

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" : HYDERABAD

BEFORE SHRI P.M. JAGTAP, ACCOUNTANT MEMBER
AND
SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER

ITA.No.469/Hyd/2014
Assessment Year 2009-2010

Mr. C. Vamsi Mohan Nandyal. PAN ABVPC7070A (Appellant)	vs.	The Income Tax Officer, Ward-1, Nandyal. (Respondent)
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For Assessee :	Mr. A.V. Raghuram
For Revenue :	Mr. Ramakrishna Bandi

Date of Hearing :	26.03.2015
Date of Pronouncement :	27.03.2015

ORDER

PER P.M. JAGTAP, A.M.

This appeal filed by the assessee is directed against the Order of Ld. CIT(A)-IV, Hyderabad dated 10.01.2014 whereby he confirmed the addition of Rs.21 lakhs made by the A.O. on account of cash deposit of Rs. 21 lakhs found to be made in the bank account of the assessee treating the same as unexplained cash credit.

2. The assessee in the present case is an individual who is engaged in the business of dealing in medicine and other products on retail basis in the name and style of his proprietary M/s. C.P. Medical and Fancy Store. The return of income for the year under consideration was filed by him on 31.03.2010 declaring total income of Rs.1,60,490. During the course of assessment proceedings, the bank account maintained by the assessee with State Bank of India was

verified by the A.O. and on such verification, he found that there were cash deposits made from time to time aggregating to Rs.33,75,000. Although it was explained by the assessee that the said amount was deposited out of cash withdrawals made from the same account on earlier dates as well as sale proceeds of his proprietary business, the A.O. did not find the same to be acceptable in the absence of any supporting evidence. Accordingly, a sum of Rs.21 lakhs was added by him to the total income of the assessee in the assessment completed under section 143(3) vide order dated 21.10.2011.

3. Against the order passed by the A.O. under section 143(3), an appeal was preferred by the assessee before the Ld. CIT(A) and the submission as made before the A.O. was reiterated on behalf of the assessee while explaining the cash deposit of Rs. 21 lakhs found to be made in his bank account on 24.12.2008. The Ld. CIT(A) however, did not find the same to be acceptable and confirmed the addition of Rs. 21 lakhs made by the A.O. for the following reasons given in paras 4.2 to 4.4 of his impugned order.

“4.2. I have considered the facts on record and the submissions of the A.R. I have also examined the cash flow statement prepared by the appellant on the basis of the bank transactions. The explanation of the A.R. is based entirely on the claim that the deposits had been made out of the cash withdrawals earlier made from the same account. However, contrary to the A.R’s claim, I do not find any proximity between the withdrawals and the deposits. For example, the appellant made a series of five withdrawals ranging from Rs.2,00,000 to Rs.4,00,000 aggregating to Rs.12,50,000 between the period 02.05.2008 and withdrew another sum of Rs.8,00,000 on 31.06.2008. There was no reason for the appellant to make the repeated withdrawals if he had the amounts withdrawn earlier available with him. Indeed the transactions follow a similar pattern through the year.

4.3. *Similarly, the appellant had made a deposit of Rs.21,00,000 on 24.12.2008. There was a withdrawal of Rs.13,00,000 on 17.12.2008 before the deposit and of Rs.16,00,000 on 30.12.2008 after it. The appellant has failed to explain why a substantial sum of Rs.13,00,000 was withdrawn from the bank merely to keep it idle as cash only to redeposit it a week later. The appellant has also failed to explain why the appellant needed to continue withdrawing cash even when apparently large cash balance were available with him.*

4.4. *The logical explanation for such large withdrawals would be that the appellant needed the money either for his business or personal expenses or for making investments, in which case the cash withdrawn would have been utilized and not be available for redeposit. The appellant would have me believe that he had nothing better to do than to withdraw and deposit cash in a random manner apparently as a pastime. The explanation of the appellant is contrary to the probabilities of human behavior and is, therefore, rejected.”*

Aggrieved by the order of Ld. CIT(A), assessee has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material on record. Ld. Counsel for the assessee has submitted that although there was no cash book maintained by the assessee to show that the deposit of Rs. 21 lakhs made in the bank account on 24.12.2008 was out of the withdrawals made on earlier dates, withdrawal of Rs. 13 lakhs made from the same bank account just a week before i.e., on 17.12.2008 should atleast be treated as the source of cash deposit made on 24.12.2008. Although learned D.R. in this regard has contended that the assessee might have utilized the amount of Rs. 13 lakhs withdrawn on 17.12.2008 for some other purpose, we find that there is nothing on record to show that the amount of Rs. 13 lakhs withdrawn by the

assessee on 17.12.2008 was used for some other purpose. In our opinion, the said withdrawal having been made by the assessee just before a week i.e. on 17.12.2008, the same can reasonably be treated as available with the assessee for cash deposit of Rs.21 lakhs made on 24.12.2008 especially when there is nothing to show that the amount of Rs. 13 lakhs withdrawn on 17.12.2008 was utilized by the assessee for some other purpose. We, therefore, treat the cash deposit of Rs. 21 lakhs made by the assessee in the bank account on 24.12.2008 as explained to the extent of Rs. 13 lakhs and sustain the addition made by the A.O. and confirmed by the Ld. CIT(A) on this issue to the extent of Rs. 8 lakhs.

5. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open Court on 27.03.2015.

Sd/-
(ASHA VIJAYARAGHAVAN)
JUDICIAL MEMBER

Sd/-
(P.M. JAGTAP)
ACCOUNTANT MEMBER

Hyderabad, Dated 27th March, 2015

VBP/-

Copy to

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2.	The Income Tax Officer, Ward 1, Nandyal.
3.	CIT(A)-IV, Hyderabad.
4.	CIT-III, Hyderabad
5.	D.R. I.T.A.T. “A” Bench, Hyderabad.
6.	Guard File