

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.No.264/Vizag/2017**
(निर्धारण वर्ष / Assessment Year: 2009-10)

Bhavanasi Anjaneyulu
Guntur
[PAN No.ACJPB0329C]
(अपीलार्थी / Appellant)

ACIT, Central Circle
Vijayawada
(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 : 09.01.2018
घोषणा की तारीख / Date of Pronouncement : 19.01.2018

आदेश / ORDER

PER Bench:

This appeal filed by the assessee is directed against order of the Commissioner of Income Tax (Appeals)-3 {CIT(A)}, Visakhapatnam vide ITA No.83/2015-16/CIT-(A)-3/VSP/2016-17 dated 21.2.2017 for the assessment year 2009-10.

2. During the course of search u/s 132 of the Income Tax Act, 1961 (hereinafter called as 'the Act') in the case of the assessee on 21.01.2011, two promissory notes were found in the name of Smt. Sriram Lakshmi Kotamma and Smt. B. Annapurna and seized vide page Nos.6 & 27 of Annexure A/BA/RAS/PO-10 dated 14.12.2011 for ₹ 20,00,000/- & ₹ 25,00,000/- respectively. In addition to the promissory notes, undated cheques issued by M/s. Vijetha Constructions and Foundations (P) Ltd. (Vijetha Constructions, in short) for ₹ 20,00,000/- in favour of Smt. Sriram Lakshmi Kotamma and ₹ 25,00,000/- in favour of Smt. B. Annapurna was also seized by the income tax department. Both the promissory notes and the cheques were issued by M/s. Vijetha Constructions. The cheques were indexed as page No.20 & 21 of the same annexure. The assessee explained that the cheques were issued by the M/s. Vijetha Constructions as a security for payment made for purchase of flats constructed by Vijetha Constructions. The assessee also filed confirmations from the drawer i.e. M/s. Vijetha Constructions. Since the assessee was engaged in money lending activity also, the explanation offered by the assessee was not convinced to the A.O. and accordingly assessed ₹ 45 lakhs as unaccounted income towards the amounts advanced to M/s. Vijetha Constructions.

3. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and the Ld. CIT(A) had observed that a sum of ₹ 25 lakhs representing the promissory note was already assessed in the hands of Smt.B.Annapurna separately, hence deleted the addition of ₹ 25 lakhs and confirmed the balance amount.

4. Aggrieved by the order of the CIT(A), the revenue is in appeal before this Tribunal.

5. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The revenue's case is that the promissory note was found in the name of Smt. Lakshmi Kotamma in the premises of the assessee, hence as per the presumption u/s 292C of the Act, it is the obligation on the part of the assessee to rebut the presumption since the assessee had not satisfactorily explained, the same is brought to tax in his hands. The assessee's case is that the assessee has not given any loan to M/s. Vijetha Constructions and the promissory note was taken as a security for the amounts advanced by M/s. First Tek Pvt. Ltd. to M/s. Vijetha

Constructions for purchase of property. No amounts were advanced to M/s. Vijetha Constructions, hence the same cannot be treated as income in the hands of the assessee. The assessee also has furnished confirmation letters from M/s. Vijetha Construction, which is enclosed in paper book submitted by the assessee as page No.8 of the paper book. M/s. Vijetha Constructions has confirmed that they have taken an amount of ₹ 1.00 crore as an advance from M/s. First Tek Pvt. Ltd. by cheque Nos.810105, 810106 dated 22.7.2008 drawn in favour of ING Vysya Bank, Madhapur for sale of flat Nos.405, 501 & 504 in Vijetha Pinnacle and the sale deed was executed vide document Nos. 3822/10 dated 2.11.2010. In the meantime, the company has given promissory notes and cheques in favour of the company M/s. First Tek Pvt. Ltd. and the directors and their family members as a security. The assessee has enclosed balance sheet along with return of income and there was no such entry of loan given to M/s. Vijetha Constructions through Smt. Sriram Lakshmi Kotamma. The A.O. has not brought on record any evidence to establish that assessee had given a loan to M/s. Vijetha Constructions. M/s. Vijetha Constructions has confirmed that it has given promissory note and cheques to the family members of Directors of First Tek Pvt. Ltd., there was no dues outstanding from the assessee and there was no evidence whatsoever to establish that the promissory

note in the name of Smt. Sriram Lakshmi Kotamma was an advance given by the assessee to M/s. Vijetha Constructions. Though the promissory note was found in the premises of the assessee, since the name was clearly mentioned in the promissory note, even if it is presumed that the promissory note represent genuine loan the same should be assessed in the hands of Smt. Sriram Lakshmi Kotamma but not in the hands of the assessee. The assessee has discharged its burden and rebutted satisfactorily by furnishing confirmation letters from M/s. Vijetha Constructions evidencing the promissory note and cheque given as a security. But the revenue has not discharged its burden to establish that the promissory note really represents the advance given by the assessee. The presumption as envisaged in section 292C is limited to the correctness of the documents found at the time of search or survey, but that presumption has not been extended by the statute to presume an amount to be the income of the assessee. Hon'ble High Court of Delhi in the case of Principal Commissioner of Income-tax V. Delco India (P.) Ltd. [2016] 67 taxmann.com 357 (Delhi) relied up on by the assessee held that no addition could be made under section 68 on basis of loose papers found during search in assessee's case indicating assessee's transaction with a company when assessee not only clearly denied having any dealing with said company but also

produced all necessary details for Assessing Officer to make necessary inquiries and a letter from director of that company conforming that said company did not have any transaction with assessee. In the instant case the assessee has completely denied having given any loan to M/s. Vijetha Constructions and also furnished a confirmation letter to that effect. Hence, we hold that the promissory note and the cheque relates to the advances given by M/s. First Tek Pvt. Ltd. for purchase of property and given as security and thus there is no case for making any addition in the hands of the assessee. Accordingly we set aside the orders of the lower authorities and allow the appeal of the assessee.

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

The above order was pronounced in the open court on 19th Jan'18.

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 19.01.2018

VG/SPS

Sd/-

(वी. दुर्गराव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

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

1. अपीलार्थी / The Appellant – Bhavanasi Anjaneyulu, S/o Satyanarayana, Sri Balaji Chemical Industries, Piduguralla, Guntur Dist. 522 413.
2. प्रत्यार्थी / The Respondent – ACIT, Central Circle, Vijayawada
3. आयकर आयुक्त / The Principal CIT (Central), Visakhapatnam
4. आयकर आयुक्त (अपील) / The CIT (A)-3, Visakhapatnam
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

// True Copy //

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, VISAKHAPATNAM

