

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.822/Chny/2020

(निर्धारणवर्ष / Assessment Year: 2017-18)

Mr. Shanmugam Ethiraj, 110, Dr Radhakrishnan Road, Mylapore, Chennai-600 004.	Vs	The Income Tax Officer, Non-Corporate Ward-1(4), Chennai-600 034,
PAN: AAGPS 0240L		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Mr. B.Ramakrishnan, C.A.
प्रत्यर्थी की ओरसे/Respondent by	:	Mr. G.Johnson, Addl.CIT

सुनवाईकीतारीख/Date of hearing	:	05.04.2022
घोषणाकीतारीख /Date of Pronouncement	:	11.05.2022

आदेश / ORDER

PER G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against order passed by the Commissioner of Income Tax (Appeals)-2, Chennai dated 18.09.2020 and pertains to assessment year 2017-18.

2. The assessee has raised following grounds of appeal:-

" 1. The order passed by the learned Commissioner of the Income tax (Appeals) is contract to the law, facts and circumstances of the case.

2. The Learned Commissioner of Income Tax (Appeals)-2 erred in not considering the fact that the order passed by the Assessing officer is without Jurisdiction.

3. The Learned Commissioner of Income Tax (Appeals) erred not appreciating the fact that since the appellant is a director of M/s. S V Global Mill Ltd and hence to be assessed by the Jurisdictional Officer of the said company falling under Principal Commissioner of Income-tax -6, Chennai as per the Notification issued by CBDT in Notification No.6/2013 [F.NO.187/14/2012-(ITA.1)], dated

28-1-2013.

4. *The Learned Commissioner of Income Tax (Appeals) erred in confirming the Jurisdiction of the ITO, Non-Corporate Ward 1(4), Chennai over the appellant stating that the same is as per the transfer order passed by PCIT-1 in "C. No 236B/Scrutiny Notification /PCIT -1/20 19-20", which is not in accordance with the Notification issued by CBDT in Notification No.6/2013 [F.NO.187114/2012-(ITA.I)], dated 28-1-201 3.*

5. *The Learned Commissioner of Income Tax (Appeals), erred in confirming the addition made by the Assessing Officer of Rs.70,27,500/-, being cash deposits in the bank account of the assessee treated as Unexplained Investment u/s 69 of the Act, taxed u/s 115BBE of the Act.*

6. *The Learned Commissioner of Income Tax (Appeals), erred in confirming the levy of interest u/s 234B of the Act in consequence to the above addition."*

3. The brief facts of the case are that the assessee is a Director of M/s. S.V.Global Mills Ltd. The assessee did not file his return of income for the assessment year 2017-18 u/s.139(1) of the Income Tax Act, 1961. Subsequently, notice u/s.142(1) dated 15.12.2017 was issued calling upon the assessee to file his return of income. In response, the assessee filed his return of income on 12.01.2018 admitting total income of Rs.32,96,820/- and said return has been revised on 13.12.2018 and declared total income of Rs.32,96,820/-. The case has been taken up for scrutiny. During the course of assessment proceedings, the Assessing Officer noticed that during financial year relevant to

assessment year 2017-18, the assessee had made cash deposits of Rs.1,17,38,500/- and cash withdrawal of Rs.2,19,59,800/- from City Union Bank Ltd. The assessee was called upon to explain source for cash deposits into bank account. In response, the assessee claimed that source for cash deposits is out of interest income received from M/s. Srinidhi Finance Pvt .Ltd. and also withdrawals from very same bank account on earlier occasions. The assessee has filed ledger extract explaining cash withdrawals and cash deposits and claimed that source for cash deposit is out of cash withdrawals as well as income declared under the head 'income from other sources'. The Assessing Officer has examined case of the assessee in light of evidences filed during the course of assessment proceedings, including bank statements obtained from City Union Bank along with ledger extracts filed by the assessee. The Assessing Officer has accepted major cash deposits out of source from interest received on loans and loan repaid from M/s. Srinidhi Finance Pvt. Ltd. The Assessing Officer had also accepted explanation of the assessee that previous cash withdrawals from very same bank account was used for deposits into bank account and

wherever cash deposits are made within two to three days from date of withdrawal from very same bank account. But, in respect of cash deposits made beyond three days, the Assessing Officer was of the opinion that the assessee has withdrawn higher amount and deposited lesser amount which means the assessee must have spent cash withdrawal from bank account for some other purposes. Therefore, the Assessing Officer rejected arguments of the assessee and made addition of Rs.70,27,500/- u/s.69A of the Income Tax Act, 1961, as unexplained money.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before learned CIT(A). Before the learned CIT(A), the assessee has challenged jurisdiction of the Assessing Officer in light of Notification No.6/2013 dated 28.01.2013 issued by CBDT and argued that assessment order passed by the Assessing Officer is null & void, because the Assessing Officer does not have jurisdiction over the assessee. The assessee had also challenged additions made towards cash deposits u/s.69 of the Income Tax Act, 1961, and contended that when the Assessing Officer was not disputing

cash withdrawal from very same bank account, ought not have made addition on the ground that the assessee must have utilized cash for some other purposes without bringing on record any evidence to prove that cash withdrawal has been used for some other purposes.

5. The learned CIT(A), after considering relevant facts has rejected legal ground taken by the assessee challenging jurisdiction of the Assessing Officer on the ground that the Assessing Officer, who passed the assessment order exercised jurisdiction as per Notification issued by the Principal CIT assigning the case and further, the assessee was put to notice u/s.129(1) of the Income Tax Act, 1961, informing change in incumbent of an officer and thus, the CIT(A) was of the opinion that there is no merit in the legal ground taken by the assessee challenging jurisdiction of the Assessing Officer. As regards cash deposits made to City Union Bank Ltd. amounting to Rs.70,27,500/-, the learned CIT(A) observed that the assessee could not explain nature of cash deposit of Rs.70,27,500/- with necessary evidences. Although, the assessee claims to have used earlier withdrawal from very

same bank account for making deposits on subsequent date, but could not substantiate his claim, because the assessee was withdrawing higher amount and depositing lesser amount in subsequent dates which means, the assessee must have used cash withdrawn on earlier occasion for some other purposes. Therefore, the learned CIT(A), rejected arguments of the assessee and sustained additions made by the Assessing Officer. The relevant findings of the learned CIT(A) are as under:-

"5. I perused the grounds of appeal, assessment order, AR's submission and materials available on record. My observations in respect the grounds raised by the appellant are as follows:

6. Jurisdiction of the Assessing Officer:

6.1 In the grounds of appeal, the appellant contested that the order of the Learned Assessing Officer is without Jurisdiction; the appellant is a Director of MIs. S V Global Mill Ltd and hence to be assessed by the Jurisdictional Officer of the said company as per the Circular issued by CBDT.

6.2 In the written submission the A.R stated that the jurisdiction of the appellant, being the director of M/s S V Global Mill Ltd lies with Corporate Circle-6(2) and hence the impugned assessment order passed by the Assistant Commissioner of Income Tax, Non Corp. Circle 2(1) Chennai is without jurisdiction and deserves to be set-aside.

6.3 It is pertinent to mention here that the Assessment Order was passed not by Assistant Commissioner of Income Tax, Non Corp. Circle 2(1) Chennai but by the Income Tax Officer Non-Corp Ward-1(4), Chennai.

Income Tax Officer Non-Corp Ward-1(4), Chennai received this case as per the Order of the Principal Commissioner of Income Tax. This was stated by the Assessing Officer in the first para of Assessment Order as under:

“The case was selected for scrutiny through CASS for the AY 2017-18 and notice U/s 143(2) of the IT Act, 1961 was issued to the assessee on 29.08.2018 by the Assistant Commissioner of Income Tax, Non Corporate Range-2, Chennai. Subsequently, this case was received on transfer vide notification dated 11.11.2019 in C.No. 236B/Scrutiny Notification/PCIT 1/2019-20. Thereafter a notice u/s. 129 of the IT Act was issued to the assessee informing the change in incumbency.”

Thus the Income Tax Officer Non-Corp Ward-1(4), Chennai who passed the Assessment Order exercised the jurisdiction as per the notification issued by the Principal Commissioner of Income Tax.

Hence this ground of appeal is dismissed.

7. Addition u/s 69:

7.1 Assessee made cash deposits totalling to Rs 1,17,38,500/- and cash withdrawals totalling to Rs 2,19,59,800/- during the AX 2017-18. Assessee failed to explain the sources for the cash deposits and the reasons for the huge cash deposits and withdrawals in frequent intervals. Assessing Officer accepted the withdrawals as sources for the cash deposits made within a reasonable time from the withdrawals and treated the balance cash deposits totalling to Rs 70,27,500/- as unexplained investment u/s 69.

7.2 In the grounds of appeal the appellant contested that the Learned Assessing Officer erred in making an addition of Rs.70,27,500/- being Cash deposits in Bank account as Unexplained Investment u/s 69 of the Act and taxed u/s 115BBE of the Act.

7.3 In the written submission the A.R contested that merely because there was a time gap between withdrawal of cash and

cash deposits, the explanation of the assessee cannot be rejected.

7.4 However with respect to the cash deposits totalling to Rs 70,27,500/-, the appellant did not explain the nature of cash deposits in bank and the purpose of cash withdrawals. Appellant did not bring any material on record to link the cash withdrawn from bank to cash deposits.

In [2017] 81 taxmann.com 317 (Punjab & Haryana) Snit. Kavita Chandra vs Commissioner of Income-tax (Appeals), Panchkula, Hon'ble High Court of Punjab and Haryana held - "On assessment, an addition of Rs.41.20 lakhs was made on account of unexplained income. On appeal, bank deposit of Rs. 27 lakhs by assessee in banks was accepted while balance Rs. 14.20 lakhs was rejected on ground that same was deposited after gap of 2-3 months from its withdraw& from bank. It was clear that impugned cash withdrawals were made for purpose of business and same was not available for redeposit and assessee was unable to link cash withdrawn from bank to cash deposit, same would be held to be assessee's unexplained income.'

Respectfully following the above stated decision of the Hon'ble High Court of Punjab and Haryana addition of Rs 70,27,500/- as unexplained investment u/s 69 is upheld."

6. The first issue that came up for our consideration from ground no.5 of the assessee appeal is addition u/s.69 of the Income Tax Act, 1961, towards cash deposits into City Union Bank account amounting to Rs.70,27,500/- as unexplained investments. The learned A.R for the assessee submitted that the learned CIT(A) erred in not appreciating fact that the assessee had explained cash deposits into bank account out of cash withdrawal from very same bank account in earlier

occasion, which is evident from fact that the Assessing Officer has recorded factual finding that the assessee has made cash deposits amounting to Rs.1,17,38,500/- and cash withdrawal to the tune of Rs.2,19,59,800/- from City Union Bank Ltd. The learned A.R further submitted that the Assessing Officer has not disputed fact that cash withdrawal from bank account is more than amount of cash deposited into bank account, but made addition only for the reason that the assessee must have used cash withdrawal for some other purposes without bringing on record any evidence to support his findings. In this regard, the learned A.R relied upon certain judicial precedents, including decision of the Hon'ble Delhi High Court in the case of CIT Vs Kulwant Rai (2007) 291 ITR 36(Del).

7. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that the Assessing Officer is very fair, inasmuch as whenever the assessee could explained cash deposits out of previous withdrawals, the Assessing Officer has accepted explanation, however in respect of cash deposits beyond certain dates, the Assessing Officer does not accept explanation, because the assessee could not offer any

explanation as to why cash withdrawal from bank account was kept and re-deposited after a gap of one or two months. The learned CIT(A), after considering relevant facts has rightly upheld additions made by the Assessing Officer and their order should be upheld.

8. We have heard both the parties, perused material available on record and gone through orders of the authorities below. There is no dispute with regard to fact that the assessee has made cash deposit of Rs.1,17,38,500/- and cash withdrawal of Rs.2,19,69,800/- from City Union Bank account. In fact, the Assessing Officer has never disputed fact that cash withdrawal from City Union Bank account is more than amount of cash deposited in the very same bank account. It is also not in dispute that the Assessing Officer has accepted cash withdrawal from the bank in earlier occasion as source for cash deposits in subsequent dates, wherever gap between cash withdrawal and cash deposit is less than 3 to 5 days. However, in respect of cash deposits beyond five days, the Assessing Officer did not accept explanation of the assessee on the ground that the assessee deposited only part of the amount

withdrawn after few days, which means the assessee had exhausted amount withdrawn earlier and further, amount withdrawn in earlier occasions were for specific purposes and thus, opined that cash withdrawal in earlier occasion cannot be telescoped against cash deposited in subsequent dates.

9. We have given our thoughtful consideration to the reasons given by the Assessing Officer and we ourselves do not subscribe to the reasons given by the Assessing Officer for simple reason that when the Assessing Officer has accepted explanation of the assessee in respect of cash deposits into bank account out of cash withdrawals from very same bank account, wherever cash deposits are made within a period of 2 to 5 days, ought not to have made additions towards remaining cash deposits, when the assessee has explained source for cash deposits out of cash withdrawal from very same bank account, unless the Assessing Officer demonstrates that amount of withdrawal in earlier occasion has been used by the assessee for any other purposes. This legal principle is supported by the decision of the Hon'ble Delhi High Court in the case of CIT Vs Kulwant Rai (supra), where an identical

issue has been dealt by the Hon'ble High Court and held that no material has been relied upon by the Assessing Officer to support his view that entire cash withdrawal in earlier occasion must have been spent by the assessee for some purposes and the assessee would not have cash in hand for making deposit in subsequent dates. The ITAT.,Delhi Benches in the case of Gordhan Vs. ITO in ITA No.811/Del/2015 dated 19.10.2015 held that no addition can be made u/s.69 of the Act, on the sole reason that there is time gap of five months between the date of withdrawal and re-deposit into bank account, unless the Assessing Officer demonstrates that amount of withdrawal in earlier occasion had been used by the assessee for some other purposes.

10. In this case, there is no dispute with regard to fact that the assessee has withdrawn cash to the tune of Rs.2,19,59,800/- and made cash deposit to the tune of Rs.1,17,38,500/- into City Union Bank account during the relevant financial year. Therefore, we are of the considered view that once the Assessing Officer never disputed fact that cash withdrawal from bank account is higher than amount of cash deposited into

bank account, then the A.O. ought not to have made additions towards cash deposits into bank account only for the reason that there is time gap of more than 3 to 5 days between cash withdrawal and cash deposits from very same bank account. It was not the case of the Assessing Officer that cash withdrawal from bank account on earlier occasion had been spent by the assessee or used for some other purposes. In absence of any finding contrary to explanation of the assessee that cash deposits into bank account is out of withdrawal from earlier occasion cannot be disregarded. The learned CIT(A), without appreciating above facts has simply confirmed additions made by the Assessing Officer. Hence, we reverse findings of the learned CIT(A) and direct the Assessing Officer to delete additions made towards cash deposits into City Union Bank account u/s.69 of the Income Tax Act, 1961.

11. The next issue that came up for our consideration from ground No.1 to 4 of assessee appeal is questioning jurisdiction of the Assessing Officer in passing the assessment order. The assessee has questioned jurisdiction of the Assessing Officer in passing assessment order in light of notification issued by

CBDT No. 6/2013 dated 28.01.2013. Although, there is substance in legal ground taken by the assessee in challenging jurisdiction of the Assessing Officer, we do not go into adjudicate legal ground, because the issue raised on merits regarding additions made u/s.69 of the Income Tax Act, 1961, towards cash deposits into bank account has been deleted by us in preceding paragraphs. The legal ground taken by the assessee becomes academic in nature and thus, we are of the considered view that the grounds taken by the assessee challenging jurisdiction of the Assessing Officer does not require to be adjudicated. Hence, ground taken by the assessee is dismissed as infructuous.

11. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 11th May, 2022

Sd/-
(वी. दुर्गा राव)
(V.Durga Rao)
 न्यायिक सदस्य /Judicial Member
 चेन्नई/Chennai,
 दिनांक/Dated 11th May, 2022
 DS

Sd/-
(जी. मंजुनाथ)
(G. Manjunatha)
 लेखा सदस्य / Accountant Member

आदेश की प्रतिलिपि अर्पित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.