

आय अधकरण, "ए+आयायपीठ, चेनई
APPELLATE TRIBUNAL 'A' BENCH, CHENNAI

श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुवुरु आर.एल रेडी, न्यायिक सदस्य के समक्ष
Before Shri A. Mohan Alankamony, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I T.A. No. 1333/Mds/2016

अवधारण वर्ष/Assessment Year:2005-06

Shri E.R. Balaji Prasad,
C/o M.R. Aruloli & Associates, C.A.,
Anbumalar Aalayam, 1373, I-Block,
Kambar Kudiiruppu, No. 2, 27th Street,
Annanagar West, Chennai 600 040.
[PAN:ANTPB7935M]

Vs. The Deputy Commissioner of
Income Tax, Business Circle III,
Chennai.

(अपीलाथ/ Appellant)

(अपीयथ/ Respondent)

अपीलाथ का ओर से / Appellant by : Shri G. Baskar, Advocate

अपीयथ का ओर से/Respondent by : Shri Shiva Srinivas, JCIT

सुनवाई का ताराख/ Date of hearing : 20.07.2016

घोषणा का ताराख /Date of Pronouncement : 07.10.2016

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 16, Chennai, dated 28.03.2016 relevant to the assessment year 2009-10. The only effective ground raised in the appeal of the assessee is that the Id. CIT(A) has erred in confirming the addition made as unexplained income under section 69B of the Income Tax Act, 1961 [Act+in short].

are that the assessee is an individual and earning income from other sources. A survey under section 133A of the Act was conducted on 09.03.2012 in the group case of M/s. Indira Arcades and Estates. During the course of survey, it was found that the assessee has received a sum of .1,64,39,500/- by way of transfer into his savings bank account maintained with Karnataka Bank Ltd., Anna Nagar Branch during the financial year 2004-05 relevant to the assessment year 2005-06. The assessee has not filed his return of income for the assessment year 2005-06. Notice under section 148 of the Act was issued and in the reassessment proceedings, addition was made by treating cash credit into the said bank account which remains unexplained before the Assessing Officer. Therefore, the Assessing Officer has treated the sum of .1,64,39,500/- as unexplained income under section 69B of the Act and treated it as income under the head other sources and completed the assessment under section 144 r.w.s. 147 of the Act on 26.03.2013.

3. The assessee carried the matter in appeal before the Id. CIT(A). After considering the written submissions made by the assessee, the Id. CIT(A) dismissed the appeal filed by the assessee.

4. On being aggrieved, the assessee is in appeal before the Tribunal and raised ten grounds in his appeal, however the crux of the issue is that the assessee is aggrieved by the order of the Ld. CIT(A), who had erred in

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under section 69B of the Act. The Id. Counsel for the assessee has vehemently argued that during the course of assessment proceedings in respect of the assessee Shri V.G. Rajendran, who was the promoter of Indira Groups, where survey operation was carried by the DDIT(I), Shri Rajendran has admitted before the DDIT(I) about various bank accounts operated in the name of his family member and friends, in order to enjoy short term accommodation of funds, which includes Karnataka Bank A/c No. SB 7968 in respect of Shri Balaji Prasad. During the course of post survey proceedings, in order to arrive at the undisclosed income in the said bank accounts, the transactions in the said bank accounts were tabulated and the peak credit as on 12.08.2005 amounting to .2,72,46,400/- was offered by Shri Rajendran before the investigation authorities and in the assessment order under section 143(3) r.w.s. 147 of the Act dated 21.03.2014, the Assessing Officer has brought the above sum of .2,72,46,400/- plus other deposits of .27,04,400/- [.2,99,50,700/-] to tax under the head income from other sources, which includes the sum transferred to the account in the name of Shri Balaji Prasad. The Id. Counsel for the assessee has further argued that during the course of remand proceedings, vide his remand report dated 19.02.2016, by considering the confirmation letter from Shri V.G. Rajendran that Shri Balaji Prasad was employed in his organization and the said bank account was operated by Shri Rajendran for the purpose of availing short term bank credit in the form

Assessing Officer has accepted that the assessee [Shri Balaji Prasad] bank account has been operated by his employer M/s. Indira Arcades for providing short term accommodation of funds and all the credits/deposits appearing in the bank account were immediately withdrawn through self cheque. Once the sum was assessed as unexplained credit in the exparte order under section 144 r.w.s. 147 of the Act passed by the Assessing Officer was accepted, the Id. CIT(A) was incorrect in not accepting the remand report of the Assessing Officer, wherein, he has accepted that the account was operated by his employer and was assessed as unexplained income from other sources and brought to tax in the hands of Shri Rajendran. Accordingly, the Id. Counsel for the assessee has pleaded that the addition made by the Assessing Officer once again in the hands of Shri Balaji Prasad, present assessee should be deleted.

5. On the other hand, the Id. DR dutifully relied on the order passed by the authorities below.

6. We have heard both sides, perused the materials on record and gone through the orders of authorities below. During the course of hearing, the Id. Counsel for the assessee has submitted additional grounds and prayed grant of permission for the admission of additional grounds as raised by the assessee. Since the assessee has raised the legal issue in the form of

considered the same and admitted the additional ground. The crux of the additional grounds raised by the assessee is that the Id. CIT(A) ought to have quashed the reassessment as there was neither proper service of notice under section 148 nor under section 143(2) of the Act.

6.1 We have considered the arguments of both the parties. Admittedly, the assessee has not filed return of income for the assessment year under consideration. It was only because the assessee himself presumed that the income of the assessee has not exceeded the maximum amount which is not chargeable to income tax. When the assessee was very much aware that his employer has operated saving bank account in his name with Karnataka Bank Ltd. for availing cheque discounting facilities, even though there was no cash physical cash receipt in the hands of the assessee, it was mandatory on the part of the assessee to bring the same to the knowledge of the Department by filing NIL return of income, so that the Assessing Officer is enabled to call for explanation/service of notices, etc. When a sum of .1,64,39,500/- was credited in the saving banks account of the assessee and found that the said income has escaped assessment, the Assessing Officer is duty bound to initiate appropriate proceedings against the assessee. Since the assessee has not filed the return of income for the said assessment year, the notice under section 148 of the Act was served on the

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at the address provided by the Investigation Wing of the Department and thereafter, notice under section 143(2) dated 16.04.2012 was issued to the assessee. However, the assessee has not responded to the above notices served on the assessee. In view of the above facts and circumstances, we are of the considered opinion that the Assessing Officer has validly passed the order under section 144 r.w.s 147 r.w.s. 143(3) of the Act. Thus, the addition ground raised by the assessee is dismissed.

7. On merits, admittedly, there was cash transaction in the saving bank account of the assessee with Karnataka Bank Ltd. and .1,64,39,500/-, which was found transferred to assessee's account. In this case, the employer Shri V.G. Rajendran has filed a confirmation letter stating that the assessee was employed in their organization and moreover, for the purpose of availment of bank credit in the form of cheque purchase, the employer issued and discounted cheques and withdrawn on the same day from assessee's savings bank account maintained with Karnataka Bank, Anna Nagar Branch. Shri Rajendran, who was the proprietor of Indira Group, vide his letter dated 05.10.2012 addressed to the ADIT, has admitted that in continuation of the survey proceedings in his business premises on 09.03.2012, Shri Rajendran has offered a sum of .2,72,46,400/- as additional income of its group. The above said income was offered after

s as maintained by him in the name of his family members and friends including the bank account bearing A/c No. SB 7968 with Karnataka Bank Ltd., which, was duly admitted by him during the course of survey proceedings. It was also admitted by Shri Rajendran that the said bank accounts even through in the name of his family members and friends and their business concerns, certain transactions reflected in such bank accounts were operated by him and the same was outside his regular books of accounts. On perusal of the assessment order passed in the case of Shri Rajendran, we find that the sum of .2,72,46,400/- offered as additional income of his group concern including some other deposits were accepted by the Assessing officer as unexplained credit under the head income from other sources. However, in that assessment order, the complete details with break-up of .2,72,46,400/- were not available.

8. During the course of appellate proceedings, based on the confirmation letter filed by the assessee's employer, the Id. CIT(A) has called for remand report from the Assessing Officer. After considering the submissions of the assessee and verification of details filed by the assessee's employer, in his remand report dated 16.02.2016, the Assessing Officer has submitted that

% .. it is clear that the assessee's bank account has been operated by his employer M/s. Indira Arcades for providing short term accommodation of funds and all the credits/deposits appearing the

Immediately withdrawn through self cheque and hence, the assessee's appeal against the ex-parte assessment under u/s 144 may be considered on merits.+

Against the above remand report, the Id. CIT(A) has observed the assessee has not clarified before the Assessing Officer that the assessee's cash credit/transfers in Karnataka Bank account pertaining to financial year 2004-05 has been considered in the case of V.G. Rajendran admission made before the ADIT/DDIT or AO and therefore the assessee was asked to clarify during the appeal proceedings and on clarification, the assessee has submitted two appeals order decided in the case of Smt. R. Indira and Shri V. Gurunathan for consideration. After considering the appellate orders in respect of Smt. R. Indira and Shri V. Gurunathan, the Id. CIT(A) has held that there was no discussion about assessee Shri E.R. Balaji Prasad in the findings of CIT(A)'s order in the case of Smt. R. Indira and Shri V. Gurunathan. We have also gone through the common order of the Id. CIT(A) dated 12.11.2014 in the case of Smt. R. Indira for the assessment years 2005-06 & 2006-07, wherein, at paras 4.2.25 to 4.2.27, the Id. CIT(A) has given his findings and the same are reproduced as under:

“4.2.25. The above peak credit (cash) balance of ₹.2,72,46,400/- (found on 12.08.2005) represents the unexplained cash credits for the period 01.04.2004 to 31.03.2006) on account of the transactions in all the unaccounted bank accounts, operated by Shri V.G. Rajendran. Shri V.G. Rajendran also admitted that the above unexplained credits represent his income and offered to tax in his returns filed. In fact, Shri V.G. Rajendran in his returns, filed consequent to the survey, offered

8,000/- in A.Y. 2005-06 and ₹.2,41,98,400/-
on the admissions and declarations made
before the DDIT (Inv.).

4.2.26 Thus, the total unexplained cash credits admitted by Shri V.G. Rajendran, before the DDIT (Inv.) and offered to tax in his returns, was as per the actual unexplained cash credits determined above. Further, as admitted by Shri V.G. Rajendran and other members of the group, both before the DDIT (Inv.) and also before the undersigned, all the above bank accounts were operated by him (Sri VG Rajendran) and the transactions belong to him only. Under these circumstances and since the entire unexplained cash credits have already been admitted and offered to tax by Shri V.G. Rajendran, no separate additions are warranted in the hands of other assesseees of the group (including the present assessee – Smt. R. Indira). It is also not out of context to mention here that since the tax rates are same and all the assesseees of the group are already in the higher slab rates of tax, there will not be any revenue loss on account of offering the entire cash credits in the hands of one person only.

4.2.27 In view of the above discussion, it is clear that the total unexplained cash credits assessable to tax u/s 68 of the Act, on account of all the above unaccounted bank accounts, is ₹.2,72,46,400/-. As against this amount, Shri V.G. Rajendran has already admitted and offered to tax an amount of ₹.2,72,46,400/- as unexplained cash credits in his returns of income filed for A.Ys. 2005-06 (₹.30,48,000) and 2006-07 (₹.2,41,98,400). Hence, no further/separate additions are warranted either in the hands of Shri V.G. Rajendran, or Smt. R. Indira, or Shri V. Gurunathan or M/s. Indira Foundations P. Ltd. on account of the transactions found in the above unaccounted bank accounts mentioned, by way of unexplained cash credits u/s. 68 of the Act. Therefore, the additions of ₹.22,88,89,916/- made by the Assessing Officer in the instant case, by way of unexplained ash credits u/s. 68 of the Act, is unwarranted. The addition made by the Assessing Officer is not justified and deleted. The assessee succeeds in her appeals in this regard.”

9. From the above concurrent findings of the Id. CIT(A) in the case of Smt. R. Indira (supra), it is amply clear that Shri V.G. Rajendran, Proprietor of the Indira Group has operated the unaccounted bank accounts in name of

nd friends. Just because the name of the assessee Shri E.R. Balaji Prasad was included at para 4.2.27 reproduced hereinabove, it cannot be held that Shri Rajendran has not operated the bank account in question. However, at para 4.2.25, the Id. CIT(A) has observed that the above peak credit (cash) balance of .2,72,46,400/- (found on 12.08.2005) represents the unexplained cash credits for the period 01.04.2004 to 31.03.2006) on account of the transactions in all the unaccounted bank accounts, operated by Shri V.G. Rajendran. Further, we are inclined to ignore the findings of the Id. CIT(A) at para 4.2.26 that since the entire unexplained cash credits have already been admitted and offered to tax by Shri V.G. Rajendran, no separate additions are warranted in the hands of other assesseees of the group. Because, on perusal of the paper book filed by the assessee, it is pertinent to point out here that in the assessment order dated 21.03.2014, in the case of Shri V.G. Rajendran, the assessee vide his letter dated 18.02.2014 has submitted unaccounted bank account statement, which includes name of the present assessee Shri Balaji Prasad stated to have maintained with Karnataka Bank Ltd. bearing A/c. No. 7968. The above submissions of the assessee Shri Rajendran have been resolved in all the assessee of his group. Under the above facts and circumstances, in the present case, we are unable to accept the findings of the Id. CIT(A) that the assessee Shri E.R. Balaji Prasad was not included in the Indira Group. Since, when the survey was conducted on 09.03.2012 in

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Indira Arcades and Estates, the bank account maintained by Shri V.G. Rajendran in the name of Shri E.R. Balaji Prasad was found and the said bank account was one of the bank accounts admitted to have maintained by Shri Rajendran during the course of survey proceedings. Based on the survey conducted in the group case of M/s. Indira Arcades, the present assessee was assessed to tax. In view of the remand report submitted by the Assessing Officer in assessee's own case and the findings of the Id. CIT(A) in the case of Smt. R. Indira and others (supra), who were belong to Indira group, the addition made by the Assessing Officer and confirmed by the Id. CIT(A) is unwarranted and not justified. Accordingly, we delete the addition made on this account. Thus, the ground raised by the assessee is allowed.

10. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on the 07th October, 2016 at Chennai.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 07.10.2016

Vm/-

आदेश का प्रतिलिपि अर्पण/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. प्रभागीय प्रत्यक्ष/DR & 6. गाडफाईल/GF.