

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'C', BANGALORE

BEFORE SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

AND

SHRI. VIJAYPAL RAO, JUDICIAL MEMBER

I.T.A No.817/Bang/2014
(Assessment Year : 2007-08)

Smt. Shubhalaxmi D Huilgol,
Burbure Plot, Gadag .. Appellant
PAN : ADGPH5363Q

v.

Income-tax Officer,
Ward -1, Gadag .. Respondent

Assessee by : Smt. Sheethal, Advocate
Revenue by : Shri. Sunil Kumar Agarwala

Heard on : 03.11.2015
Pronounced on : 18.11.2015

ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

In this appeal filed by assessee she has altogether raised five grounds. These grounds, except for grounds 1 and 5 which are general in nature, relate to additions made by the AO disbelieving the explanations

given by the assessee on the source for acquiring a land measuring 1 acre 25 guntas at Gadag.

02. Facts apropos are that assessee had acquired a piece of land at Gadag for a total cost of Rs.50,79,755/-. Source of this investment furnished by the assessee along with her return of income read as under :

Out of agricultural income spread over a period of 6 year i.e., from 2001 to 2006 at Rs.3 lakh per annum		18,00,000
Loan from Kanakadas Shikshana Samithi, Gadag by SBI cheque dt. 22-8-2006 – Rs.5,00,000/- and 24-8-2006 – Rs.2,00,000/-		7,00,000
Loan from Punjab National Bank, CC A/c. No.2021, Gadag.		3,00,000
Handloan from Veeramma S Sajjanar and Smt. Girijadari V Sajjanar of Kelur village, Tq., Ron.		8,00,000
Handloan from Shivappa H Neeralgi, Huilgol Village -		
26-12-2006	Rs.2,00,000	
20-11-2006	Rs.3,00,000	5,00,000
Handloan from Allasab H Kadad, Huilgol village		
03-10-2006	Rs.3,00,000	
01-11-2006	Rs.2,00,000	5,00,000
Handloan from Devappa G Kadi, Huilgol village		
08-9-2006	Rs.3,00,000	
10-10-2006	Rs.2,00,000	<u>5,00,000</u>
	Total	<u>51,00,000</u>

03. AO verified each of the above source given by the assessee. On the first item of agricultural income of Rs.18 lakhs, AO found that the family members were altogether holding 52 acres of land at Huilgol. Explanation of the assessee was that the land was cultivated with crops like cotton, groundnut, chillies, Bengal gram and green gram. Assessee's husband Shri. Dheerendra B. Huilgol was examined since he was the largest holder of agricultural land and also since assessee had received some of the loans mentioned in the table above through him. AO after verifying the submissions of the assessee and also considering the Village Accountant's certificate, came to a conclusion that assessee and her family members had substantial agricultural holding and family of the assessee was one of the richest in the area. However according to him, savings from agricultural income claimed at Rs.18 lakhs, if it was really there, would not have been held by the assessee in cash but would have been banked. He was of the opinion that assessee's claim that the money was kept as such in the house could not be believed. He accepted Rs.5 lakhs as reasonable savings from agriculture and the balance of Rs.13 lakhs was treated as unexplained investment for the purchase of property.

04. For the loan of Rs.7 lakhs from Kanakadas Shikshana Samithi, claimed to have been received by assessee's husband, through cheques from the said Samithi, assessee filed confirmation letter from the President of Kanakadas Shikshana Samithi. In the said confirmation, the latter affirmed that he had given cheques to Dheerendra B. Huilgol. AO himself has stated that passbook of Shri. B. F. Dandin, President of Kanakadas Shikshana Samithi was verified. However, AO was of the opinion that the amount borrowed by assessee's husband from Shri. B. F. Dandin was not connected with the investment made by the assessee for purchase of the property. As per the AO, there was no reason why assessee did not borrow the money directly from Shri. B. F. Dandin and why it was routed through her husband. AO also noted that there was a time gap of four months between receipt of the money from Shri. Dandin and purchase of the property by the assessee. Former was in August 2006, whereas the latter was in December 2006. He refused to believe this version given by the assessee and made an addition of Rs.7 lakhs as unexplained investment.

05. For the loan of Rs.3 lakhs claimed to have been taken from Punjab National Bank, assessee furnished copy of the bank account. Such bank account reflected withdrawals totalling Rs.2,98,000/- during August and

September 2005. AO was of the opinion that due to the time gap of one year two months between withdrawal and purchase of the property, the source claimed by the assessee could not be accepted. He made an addition of Rs.3 lakhs as unexplained investment in the property.

06. For the hand loan of Rs.8 lakhs claimed to have been received from Veeramma S. Sajjanar and Smt. Girijadari V. Sajjanar of Kelur village, assessee filed confirmation letters. Assessee also filed certificates from village accountant which inter alia confirmed that these persons were having agricultural land measuring about 29 acres where they were growing mango, banana, maize, sunflower, groundnut, wheat. Shri. Veeranna S. Sajjanar appeared before the AO on 18.02.2009 and stated that he was selling the agricultural produce on the field itself and the buyers had not given any receipts. However the AO viewed confirmation of Shri. Veeranna S. Sajjanar & Smt. Giridari V. Sajjanar with caliginosity. According to him, though the village accountant had certified an annual income of Rs.2,75,000/- for Veeranna S. Sajjanar and his wife, after considering their personal expenditure they would not have had sufficient funds with them to lend a sum of Rs.8 lakhs to the assessee. Further as per the AO, these persons had also not produced any evidence for sale of

agricultural produce and their claim that the money was kept in cash at their home without banking it could not be believed. He considered the sum of Rs.8,00,000/- as unexplained.

07. Vis-a-vis hand loan of Rs.5 lakhs claimed to have been taken from Shivappa H. Neeralgi, submission of the assessee was that borrowal was by her husband who had given it to her. Shivappa was also examined by the AO and in such statement he stated that he had 30 acres where commercial crops were cultivated and earned an income of Rs.4.5 lakhs per annum therefrom. He also stated that the sale of agricultural produce was done on the field on spot basis and there were no records for sale. AO refused to believe this also for a reason that after meeting the expenditure of the big family that the lender had, he would not have had much cash with him for giving loans to assessee's husband. Further as per the AO if assessee needed money she would have borrowed directly and not through her husband. He considered Rs.5 lakhs also as unexplained.

08. For the loan of Rs.5 lakhs claimed to have been taken from Allasab H. Kadad, AO examined the latter. He stated that he was holding 30 acres of agricultural land along with his brother and was earning Rs.4.5 lakhs. Further as per Shri. Allasab H. Kadad, he was selling the produce on spot in

the field in cash. For similar reasons as mentioned in the case of Shivappa H. Neeralgi, AO refused to accept the version given by the assessee and made an addition of Rs. 5 lakhs.

09. For the loan of Rs.5 lakhs claimed to have been taken from Devappa G. Kadi, through her husband Dheereendra B. Huilgol, assessee produced the creditor before the AO. Said person stated that he along with his brothers were holding 38 acres of land with different agricultural produce. His agricultural earnings came to Rs.4.5 lakhs per annum and he had no other source of income. AO refused to accept this also for a reason that the loans were taken through assessee's husband for no reason,when assessee could have directly taken the loan. Further according to him, the creditor would not have so much cash accumulated and kept in his house. He made an addition of Rs.5 lakhs also considering it as unexplained investment in the property.

10. It is to be mentioned that in respect of each of the above addition where agricultural income was claimed by the concerned creditor as the source of his income, a record of rights of the agricultural holdings and certificate by the village accountant were filed.

11. Aggrieved assessee moved in appeal before the CIT (A) against each of the above addition. The very same averments which were made before the AO were repeated before the CIT (A). CIT (A) affirmed the order of AO

considering that assessee could not discharge the duty vested on her to establish that loans were genuine. As per the CIT (A) in almost all the cases, receipt of loans were in cash. Claim of the assessee that creditors had kept large amounts of money in their hand without banking could not be accepted and no evidence were produced by the assessee regarding sale of agricultural produce by the creditors or herself. CIT (A) also noted that assessee could have directly loaned the sums from the creditors instead of indirectly doing it through her husband.

12. Now before us, assailing each one of the additions made by the assessee and confirmed by the CIT (A), Ld.AR submitted identity of the creditors, their credit worthiness and genuineness all stood established. Concerned persons had appeared before the AO and confirmed the loans. Concerned persons had also produced proof for holding of agricultural land and income therefrom. Therefore, according to her, assessee had discharged her onus for proving the identity and creditworthiness of the creditors and genuineness of the transaction.

13. Continuing her arguments, Ld. AR submitted that the money was kept in cash by the creditors, since there was no bank in Huilgol village. According to her all the persons were agriculturists and not well versed with banking methodology. According to her, it was normal practice

among agriculturists in villages to hold cash in their homes without banking and this could not be a reason for disbelieving the loans of the creditors. In this regard, reliance was placed on the decision of coordinate bench in the case of Smt. Meena Nagaraj Naik v. DCIT [ITA.324/Bang/2013, dt.11.04.2014]. As per the Ld. AR, even the Hon'ble jurisdictional High Court in the case of Smt. P. Padmavathi v. ITO [ITA.No.414 of 2009, dt.06.10.2010] had held that once the money was with the assessee it was not the concern of the Department as to why it was not actually deposited in the bank. As for the addition made for agricultural income claimed by the assessee, Ld. AR submitted that AO had himself admitted assessee to be the richest farmer in the village having substantial agricultural holding. Keeping the money in cash was not a proper reason for disbelieving the source of assessee. In so far as Rs.2,98,000/- withdrawn from the cash credit account was concerned, Ld. AR submitted that time gap was only a few months and AO had not shown that the money was used elsewhere.

14. Per contra, Ld. DR submitted that assessee could not prove the receipt of agricultural income, could not produce any evidence to show that she, or her husband or her sons had sold any agricultural produce. As per the Ld. DR it could not be believed that all the persons were holding cash

as such in their house without banking. As for the reliance placed by the Ld. AR in the case of Meena Nagaraj Naik (supra), Ld. DR submitted that time gap in the said case was only 42 days whereas in the case of the assessee, creditors were holding the cash for so many years which was unbelievable.

15. We have perused the orders and heard the rival contentions. Ground through which the assessee has assailed the addition of Rs.13 lakhs disbelieving the claim of Rs.18 lakhs as agricultural income appears as ground no.4. No doubt AO himself has admitted that assessee along with her husband and sons were holding 52 acres of agricultural land. There was a certificate from village accountant also confirming the holding of land. Assessee had also filed records of extracts for the agricultural land. AO had doubted the claim of the assessee for a reason that savings which were made during a period of 5-6 years, if it was real would have been banked. Assessee also could not produce any evidence for sale of the agricultural produce. In our opinion the reasons given by the AO was well justified. In the first place assessee herself was having an account in Punjab & National Bank, Gadag. Assessee's husband was also having bank account in Corporation Bank as well as State Bank of India, Gadag, which fact he affirmed in his answer to question no.7 posed by the AO during his examination on 27.02.2009. Assessee's husband had admittedly received some of the loans, claimed by the assessee as a

source, through cheques. Thus when assessee and her husband were having bank accounts, it is difficult to believe that savings from agricultural income was kept by them in cash as such at home. As for the decision of coordinate bench in the case of Meena Nagaraj Naik (supra), as pointed out by the Ld. DR, period of holding of cash in hand was short and not in years. No doubt, there cannot be a surmise that it was not probable for an assessee to retain cash withdrawn from bank account, without utilizing the same. However, here the explanation for the same was not withdrawal from the bank, but earnings from agricultural income. It is difficult to believe that a person who was having a bank account would have kept as much as 18 lakhs in cash in her / his house without banking. In such circumstances, we are of the opinion that AO was justified in considering Rs.5 lakhs as saving from agricultural income that could have been kept by the assessee. In our opinion, lower authorities were justified in making an addition of Rs.13 lakhs. Ground 4 of the assessee therefore stands dismissed.

16. Ground raised by the assessee in respect of addition of Rs.2,98,000/- claimed to have been withdrawn from a cash credit account with bank appears as ground 3. There is no dispute that assessee was having a cash credit account and she had withdrawn Rs.2,98,000/- in August and

September 2005. The purchase of the property was in December, 2006. Gap was about one year and two months. What we notice is that the drawing claimed is from cash credit account on which interest would have been paid by the assessee. No man with reasonable prudence would have taken an interest bearing loan and kept it with him / her as cash without utilising for a period of one year. Therefore, preponderance of probability is that the amount of Rs.2.98 lakhs withdrawn by the assessee in August and September 2005 would have been used by her for some other purposes. This cannot be considered as a surmise, for a simple reason that assessee had to pay interest on the cash credit account. In such a situation, we are of the opinion that lower authorities were justified in not accepting the withdrawal from the cash credit account, more than one year back, as a source for investment in the property. Case of Meena Nagaraj Naik (supra) of coordinate bench would not come to the aid of assessee since the drawings were from the cash credit account and not a savings account. Accordingly we are of the opinion that lower authorities were justified in making an addition of Rs.2.98 lakhs. Ground 3 of the assessee stands dismissed.

17. Ground taken by the assessee vis-a-vis loans from Kanakadasa Shikshana Samiti, Veeranna S. Sajjanar and Smt. Girijadari V. Sajjanar,

Shivappa H. Neeralgi, Allasab H. Kadad and Devappa G. Kadi, appear as ground no.2. Of these persons, loan from Kanakadasa Shikshana Samithi, loan from Shivappa, loan from Allasab and loan from Devappa are claimed to have been taken by assessee's husband, whereas loan from Veeranna S. Sajjanar and Smt. Giridari V. Sajjanar is claimed to have been borrowed directly by the assessee. In all these cases of loans there is no dispute that the concerned persons had appeared before the AO and affirmed the factum of giving loans to the assessee in cash. It is also not disputed that all these persons were having substantial agricultural holdings and they had produced certificates from village accountant for the holdings as well as the income.

18. AO disbelieved the loan from Kanakadasa Shikshana Samithi for a reason that assessee herself could have raised the loan and the loans need not have been taken through her husband. Further, as per the AO there was a gap of 4 – 5 months between the loan and acquisition of the property. What we note is that the loans from Kanakadasa Shikshana Samithi were taken by assessee's husband through cheques of Rs.5 lakhs and Rs.2 lakhs and this has not been disputed by the Revenue. B. F Danin, President of Kanakadasa Shikshana Samithi had confirmed the loans. Gap between August 2006 and December 2006, was not so large to disbelieve the

version. Assessee's husband had appeared before the AO and confirmed that the loan was given to his wife. In such a situation. In our opinion, the loan claimed to have been taken from Kanakadasa Shikshana Samithi ought not have been disbelieved.

19. However, vis-a-vis, loan of Rs.8 lakhs claimed to have been taken from Veeranna Sajjanar and Girijadari Sajjanar of Kelur village, the agricultural income certified by the village accountant was only Rs.2,75,000/- per annum. It is not possible to believe that after meeting the expenditure of their family, Veeranna Sajjanar, could save enough to give a loan of Rs.8 lakhs to the assessee. Said persons also could not show that why they could not give the loan through a bank account. Their claim that there was no banking facility in the village of Kelur might have been correct. However, Huilgol village where assessee lived also had no banking facility. Closest bank was 10 kms away, in Gadag. Nevertheless both assessee as well as husband were having bank accounts at Gadag. That Gadag was only 10 km away from Huilgol is clear from the submission made by the assessee before the CIT (A), appearing at pages 17 and 18 of CIT (A)'s order. Nobody can claim that there should be a bank at his / her door step. Availability of a bank branch can be envisaged only within a reasonable vicinity of the place of residence of a person and not at his door step. Even in cities, a bank can be 10 to 15 kms away from the residence of an individual. In our opinion claim of creditors

that they did not have any bank account, since the village they lived viz., Huilgol / Kelur had no bank account cannot be accepted, when there were banks available within a reasonable periphery. It is against the principle of preponderance of probability that huge sums of money would have been kept in cash by them, over a number of years and loaned to the assessee in one go. Assessee might have been able to prove the credit worthiness of the parties and identity of the creditors. However in our opinion genuineness of the transaction has not been proved by the assessee. In such a situation, we are of the opinion that lower authorities were justified in disbelieving the version of loan of Rs.8 lakhs from Veeranna Sajjanar.

20. Coming to the loan of Rs.5 lakhs alleged to have been taken from Shivanna, the said transaction was also claimed to be in cash. No doubt here also, the village accountant had certified the holding of the concerned Shivanna to be about 30 acres. As mentioned by us, Shivanna was also a resident of Huilgol village. To believe that he had saved and kept a sum of Rs.5 lakhs in cash at his residence over various years and loaned it in cash to the assessee is difficult to believe. It is not a surmise but against the principle of preponderance of probability . Just because the creditor had

produced evidence in the nature of agricultural holding or income of Rs.4.5 lakhs per year would not be sufficient to come to a conclusion that they had funds with them to give a loan to the assessee in cash. Here also, in our opinion, genuineness of the loan has not been proved by the assessee.

21. Coming to the loan of Rs.5 lakhs claimed to have been taken from Allasab, we find that the contentions were very similar to that of the loan claimed to have been taken from Shivappa. Transactions were claimed to have been in cash. There is no evidence for sale of agricultural produce. Money claimed to have been accumulated was never banked. Claim that there was no banking facility in Huilgol was only a camouflage since admittedly there was a bank facility in Gadag which was only ten kms away. In this case also assessee has not been able to establish the genuineness of loan.

22. Coming to the loan of Rs.5 lakhs taken from Devappa, situation is almost the very same. Claim is that loan was taken in cash and the creditor had saved the money out of agricultural income over various years. In our opinion, genuineness of the transaction has not been proved here also.

23. In all the above cases except for loan of Rs.7 lakhs claimed to have been taken from Kanakadasa Shikshana Samithi, what we find is that assessee is simply relying on a certificate from Village Accountant for the

source of the source of the creditors. It is no doubt true that source of the source is not required to be proved by an assessee while justifying a credit. However, when the claim is that large amount of loans were received in cash from various creditors, who despite having huge agricultural income had never banked such money in bank is far fetched and unbelievable. Especially so since banks were available within a short radius of 10 – 15 kms from the residence of concerned creditors. In our opinion, decision of Meena Nagaraj Naik (supra) relied on by the Ld. AR would not come to assessee's help. As for the judgment of Hon'ble jurisdictional High Court in the case of P. Padmavathi (supra), Ld. AR did not place a copy of this unreported judgment. Nevertheless we have gone through this judgment also and the fact situation therein was entirely different and it dealt with an issue where drawings of assessee's own money from bank was kept with herself. We therefore have no hesitation in confirming the order of lower authorities, in so far as it relates to the addition of Rs.8 lakhs claimed to have been taken from Veeranna S. Sajjanar and Smt. Girijadari V. Sajjanar, addition of Rs.5 lakhs claimed to have been received from Shivappa H. Neeralgi, addition of Rs.5 lakhs claimed to have been taken from Allasab H. Kadad and addition of Rs.5 lakhs again claimed to have been received from Devappa G. Kadi. However, addition of Rs.7 lakhs loan being loan received from Kanakadasa Shikshana Samithi is not warranted and such addition is deleted. Ground 2 of the assessee is therefore treated as partly allowed, whereas its grounds 3 and 4 are dismissed.

24. In the result, appeal of the assessee is treated as partly allowed.

Order pronounced in the open court on 18th day of November, 2015.

Sd/-

Sd/-

(VIJAYPAL RAO)
JUDICIAL MEMBER

(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

MCN

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order
Assistant Registrar