

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्रीवी. दुर्गा राव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.No.287/Viz/2015

(निर्धारण वर्ष/Assessment Year:2011-12)

Income Tax Officer
Ward-3(3)
Visakhapatnam

Vs. Sri J Lakshmi Narayana
Kumar
D.No.9-6-91/8
Opp Sivaji Park
Sivajipalem, Visakhapatnam

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

Cross Objection 40/Viz/2016

(Arising out of ITA No.287/Viz/2015)

(निर्धारण वर्ष/Assessment Year:2011-12)

Sri J Lakshmi Narayana Kumar
D.No.9-6-91/8
Opp.Sivaji Park
Sivajipalem, Visakhapatnam

Vs. Income Tax Officer
Ward-3(3)
Visakhapatnam

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

निर्धारिती की ओर से / Assessee by

: Shri G.V.N.Hari, AR

राजस्व की ओर से / Revenue by

: Shri M.R.Bangari, DR

सुनवाई की तारीख / Date of Hearing

: 28.02.2018

घोषणा की तारीख/Date of Pronouncement

: 09.03.2018

आदेश / O R D E R

PER D.S. SUNDER SINGH, Accountant Member:

This appeal is filed by the revenue against the order of the Commissioner of Income-Tax (Appeals) [CIT(A)]-1, Visakhapatnam vide ITA No.1195/2013-14/ITO/W-3(1), VSP/2015-16 dated 22.04.2015 for the assessment year 2011-12.

2. In this case, the assessee filed return of income declaring total income of Rs.5,57,390/- on 28.09.2011. The case was selected for scrutiny and the assessment was completed on total income of Rs.58,14,450/-. During the assessment proceedings, the Assessing Officer(AO) made the following additions to the returned income which were disputed by the assessee :

(i)	Unexplained cash credits	-	Rs.43,42,300/-
(ii)	Bonus and accounting charges		Rs. 2,16,000/-
(iii)	Staff Salaries		Rs. 6,48,000/-

3. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) restricted the disallowance of staff bonus to 10% and accounting charges to 15% of the expenses incurred. With

regard to unexplained cash credits u/s 68, the Ld.CIT(A) directed the AO to make the addition of peak credit.

4. Aggrieved by the order of the Ld.CIT(A), the revenue is in appeal before this Tribunal and the revenue has raised the following grounds of appeal :

1. *The Order of the Ld. CIT(A) is contrary to the facts and to the Law applicable to the facts of the case.*
2. *The Ld. CIT(A) erred in disallowing only 10% of the expenditure claimed on account of salaries of Rs 21,60,000/-, as against the 30% disallowed by the A.O, considering the fact that the expenditure claimed against salaries was unreasonably high.*
3. *The Ld. CIT(A) erred in disallowing only 10% of the expenditure claimed towards staff bonus paid of Rs. 1,80,000/- as against the whole amount being disallowed by the A.O, considering the fact that the assessee has failed to produce any bills or vouchers in support of his claim.*
4. *The Ld. CIT(A) erred in disallowing only 15% of the expenditure claimed towards accounting charges of Rs. 36,000/-, as Against the total amount being disallowed by the A.O, considering the fact that the assessee has failed to produce any bills or vouchers in support of his claim.*
5. *The Ld. CIT(A) erred in holding that the peak credit in the assessee's bank account with regard to cash withdrawals and deposits may be brought to tax as against the total unexplained cash credits added to the assessee's income by the A.O. Reliance is placed in this regard in the Order of the Hon'ble ITAT, Mumbai, in the case of M.H Raney vs. 110(145 ITD 573(MUM), in which the Hon'ble ITAT held that unless the assessee explains the nature of cash deposits in the bank and their utilization satisfactorily, the peak credit method is not applicable.*
6. *Any other ground that may be urged at the time of hearing.*

5. Ground No. 1 and 5 are general in nature, which do not require specific adjudication.

6. Ground No.2 is agitated against disallowance of staff salaries to 10% against the disallowance made by the AO at 30%.

7. Ground No.3 is related to the restriction of disallowance of staff bonus to 10% as against complete disallowance made by the A.O.

8. Ground No.4 is related to the restriction of disallowance to 15% on account of accounting charges as against total amount being disallowed by the AO during the assessment proceedings.

9. During the appeal hearing, the Ld. DR supported the orders of the AO while the Ld.AR relied on the orders of the CIT.

10. We have heard both the parties and perused the material placed on record. Ground Nos.2, 3 and 4 are related to the disallowance of expenditure under various heads in respect of salaries, bonus, accounting charges. The AO disallowed 30% of the salaries paid without assigning any

reason. Similarly, in respect of bonus and accounting charges entire amount was disallowed by the AO. Ld.CIT has considered the issue very carefully and held that disallowance of 10% of expenditure in respect of salaries and bonus and 15% of expenditure in respect of accounting charges would meet the ends of justice. For ready reference, we extract relevant paragraphs of the order of the Ld.CIT which reads as under :

“7.2 During the appeal hearing, the AR represented that the expenditure incurred towards salaries, staff bonus and accounting charges were routine expenses and considering the turnover of the assessee, the expenses claimed cannot be said to be high. The assessee filed copies of vouchers for these expenses but no credence could be given as they were not produced before the AO. The assessee also submitted information that the percentage of expenses incurred towards salaries was 3.36% of the turnover for the subject year and it was 3.57% for AY 2010-11 & 2.69% for AY 2009-10. The net profit declared for AY 2009-10 was 1.12%, for AY 2010-11 it was 0.36% and for the subject year it was 0.37%. Taking into consideration these details, I consider it reasonable and fair to estimate the disallowance towards salaries & staff bonus at 10% of the expenditure claimed and expenditure towards accounting charges at 15% of expenditure claimed. Accordingly the AO may recompute the total income.”

11. During the appeal hearing, the Ld. DR did not bring any tangible material to substantiate the disallowance of salaries at 30% and disallowance of entire expenditure in respect of staff bonus and accounting charges. No other material was placed on record before us to controvert

the finding of Ld.CIT(A). Therefore, we do not find any reason to interfere with the order of the Ld.CIT(A) and accordingly ground Nos.2,3 and 4 of revenue's appeal are dismissed.

12. Ground No.5 is related to the addition of Rs.43,42,300/- in respect of cash deposits made in the bank account, u/s 68 of the IT. Act. During the assessment proceedings, the AO found as per AIR information, that the assessee had savings bank account No.017300100023562 in M/s Dhanalaxmi Bank, Visakhapatnam and had made cash deposits on various dates to the tune of Rs.53,42,300/- in the bank account. The assessee explained the cash deposits of Rs.10 lakhs which was received from Sri V. Kondappa Naidu by way of account payee cheque on 28.04.2010 bearing cheque No.46608 deposited in his SB Account No.017300100023562. Therefore, the AO made the balance amount of Rs.43,42,300/- as unexplained cash credits u/s 68 of I.T.Act after excluding the sum of Rs.10.00 lacs.

13. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and argued that the assessee had made cash withdrawals from his SB account which were used for cash advances to the staff members as

and when required. The Ld.CIT(A) could not rule out cash withdrawals forming source for subsequent cash credits since there is no other evidence placed on record to show that cash withdrawals were incurred towards other expenses. Therefore, the Ld.CIT(A) directed the AO to compute the peak credit to tax.

14. Aggrieved by the order of the Ld.CIT, the revenue has filed appeal before this Tribunal. During the appeal hearing, the Ld.DR argued that the Ld.CIT(A) has erred in directing the AO to tax the peak credits instead of the entire cash deposits. The Ld. DR argued that the assessee required to explain the source of each deposit made in the bank account failing which the entire cash deposits required to be brought to tax. Ld. DR relied on the orders of the ITAT Mumbai Bench in the case of Late Mr. M.H. Raney vs. ITO [145 ITD 573].

15. On the other hand, the Ld.AR relied on the orders of the CIT(A).

16. We have heard both the parties and perused the material placed on record. The assessee is having a bank account in Dhanalakshmi Bank and made cash deposits to the tune of Rs.42,300/- out of which a sum of Rs.10

lakhs was explained by the assessee. The assessee argued before the AO as well as Ld.CIT(A) that he used to give advances to the staff from the amounts withdrawn from the SB account and the same were deposited back into their bank account. The argument of the assessee was that the cash deposits were made in the bank account out of withdrawals. There was no other evidence brought by the revenue before us indicating that the cash withdrawals were used for any other purpose either for expenditure or for any other investments. In the absence of any other evidence as observed by the Ld.CIT(A), the possibility of cash withdrawals forming source for the subsequent cash credits cannot be ruled out. The Ld. CIT(A) observed from the bank statement that the assessee has withdrawn the cash and redeposited the same in the bank account. The decision relied upon by the revenue is distinguishable on facts in respect of inconsistency with not only explanation of amounts being used for charitable purposes but also the fact of same being withdrawn in cash and also by cheques ostensibly for personal purposes on recurring basis. The Hon'ble ITAT observed that the pattern of withdrawal revealed that account to be employed for transfer of funds in main, i.e. deposit of cash in one place and its withdrawal at another place and the assessee was unable to discharge the onus of satisfactory explanation qua cash deposits. Therefore, the case

law relied upon by the revenue is distinguishable on facts and not applicable in assessee's case. The CIT(A) has observed that the bank account clearly indicates the possibility of cash withdrawals forming part of source for subsequent cash credits and no other evidence was shown by the revenue demonstrating that the cash withdrawals are used for any other purpose either for personal or business credits. Therefore, we do not find any infirmity in the order of the Ld.CIT(A) and the same is upheld. Appeal of the revenue is dismissed on this ground.

17. The assessee filed cross objections stated to be supportive of the order of the Ld.CIT. However, during the appeal hearing, the Ld.AR did not press any of the grounds raised in Cross Objection. Hence, Cross Objections are dismissed as not pressed.

18. In the result, appeal of the revenue is dismissed and cross objections of the assessee are dismissed.

The above order was pronounced in the open court on 9th March, 2018.

(वी.दुर्गराव)

(V. DURGA RAO)

न्यायिकसदस्य/JUDICIAL MEMBER लेखासदस्य/ACCOUNTANT MEMBER

(डि.एस. सुन्दरसिंह)

(D.S. SUNDER SINGH)

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 09.03.2018

L.Rama, SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant- Income Tax Officer, Ward-3(3), Visakhapatnam
2. प्रत्यार्थी / The Respondent- Sri J Lakshmi Narayana Kumar, D.No.9-6-91/8
Opp.Sivaji Park, Sivajipalem, Visakhapatnam
3. The Commissioner of Income Tax-1, Visakhapatnam
- 4.The Commissioner of Income Tax(Appeals)-1, Visakhapatnam & Rajahmundry
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

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Sr. Private Secretary
ITAT, VISAKHAPATNAM