

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SMT P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER**

**ITA No. 758/Hyd/2014
Assessment Year: 2010-11**

Shri Bandi Sadanandam, vs. The Income Tax Officer,
Hyderabad. Ward No. 12(4),
PAN – AENPB8049R Hyderabad.

(Appellant)

(Respondent)

Assessee by : Shri T. Chaitanya Kumar
Revenue by : Shri M. Sitarama Rao

Date of hearing : 26-04-2017
Date of pronouncement : 03-05-2017

ORDER

PER B. RAMAKOTAIAH, AM

This is an appeal by Assessee against the order of CIT(A)-2, Hyderabad dated 10-03-2014. The issue is with reference to bringing to tax an amount of Rs. 1,03,28,500/- pertaining to deposits in bank accounts during the year. Assessee's main grounds are with reference to considering the peak of the amounts as taxable and not each and every individual deposits as there were withdrawals as well.

2. Briefly stated, Assessee is the Vice President of M/s Alghamin Industries having income from salary, property and other sources and has filed return of income

of Rs. 7,20,241/-, whereas the assessment was completed determining the taxable income at Rs. 2,47,61,970/-. One of the issue for consideration is with reference to the deposits in bank account to an extent of Rs. 1,03,28,500/- in various accounts of Assessee in Axis bank, Journalist Colony, Jubilee Hills and Andhra Bank, Jubilee Hills. Since Assessee could not explain the source of deposits, the entire amount was brought to tax by the AO.

3. Before Ld. CIT(A) Assessee furnished more details including receipts and payments statement made before AO and requested for accepting the explanation. In the alternate, Assessee requested to compute the peak credit considering the withdrawals also. Ld. CIT(A) did not accept Assessee contentions by stating as under:

“3.3 During the course of appellate proceedings the appellant reiterated that the cash withdrawals made from the bank were the sources for the cash deposits made. As mentioned in the earlier paras almost all the accounts of the appellant are with the same branch of Axis Bank, i.e., in Journalists Colony, Jubilee Hills, Hyderabad. The deposits in Andhra Bank was a small amount of Rs. 4,84,000/- made only on three occasions in the entire year:

<u>Date</u>	<u>Amount</u>
22.07.2009	Rs. 1,94,000/-
07.01.2010	Rs. 90,000/-
10.03.2010	<u>Rs. 1,50,000/-</u>
	<u>Rs. 4,84,000/-</u>

Further the deposits in Axis Bank, Banjara Hills, Hyderabad were to the tune of Rs. 24,75,000/-. Almost 90% of the transactions took place in four accounts maintained with Axis Bank Branch, Journalists Colony, Jubilee Hills, Hyderabad with repeated withdrawals and deposits. As correctly pointed out by the Assessing

Officer no valid reasons were given as to why the amounts were withdrawn in cash and deposited in cash at frequent intervals. This only explains that the appellant withdrew the money, spent it for the purposes known to him and introduced the cash as and when he required in the form of cash deposits. The assessee could have comfortably issued the cheque or transferred the money from one account to the other account without taking the pain of withdrawing the cash and depositing the same in his account in the same bank, same branch. The cash withdrawals and deposits made by the appellant in his bank account is enclosed in the form of Annexure-A. The Authorized Representative relied on the decision in the case of Sri Gopal Agarwal vs ITO, ITA No. 408/Hyd/2009 Order dated 05.02.2010. In this case, the Hon'ble Tribunal held that the nexus between debits and credits need not be proved by the assessee as the account was undisclosed. However, the facts in the present case are different. All the accounts of the assessee are disclosed. Hence it is not correct to compute peak credit, as I consider that cash withdrawals are not sources for cash deposits. As the explanation given by the appellant is not satisfactory, and there is not nexus between withdrawals and deposits, the addition made by the A.O of Rs. 103,28,500/- is confirmed. Therefore this ground of appeals is dismissed.

4. In this present appeal, Assessee has raised the following grounds:

"2. The Ld. CIT(A) erred in confirming the addition made of Rs. 1,03,28,500/- by holding that the aggregate of the deposits made would represent the income of the appellant. The Ld. CIT(A) ought to have considered the fact that peak of the amounts deposited with the bank is much lesser and even the said peak is explainable by the appellant herein.

3. The Ld. CIT(A) ought to have considered the explanation submitted and restricted the addition to the extent of peak credit instead of upholding the aggregate addition made.

4. The Ld. CIT(A) erred in not following the decisions of the Hon'ble ITAT in the case of Sri Gopal Agarwal Vs ITO, Ward 2(4), Hyderabad in ITA No. 408/Hyd/2009, dated 05-02-2010.

5. Ld. Counsel reiterated submissions made before Ld. CIT(A) and referred to various statements filed with reference to explanation of deposits and he also referred to the peak credit worked out, which turns to be an amount of Rs. 19,93,800/-, It was submitted that assessee has no objection if the peak amount was confirmed.

6. Ld. DR however relied on various case law, mostly pertaining to addition u/s 69 of the IT Act. He has placed on record the decision of ITAT Delhi in the case of Shri Manoj Kumar Jain Vs ITO 13 ITR (TRI) 227 and Shri Sudheer Kumar Sharma HFU Vs CIT-3, 69 Taxman.com 219 (Supreme Court), the corresponding Hon'ble High Court judgment in the same case reported at 224 taxman.com 178 (Punjab & Haryana).

7. We have considered rival contentions and perused the orders of the authorities. Admittedly, Assessee is not in a position to justify fully the large number of deposits. Assessee before CIT(A) furnished certain sources for cash deposits and withdrawals, particularly amounts borrowed by cheques and drawn in cash. Considering that there is no allegation that Assessee has made unexplained investments and/or indulging any business, there is nothing on record to say that the withdrawals cannot be a source of subsequent deposits. In these circumstances, Assessee request for bringing to tax the peak credits can be accepted. Even though this working is not verifiable by us in the absence of complete details of domestic expenditure

or expenditure which is in nature of outgoing out of the withdrawls and the Receipt-Payment statement. Since this aspect was not examined by A.O, we set aside the issue to the file of the A.O to examine the peak credit, based on receipts and payments statement of Assessee and the consolidated deposits and withdrawals in the five banks and to bring to tax only the amount of peak credit / deficit cash as the case may be. Assessee should be given due opportunity by AO to file necessary details. The grounds raised by Assessee are accordingly considered allowed.

8. In the result, appeal filed by Assessee is allowed for statistical purposes.

Pronounced in the open court on 03rd May, 2017.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(B. RAMAKOTAIAH)
ACCOUNTANT MEMBER

Hyderabad, Dated: 03rd May, 2017.

KRK

- 1 Shri Bandi Sadanandam C/o Y.R. Rao, Advocate, Flat No. 409, Metroresidency Rajbhavan Road, Somajiguda, Hyderabad.
- 2 ITO, Ward No.12(4), Hyderabad.
- 3 CIT (A)-II, Hyderabad.
- 4 CIT – 1, Hyderabad.
- 5 The DR, ITAT Hyderabad
- 6 Guard File