

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

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER
AND SHRI A.K. GARODIA, ACCOUNTANT MEMBER

ITA No.257/Bang/2018
Assessment year : 2014-15

Smt. Vinatha Madhusudan Reddy, No.82, Avalahalli, Anjanapura Post, J.P. Nagar, 9 th Phase, Bangalore – 560 062. PAN: AAHPR 8319N	Vs.	The Assistant Commissioner of Income Tax, Circle 3(2)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri B.S. Balachandran, Advocate
Respondent by	:	Shri M. Narasimha Raju, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	02.08.2018
Date of Pronouncement	:	24.08.2018

ORDER

Per N.V. Vasudevan, Judicial Member

This is an appeal by the Assessee against the order dated 19.12.2017 of the CIT(Appeals)-3, Bengaluru relating to assessment year 2014-15.

2. The Assessee is an individual. She derives income under the head Income from House Property and Income from Capital Gains. The Assessee filed return of income for AY 2014-15 declaring total income of Rs.3,00,18,930/-. In the course of assessment proceedings, the AO noticed that there were cash deposits in the Bank A/c. No.2476101000898 maintained by the Assessee with Canara Bank. There were also

withdrawals of cash from the very same bank account by the Assessee. The details of the deposit and withdrawal in the bank account was as follows:-

Cash Deposits

18-May-13	1,50,000.00
23-Oct-13	3,00,000.00
24-Oct-13	2,00,000.00
26-Nov-13	5,00,000.00
27-Nov-13	5,00,000.00
28-Dec-13	1,00,000.00
30-Dec-13	2,50,000.00
31-Dec-13	1,44,000.00
18-Jan-14	2,30,000.00
31-Jan -14	50,000.00
28-Feb-14	35,000.00

Cash Withdrawals

19-Apr-13	2,00,000.00
02-May-13	4,00,000.00
02-May-13	3,00,000.00
03-May-13	5,00,000.00
04-May-13	5,00,000.00
07-May-13	25,000.00
31-Aug-13	2,00,000.00
10-Sep-13	1,50,000.00
24-Mar-14	25,000.00

3. The AO called upon the Assessee to explain the source of funds out of which the cash deposits were made by the Assessee in his bank account. The Assessee explained the source of funds for cash deposits as from and out of the withdrawals made from the very same bank account. The total of the cash deposits in the Bank Account was Rs.24,59,000 while the withdrawals from the Bank account was Rs. 23,00,000/-. The Assessee pointed out that the cash withdrawals were prior to the date of deposit of cash in the bank account. The Assessee also submitted that the withdrawals from the Bank account was made for the purpose of meeting expenses in connection with marriage of her daughters. The marriage of the 2 daughters of the Assessee had taken place in March, 2013 and

December, 2014. The AO was of the view that the cash withdrawals and deposits were during October, 2013 to January, 2014 and therefore there was no correlation between the cash withdrawals, deposits and the marriage of the daughters. The AO partly accepted the explanation of the Assessee with regard to the source of funds for deposit in the bank account but did not accept the plea of the Assessee regarding explanation of source of deposits to the tune of Rs.17,31,500/-, for the following reasons:-

“6. Without accepting the validity of the assessee's arguments, there may be truth in the claim that some component of cash-deposit is from the withdrawals. It is seen that as on 18-05-2013, 23-10-2013 and 24-10-2013 the assessee had sufficient cash in hand which was withdrawn in the immediate past. The deposits made from 26.11.2013 to 18.01.2014 are not supported by any withdrawals in the immediate past. Hence the same are treated as unexplained cash credits in the books of the assessee.

Total addition: 17,31,500”

4. On appeal by the Assessee, the CIT(A) confirmed the order of the AO. The following were the reasons given by the CIT(A) for confirming the order of the AO:-

4.4 The appellant has tried to explain the cash deposits by means of cash flow statement for FY 2013-14, however the same also does not retied the true state of affairs. The cash flow statement shows that huge cash is being withdrawn continuously during period 08.04.2013 to 17.09.2013 (these withdrawals are in addition to the withdrawal of Rs.30,000/- per month being made from the hank account and shown as personal drawings) and then the same is being deposited during period 03.10.2013 to 28.02.2014. Here the issue is why a person would keep on withdrawing money from its bank account when the money from earlier cash withdrawals is already lying with it. These aspects show that the cash withdrawn had been consumed by the appellant and cash deposited was from some unexplained sources of income.

4.5 The appellant has tried to take shelter of the theory of peak credit, however the same cannot be applied blindly without appreciating facts of the case. Whether to apply the peak credit theory or not and to which entries it is to be applied depends on facts of each case and material on record. In the case under consideration, the facts as discussed above clearly show that the deposits in the bank account are from undisclosed sources and the appellant has not given any reasonable cause which requires application of the peak credit theory in her case. Considering above, the addition of Rs.1731,500/- is upheld and the grounds of appeal 2 to 4 of the appellant are dismissed.”

5. Aggrieved by the order of the CIT(A) the Assessee has preferred the present appeal before the Tribunal. The Assessee had filed a cash flow statement explaining the availability of cash on the various dates when deposits were made in the bank account. The same is as follows:-

Statement of cash flow for the financial year 2013-14

Date	Particulars	Ch. No	Debit	Credit	Balance
1.4.13	Opening Balance		23,181		23181
2.5.13	Personal Drawings			20,000	3,181
8.4.13	Cash Drawn	385292	200,000		203,181
19.4.13	Cash Drawn	385293	200,000		403,181
2.5.13	Personal Drawings			30,000	373,181
2.5.13	Cash Drawn	385295	400,000		773,181
2.5.13	Cash Drawn	385296	300,090		1,073,181
3.5.13	Cash Drawn	394581	500,000		1,573,181
4.5.13	Cash Drawn	394582	500,000		2,073,181
7.5.13	Cash Drawn	394585	25,000		2,098,181
18.5.13	Cash Deposited			150,000	1,948,181
1.6.13	Personal Drawings			30,000	1,918,181
2.7.13	Personal Drawings			30,000	1,888,181
1.8.13	Personal Drawings			30,000	1,858,181
19.8.13	Cash Drawn	396168	200,000		2,058,181
31.8.13	Cash Drawn	396169	200,000		2,258,181
2.9.13	Personal Drawings			30,000	2,228,181
7.9.13	Cash Drawn	396170	50,000		2,278,181
10.9.13	Cash Drawn	396171	150,000		2,428,181

13.9.13	Personal Drawings			28,659	2,399,522
17.9.13	Cash Drawn	672539	60,000		2,459,522
3.10.13	Personal Drawings			20,000	2,439,522
23.10.13	Cash Deposited			300,000	2,139,522
24.10.13	Cash Deposited			200,000	1,939,522
2.11.13	Personal Drawings			30,000	1,909,522
25.11.13	Cash Deposited			7,500	1,902,022
26.11.13	Cash Deposited			500,000	1,402,022
27.11.13	Cash Deposited			500,000	902,022
1.12.13	Personal Drawings			22,500	879,522
28.12.13	Cash Deposited			100,000	779,522
30.12.13	Cash Deposited			250,000	529,522
30.12.13	Cash Deposited			7,500	522,022
31.12.13	Cash Deposited			144,000	378,022
2.1.2014	Personal Drawings			29,000	349,022
18.01.14	Cash Deposited			230,000	119,022
24.1.14	Cash Drawn		20,000		139,022
27.01.14	Cash Deposited			10,500	128,522
31.01.14	Cash Deposited			50,000	78,522
1.2.2014	Personal Drawings			22,500	56,022
25.02.14	Cash Deposited	-		10,500	45,522
28.02.14	Cash Deposited			35,000	10,522
24.3.14	Cash Drawn	552028	25,000		35,522
29.3.14	Cash Drawn	552030	11,100		46,622
30.3.14	Personal Drawings			20,000	26,622
31.3.14	Closing Balance			26,622	
	Total		2,864,281	2,864,281	

6. We have heard the submission of the learned counsel for the Assessee and the learned DR. The learned counsel for the Assessee reiterated plea of the Assessee as put forth before the AO and CIT(A). The learned DR relied on the order of the CIT(A).

7. We have carefully considered the rival submissions. It is seen that the cash deposits in the bank account are preceded by withdrawal from the very same bank account. The cash flow statement filed by the Assessee explaining availability of cash on the various dates of deposit of cash in the bank account has not been disbelieved by the Revenue authorities. They

have proceeded on the basis that since there was sufficient time lag between the dates of withdrawal of cash from the bank account and the dates of deposits, the availability of cash cannot be believed. The legal position in this regard is that if the deposit of money in the bank account is preceded by withdrawal of money from the very same bank account then the source of funds is *prima facie* demonstrated or explained by the Assessee. The Hon'ble Karnataka High Court in the case of *S.R. Ventakaratnam Vs CIT, Karnataka-I & Others 127 ITR 807* has held that once the Assessee discloses the source as having come from the withdrawals made on a given date from a given bank, it was not open to the revenue to examine as to what the Assessee did with that money and cannot chose to disbelieve the plea of the Assessee merely on the surmise that it would not be probable for the Assessee to keep the money unutilized. We are of the view that the ratio laid down in the aforesaid judgment will apply to the facts of the present case. If the revenue wants to disbelieve the plea of the Assessee then it must show that the previous withdrawal of cash would not have been available with the Assessee on the date of deposit of cash in the bank account. The AO and CIT(A) have proceeded purely on assumption and surmises that cash would not be lying idle with the Assessee for such a long time. In our view, the Assessee has satisfactorily explained the source of funds out of which deposit of cash was made in the bank account. We therefore delete the addition made in this regard.

8. In the result, the appeal by the Assessee is allowed.

Pronounced in the open court on this 24th day of August, 2018.

Sd/-

(A.K. GARODIA)
Accountant Member

Sd/-

(N.V. VASUDEVAN)
Judicial Member

Bangalore,
Dated, the 24th August, 2018.

/ Desai Smurthy /

Copy to:

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

By order

Senior Private Secretary
ITAT, Bangalore.