

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गराव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.Nos.389 to 392/Vizag/2014

(निर्धारण वर्ष / Assessment Years:

2005-06, 2006-07, 2007-08 & 2009-10)

Grandhi VVSLN Subba Rao

L.R. of late Grandhi Chalapathi Rao
Secunderbad

[PAN No.ACYPG8832C]

(अपीलार्थी / Appellant)

ACIT, Central Circle,
Rajahmundry

(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by

: Shri G.V.N. Hari, AR

प्रत्यार्थी की ओर से / Respondent by

: Shri Debakumar Sonowal,
DR

सुनवाई की तारीख / Date of hearing

: 03.01.2018

घोषणा की तारीख / Date of Pronouncement

: 10.01.2018

आदेश / ORDER

PER Bench:

These appeals are filed by the assessee against order of the Commissioner of Income Tax (Appeals), Guntur vide ITA No.453 to 456/CIT(A)/GNT/10-11 dated 24.2.2014 for the assessment years 2005-06, 2006-07, 2007-08 & 2009-10.

2. A search u/s 132 was carried out in the group cases of the assessee on 3.2.2009. During the course of search, certain incriminating material was found relating to the assessee evidencing the advances given by the assessee for the assessment year 2005-06, 2006-07, 2007-08 & 2009-10. During the course of search in the residential premises of Mr. G.V.V.S.L.N. Subba Rao, the assessee's son, loose sheets containing the promissory notes related to the money lending business were stated to be found and seized as Annexure GVS/1, GVS/3 & GVS/4. Shri Subba Rao, the son of the assessee was questioned regarding the contents of the loose sheets and he has explained that the loose sheets are related to his father and his relatives money lending transactions. The A.O. summarized the contents of the loose sheets found and quantified the unaccounted transactions yearwise as under:

Summary of loose sheets

S.No.	Sheet No.	Principal	Financial year	Interest amount	Financial year
1	GVS/1/18	100000	2005-06	14600	2005-06
2	18	60000	2005-06	3150	2005-06
3	18	100000	2005-06	8200	2005-06
4	19	--	--	59163	2004-05
5	21	363400	2004-05	58080	2004-05
6	22	2200	2005-06	84	2005-06
7	GVS/3/3	70000	2004-05		
8	7	70000	2006-07		
9	9	30000	2004-05		
10	11	80000	2004-05		
11	13	80000	2006-07		

S.No.	Sheet No.	Principal	Financial year	Interest amount	Financial year
12	17	20000	2004-05		
13	21	40000	2005-06		
14	18	50000	2008-09		
15	GVS/4/10	180000	2005-06		
16	33,45 to 57	309437	2006-07		

Quantification of year wise Unaccounted Income

S.No.	Financial year	Assessment year	Unaccounted income	Total addition
1	2004-05	2005-06	Principal- 563400 Interest - 117243	680643
2	2005-06	2006-07	Principal – 482200 Interest – 26034	508234
3	2006-07	2007-08	Principal – 459437 Interest -	459437
4	2007-08	2008-09	Nil	
5	2008-09	2009-10	Principal – 50000 Interest -	50000

3. The A.O. called for the explanation of the assessee as to why the above sum should not be assessed as undisclosed income of the assessee. The assessee explained during the assessment proceedings that the loose papers reflect the loans received by him from Smt. S. Venkata Ratnam and the details of disbursement of principal amount and interest are noted therein. The assessee further emphasized that the monetary transactions reflected in the loose sheets belonged to Smt. S.V. Ratnam but not belonged to him and he has maintained the affairs on behalf of her to support his old aged aunt and submitted that none of the transactions recorded in the loose sheets does belong to him, hence

requested not to make the assessment in his hands. The A.O. rejected the explanation of the assessee since the assessee failed to furnish any supporting evidence and assessed the sums as unaccounted income for the assessment year 2005-06 to 2009-10 as under:

S.No.	Financial year	Assessment year	Unaccounted income	Total addition
1	2004-05	2005-06	Principal- 563400 Interest - 117243	680643
2	2005-06	2006-07	Principal – 482200 Interest – 26034	508234
3	2006-07	2007-08	Principal – 459437 Interest -	459437
4	2007-08	2008-09	Nil	
5	2008-09	2009-10	Principal – 50000 Interest -	50000

4. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and the Ld. CIT(A) dismissed the appeal of the assessee.

5. Aggrieved by the order of the Ld.CIT(A) the assessee is in appeal before this Tribunal. During the appeal hearing, the Ld. A.R. referring to the his answer in question No. 5 argued that in the statement recorded on 18/03/2009 Shri G.V.V.S.L.N. Subba Rao, son of the assessee had stated that the loose sheets in Annexure No.GVS/3, Page Nos.2,3,7,9,11,13,17,21 were promissory notes executed by his father G. Subba Rao in the period of 2004-05 to 2005-06 in favour of S.V. Ratnam and the addition was made in the hands of the assessee without

any evidence to disprove the statement of Sri Subba Rao which is unjustified and required to be deleted.

5.1 The Ld. A.R. referring to page No.15 of paper book submitted that the assessee had explained the transactions of the seized material before the A.O. vide Page No.15 and 16 of the paper book wherein he had denied all the transactions and explained the AO that entire transactions were related to Smt. S.V. Ratnam. In fact the assessee has furnished the page wise description of the transactions and the A.O. did not bring any evidence to controvert the same. Referring to page No.17 to 18, the Ld. A.R. submitted that Smt. S.V. Ratnam also submitted a letter to the Dy. Director of Investigation (Income Tax) stating that the loose sheets marked as Annexure GVS/4 from page 1 to 57 and GVS/3 from page Nos.1 to 28 belongs to her but not belonged to the assessee. She has also submitted a letter to the effect that that a sum of Rs.1,90,000/- was deposited in Dhanalakshmi MAC Society and receiving the interest through Mr. Subba Rao. The assessee Late Mr. G. Chalapathi Rao has submitted a letter dated 20.12.2010 stating that the loose sheets referred in GVS/3 & GVS/4 are relatable to S.V. Ratnam but not relating to him. The Ld. A.R. further explained that sum of Rs.3,90,000/- out of the promissory notes seized by the department marked as Annexure GVS/3 represents the amounts taken as loan from

Shri S.V. Ratnam and the relevant promissory notes executed by him which cannot be treated as income. Similarly, a sum of Rs.1,90,000/- mentioned in the seized material stated to be out of the sums deposited in Dhanalakshmi MAC Society in the name of Smt. S.V. Ratnam. The Ld.A.R submitted that as explained by the assessee and as per the submissions made by S.V. Ratnam the entire material found and seized during the course of search marked as Annexure GVS/3 and GVS/4 belongs to S.V. Ratnam, his aunt but does not belong to the assessee. The Ld.A.R. argued that the A.O. is incorrect in making the assessment in the hands of the assessee instead of assessing the same in the hands of Smt S.V. Ratnam.

7. On the other hand, the Ld. D.R. supported the orders of the lower authorities.

8. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. The assessee has submitted the evidences with regard to the GVS/3 & GVS/4 from Smt. S.V. Ratnam stating that the transactions recorded in the Annexure GVS/3 from page Nos.1 to 28 and GVS/4 from page Nos.1 to 57 belonged to her. She owned the entire transactions recorded in Annexure GVS/3 & GVS/4 and the assessee has denied same before the A.O. as well as the DDIT. The assessee has discharged his burden with

regard to the ownership of the documents mentioned in Annexure GVS/3 & GVS/4 and it is incumbent up on the A.O. to make further verifications of the ownership and the contents of the Annexure GVS/3 & GVS/4 and required to be assessed in the hands of the correct person by taking appropriate action as available in law. Though assessee has discharged his burden the A.O.'s has not shifted the burden to the assessee. Merely relying on the statement of the assessee's son, the A.O. cannot make addition in the hands of the assessee without bringing any tangible evidence. Once the assessee furnished the details of the transactions, the name and address of the person, the burden of the assessee stands discharged and shifts to the revenue and the revenue has to discharge its burden making necessary enquiries. In this case, even though assessee has discharged the burden, the A.O. has not discharged its burden. Therefore, we hold that the A.O. has not made out a case for making addition in the hands of the assessee and the transactions recorded in the Annexure GVS/3 & GVS/4 do not related to the assessee and related to Smt. S. Venkata Ratnam and the addition if any required to be made in her hands but not in the hands of the assessee. Accordingly, the additions made on the basis of Annexure GVS/3 & GVS/4 stands deleted.

9. With regard to the additions made in respect of the seized material marked as Annexure GVS/1, the assessee's son in question No.4 has stated that the copies of the relevant documents in page Nos.18 to 22 represents the money lending transaction done by his father. This fact was neither disputed by the assessee nor disputed by his son. In the subsequent replies filed before the A.O., the assessee has not disputed the contents of the loose sheets numbered in GVS/1, GVS/18 to 22. In the loose sheets found and seized during the course of search in GVS/1, there was a principal amount as well as the interest recorded which not was disputed by the assessee and did not explain. Therefore, we hold that the amounts recorded in the loose sheets in GVS/1 from page Nos.18 to 22 are related to the money lending transactions of the assessee as stated by the assessee's son in his statement dated 18.3.2009. Accordingly, we uphold the additions for the assessment years 2005-06 to 2006-07 as under:

<u>A.Y.</u>	<u>Amount of addition</u>	<u>Remarks</u> <u>Seized material No.</u>
2005-06	Principal Rs.3,63,400/- Interest Rs. 58,080/- Total Rs.4,21,480/-	GVS/21
2006-07	Principal Rs.1,00,000/- Interest Rs. 14,600/- Total Rs.1,14,600/-	GVS/1/18

<u>A.Y.</u>	<u>Amount of addition</u>	<u>Remarks</u> <u>Seized material No.</u>
2006-07	Principal Rs. 60,000/- Rs.1,00,000/- Interest Rs. 3,150/- Rs. 8,200/- <u>Rs.1,71,350/-</u>	GVS/1/18
2006-07	Principal Rs. 2,200/- Interest Rs. 84/- <u>Rs. 2,284/-</u>	GVS/1/22

9. In the result, the appeals of the assessee are partly allowed.

The above order was pronounced in the open court on 10th Jan'18.

Sd/-

(वी. दुर्गराव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 10.01.2018

VG/SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – G.V.V.S.N. Subba Rao, L/R of Grandhi Chalapathi Rao, Prop Grandhi Subba Rao and Sons, D.No.27-7-5, Akellavari Lane, Temple Street, Kakinada.
2. प्रत्यार्थी / The Respondent – The ACIT, Central Circle, Rajahmundry
3. आयकर आयुक्त / The CIT (Central), Guntur
4. आयकर आयुक्त (अपील) / The CIT (A), Guntur
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM