order for the assessment year 2010-11 passed u/s. 143(3) and submitted that the AO has admitted the advance of

Rs. 13 lakhs shown by the assessee in the balance sheet. Therefore the said advance received back by the assessee in the assessment year 2011-12 cannot be disputed.

4. Alternatively the Id. AR has submitted that the AO has taken into consideration the entire deposits in the bank account without considering the peak credits. He has pointed out that as per the bank account statement the peak credits in three banks comes to Rs. 26,16,754/- out of the total deposit of Rs. 42,83,188/-. The Assessing Officer has accepted the source of deposit of Rs. 29,83,188/- which is more than the peak credit of Rs. 26,16,754/-. Hence the source explained by the assessee and accepted by the AO is more than the peak credit in the bank account of the assessee. Therefore no addition is warranted. On the other hand the Id. DR has submitted that the onus is on the assessee to discharge its responsibility to prove the source for making cash deposit in the bank account which has not been discharged by the assessee as no proof was produced to establish the source of cash deposits to Rs. 13 lakhs. He has relied upon the orders of the authorities below.

5. I have considered the rival submissions as well as relevant material on record. The AO found that there was a cash deposit of Rs. 42,83,188/- in the bank account and asked the assessee to explain the source. The

assessee explained the source of deposits and also produced the evidence. The AO accepted the source of deposit to the extent of Rs. 29,83,188/- however the AO rejected the source of deposit to the extent of Rs. 13 lakhs as explained by the assessee through confirmation of family members that the said amount was received by the assessee during the year under consideration which was given as an advance to the family members to purchase the ancestral property. This advance of Rs. 13 lakhs given to the family members by the assessee for purchase of ancestral property has been reflected by the assessee in the balance sheet for the year 2010-11 and the Assessing Officer has accepted the same while passing the assessment order under section 143(3) on 28.03.2013. The Id. AR of the assessee referred to the statement of affairs wherein the amount of Rs. 13 lakhs was shown under the head assets and sub head advance for property at Kopperapadu village, Ballikurava Mandal, Prakasam District, Andhra Pradesh. It is further noted that the assessee to explain the source had filed the confirmation from the family members of the assessee but the AO doubted the confirmation by treating the same as a document of settlement between the family members. Whereas it was not a document of recording the settlement between the parties but it is only the confirmation reduced in writing by the family members on a stamp paper and therefore when a stamp paper was purchased at the time of the confirmation then there is no infirmity in the said document. The

reason of doubting the said evidence by the AO is that this document pertains to the transaction of giving advance by the assessee to the family members in the Financial Year 2004-05 and thereafter receiving the same back in the Financial Year 2010-11 has been written on a stamp paper purchased on 28.02.2014. Thus it is clear that the AO has misunderstood the document itself contents of which clearly explains and narrates both incidents of advance given by the assessee in the year 2004-05 and the same was refunded to the assessee by the family members in the Financial Year 2010-11. The purpose of giving this confirmation is only for the satisfaction of the taxing authority and not for a proof of settlement to the family members. Accordingly rejecting the said confirmation at the threshold without further examination and verification of the veracity of the confirmation by conducting a proper enquiry is not justified on the part of the AO.

6. Further it is settled proposition of law that in case of deposits in bank the corresponding withdrawal for subsequent deposits can be considered as a proper source of fund in the hand of the assessee. Therefore in case whether there are multiple transaction of deposit and withdrawal on regular basis then only peak credit can be considered for the purpose of making addition on this account. The Hon'ble Allahabad High Court in

case of CIT Vs Sharraf Trading Co. (376 ITR 534) has held in para 30 and 31 as under.

“30. We may also notice that against Tribunal's earlier order dated 13th February, 2004, department filed appeal under Section 260A before this Court. We are informed that these appeals preferred by department have also been dismissed by this Court. These appeals i.e. ITA No. 179/2004 and other connected appeals have been dismissed by a Division Bench vide judgment dated 13th December, 2013. Therein the Court in paragraphs no. 14 and 15 has said :—

"14. Regarding the peak theory, it may be mentioned that the peak theory was defined in the Sampath Iyengar's Law of Income-tax, Vol. 3, 9th edition, page 3547. Accordingly, "Peak credit" theory - One of the commonest defects of an assessee, where a single credit or number of credits appear in the books in the account of any particular person side by side with a number of debits is that they should all be arranged in serial order, that a credit following a debit entry should be treated as referable to the latter to the extent possible and that, not the aggregate but only the "peak" of the credit should be treated as own explained. To give a simple example, suppose there are credits in the assessee's book in the account. As or Rs.5,000 each on 1st October, 1990 and again on 5th November, 1990 but there is a debit by way of repayment shown on 27th October, 1990, the explanation will be that the credit appearing on 5th November, 1981 has or could have come out of the withdrawal/repayment on 27th October, 1981. This plea is generally accepted as it is logical and acceptable (whether the creditor is a genuine party or not), provided there is nothing in the material on record to show that a particular withdrawal/repayment could not have been available on the date of the subsequent credit.

15. A refinement or extension of the plea occurs where the credits appear not in the same account but in the accounts of different persons. Even then, if the genuineness of all the person is disbelieved and all the credits appearing in the different account are held to be the assessee's own moneys, the assessee will be entitled to set off and a determination of the peak credit after arranging all the credits in the chronological order."

31. In view of discussion made and proposition of law referred, the questions aforesaid are answered against Revenue."

Accordingly when the AO has accepted the source of deposit to the extent of Rs. 29,83,188/- which is less than the peak credits of Rs. 26,16,754/- as explained and working given by the assessee then no addition is called for on account of deposits in the bank account of the assessee.

7. In view of the above facts and circumstances as well as the decision of Hon'ble Allahabad High Court in case of CIT Vs Sharraf Trading Co. (supra) the addition made by the AO is deleted.
8. In the result, the appeal of the assessee is allowed.
9. Pronounced in the open court on this 07th day of June, 2017

Sd/-
(VIJAY PAL RAO)
Judicial Member

Bangalore,
Dated, the 07th June, 2017.

/MS/

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.