

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

श्री वी. दुर्गराव, न्यायिक सदस्य एवं
श्री डी.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.424/Vizag/2016
(निर्धारण वर्ष / Assessment Year: 2009-10)

Korapolu Kanaka Raju
Visakhapatnam
[PAN No.AHXP2566R]
(अपीलार्थी / Appellant)

ITO, Ward-1(4),
Visakhapatnam

(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by
प्रत्यार्थी की ओर से / Respondent by

: Shri C. Subrahmanyam, AR
: Shri Sesha Srinivas, DR

सुनवाई की तारीख / Date of hearing

: 07.02.2018

घोषणा की तारीख / Date of Pronouncement

: 09.02.2018

आदेश / ORDER

PER D.S. SUNDER SINGH, Accountant Member:

This appeal filed by the assessee is directed against order of the Commissioner of Income Tax-1 {CIT(A)}, Visakhapatnam vide ITA No.0254/2014-15/ITO W-1(4),Vsp/2015-16 dated 30.9.2016 for the assessment year 2009-10.

2. The assessee filed return of income declaring total income of ₹ 3,31,219/-. The case was selected for scrutiny and during the course of assessment proceedings, the A.O. found the undisclosed bank account maintained by the assessee with Indian Bank, Maharaniipeta, Visakhapatnam with account No.713957051. The A.O. called for the bank account and found that the assessee had made aggregate deposits of ₹ 30,04,218/- in the bank account, inclusive of cash deposits of ₹ 14 lakhs and the remaining amount of ₹ 16,04,218/- by cheque. During the assessment proceedings, the A.O. called for explanation of the assessee for cash deposits and the assessee explained that the cash deposit of ₹ 11.00 lakhs was made out of the advances received for sale of agricultural lands as per agreements dated 18.7.2008 for ₹ 5 lakhs and 18.8.2008 for ₹ 6 lakhs and a sum of ₹ 2 lakhs was out of personal savings. The assessee has not offered any explanation for the balance amount of ₹ 1 lakh. The A.O. being not convinced with the explanation of the assessee treated the entire cash deposits of ₹ 14 lakhs as unaccounted income and accordingly brought to tax.

3. With regard to the cheque deposits, the assessee has explained that the sources were out of postal savings scheme and assured to furnish the necessary evidences to the AO but failed to furnish the

evidences. Hence, the A.O. treated the entire cheque deposits as unexplained income and brought to tax.

4. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and the Ld. CIT(A) confirmed the cash deposit of ₹ 14 lakhs and also confirmed the cheque deposit of ₹ 15,04,218/- and allowed relief in respect of ₹ 1 lakh cheque deposit since the same was explained.

5. Aggrieved by the order of the Ld. CIT(A), the assessee filed appeal raising the following grounds of appeal:

- 1.0 That under the facts and circumstances of the case and provisions of law the assessment completed u/s 143(3) r.w.s. 147 of the I.T. Act is bad in law.
- 1.1 The learned Commissioner of Income Tax(A)(in short "CIT(A)") is not correct in confirming the action of the AG in making addition pertaining to cash deposits to the tune of Rs.14 lakhs in Bank a/c. The learned CIT(A) rendered his decision on mere suspicion and without any substantive acceptable reasoning.
- 1.2 The learned CIT(A) if he had considered the assessee's submissions in the right perspective he would not have resorted to confirming the addition pertaining to cheque deposit in Bank of Rs.15,04,218/-. The learned CIT(A) ought to have considered these cheque deposits from out of business receipts.
- 1.3 For these and other reasons that are to be urged at the time of hearing of the case the appellant prays that the orders of the learned CIT(A) are to be quashed in the interest of justice and fair play.

6. Ground No.1 is not pressed by the Ld. A.R., therefore ground No.1 is dismissed as not pressed.

7.0 Ground No.1.3 is general in nature, which does not require specific adjudication.

8.0 Ground No.1.1 is related to the cash deposits amounting ₹ 14 lakhs in the undisclosed bank account. During the course of assessment proceedings, the A.O. found the cash deposit of ₹ 14 lakhs which was explained as advances received for sale of agricultural lands. The advances received were ₹ 5 lakhs from Shri N. Swami Naidu on 18.7.2008, ₹ 6 lakhs from Shri K. Ramakrishna on 18.7.2008, ₹ 2 lakhs was stated to be personal savings and the source of remaining ₹ 1 lakh was not explained. The aggregate cash deposits made in the bank account was ₹ 14 lakhs. The bank account was not disclosed to the Income Tax Department and there was an outstanding balance of ₹ 29,04,894/- as at the end of the year in the Indian Bank savings bank account, which represents the undisclosed asset. During the assessment proceedings, the assessing officer has called for the source of cash deposits and the assessee had explained that the source of ₹ 11.00 lakhs was out of the advances received from the buyers of the land by an agreement dated 18.7.2008 and 18/08/2008. ₹ 2 lakhs was from personal savings and no explanation was offered for the remaining amount of ₹ 1 lakh. With regard to the advances received

for sale of land, the assessee has furnished the photocopy of the sale agreement entered into by the assessee with Mr. K. Ramakrishna for ₹ 7 ½ lakhs for sale of land at Revallapalem, Madhurawada Visakhapatnam Dist. admeasuring 50 Sqyds. in survey No.27 along with thatched house. The agreement was unregistered and as per the recitals of the agreement, out of ₹ 7 ½ lakhs, the assessee had received a sum of ₹ 6 lakhs from Shri K. Rama Krishna by an agreement dated 18.8.2008 in cash and the balance amount of ₹ 1 ½ lakhs required to be paid by the buyer within one month from the date of the agreement and the assessee required to transferred the land to the buyer or the nominee of the buyer. Similarly, the assessee had also entered into an agreement for sale of land at., Srinivasapuram Colony, Kovvur Mandalam, W.G. Dist admeasuring 884 Sq.yds. for a consideration of ₹ 6 ½ lakhs and had received a sum of ₹ 5 lakhs as advance and balance due was ₹ 1 ½ lakhs which should be paid according to the agreement within 2 months from the date of the agreement and the assessee required to register the land to the buyer or to the nominee of the buyer. The assessee has furnished both the photo copies of the agreement before the A.O but not the originals. The A.O. has issued summons to one of the buyer Mr. M. Swami Naidu who had not responded to the summons issued u/s 131 of the Income

Tax Act, 1961 (hereinafter called as 'the Act'). Therefore, the A.O. issued summons to the assessee and requested the assessee to appear before him along with original sale agreement, sale deeds and other evidences to substantiate the sources of the cash. The assessee failed to furnish the evidences and did not respond to the summons issued by the A.O. Therefore, the A.O. treated the entire amount of ₹ 14 lakhs cash deposit as unexplained and made the addition to the returned income. Before the Ld. CIT(A), the assessee had reiterated the submissions made before the A.O. but did not furnish any fresh evidence to substantiate the cash deposits. Therefore, the Ld. CIT(A) confirmed the addition.

9.0 During the appeal hearing, the Ld. A.R. argued that the source of cash deposit was advances received from the buyers of the land. The Ld. A.R. filed paper book enclosing the photo copies of agreement discussed above. The Ld. A.R. argued that since the assessee has produced the copies of sale agreements, the the same should be treated as genuine and addition be deleted. The Ld. A.R. further submitted that in the case of Mr. N. Swami Naidu, the entire advance was repaid, hence argued that the receipt of advance is genuine and requested to delete the additions.

10.0 We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The assessee had made the cash deposits of ₹ 14 lakhs in the savings bank account and the savings bank account was not disclosed to the Income Tax department. There was a balance of ₹ 29,04,894/- in the bank account, which remained undisclosed asset. The assessee explained before the A.O., the Ld. CIT(A) and before us that the cash deposits were out of the advances received for sale of land. The agreements were not registered and the sale deeds were not executed. The entire advance was received in cash. Except photocopy of the sale agreement, no other evidence was placed before us to substantiate the claim that amounts were in fact received from Mr. K. Rama Krishna and Mr. N. Swami Naidu as advances. The assessee had neither furnished the original sale agreements before the A.O. or before the CIT(A), no confirmation letter was also furnished by the assessee to the A.O. It is obligation on the part of the assessee to prove the source of cash deposits. When assessee claimed to have received the advances, it is also obligation on the part of the assessee to establish the receipt with the identity of the person from whom the advance received, genuineness and creditworthiness of the advances given by the creditors. In the instant case, the assessee has neither furnished

confirmation letter nor produced the creditors who has made the advances to the assessee. The photo copy of unregistered sale agreement cannot be considered as a valid evidence unless it is supported by the sale deed or the confirmation from the buyer. Though the summons were issued to one of the creditors, there was no response from the creditor. The A.O. has issued the summons to the assessee but there was no response from the assessee. During the appeal hearing before the first Appellate authority also the assessee did not place any evidence to establish the source of the credits except the photocopies of the unregistered sale agreements which cannot be treated as a valid evidence unless it is supported by the registered sale deeds or the confirmation from the creditor. In this case as submitted by the assessee the sale did not materialise in respect of both the agreements and in case of Mr. Swami Naidu the agreement was cancelled and the assessee stated to have repaid the entire advance in cash and in case of Mr. Rama Krishna till date the sale was not concluded. As stated earlier, the entire transactions were in cash and no supporting evidence was furnished for receipt of advance. Hence we are of the considered opinion that the assessee failed to establish the source of Rs.11.00 lakhs and the photo copies of sale agreements are nothing but self serving documents.

11.0 With regard to ₹ 2 lakhs personal saving claimed the assessee has not furnished any evidence before lower authorities and no explanation was offered in respect of the remaining amount of Rs.1.00 lac. Therefore, we hold that the assessee failed to establish the source of the deposit of Rs.14.00 and accordingly, we uphold the order of the Ld. CIT(A) and dismiss the appeal of the assessee on this ground.

12.0 Ground No.1.2 is related to cheque deposit in bank account for a sum of ₹ 16,04,218/-. The assessee explained before the A.O. source for the deposits represent postal savings but no evidence was furnished. Before the Ld. CIT(A) stated that the deposits represent business receipts. There was apparent inconsistency in the explanation offered by the assessee before the A.O. and the Ld. CIT(A). The Ld. CIT(A) has deleted the addition of ₹ 1.00 lac and confirmed the balance amount of ₹ 15,04,218/- for want of evidence.

13.0 During the appeal hearing before us, the Ld. A.R. submitted that the cheque deposits represent the business receipts, but no evidence was placed before us to establish the business receipts. No bills or vouchers etc. were furnished before the lower authorities. For a query from the Bench with regard to the details of expenses relating to

the business receipts, the Ld. A.R. could not place any details of expenses relatable to the purported business receipts of ₹ 15.04 lakhs and the relevant expenditure. Therefore, it is established that there was no expenditure incurred for earning the income (unaccounted receipt) of ₹ 15,04,218/-. Since the assessee failed to furnish any evidences to substantiate the source of ₹ 15,04,218/-, we do not see any reason to interfere with the order of the Ld.CIT(A) who confirmed the addition. Accordingly, this ground of appeal of the assessee is dismissed.

14.0 In the result, the appeal of the assessee is dismissed.

The above order was pronounced in the open court on 9th Feb'18.

Sd/-

(वी. दुर्गराव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 09.02.2018

VG/SPS

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

1. अपीलार्थी / The Appellant – Korapolu Kanaka Raju, D.No.16-3-3, Official Colony, Maharani-peta, Visakhapatnam
2. प्रत्यार्थी / The Respondent – The ITO, Ward-1(4), Visakhapatnam
3. आयकर आयुक्त / The Principal CIT-1, Visakhapatnam
4. आयकर आयुक्त (अपील) / The CIT (A)-1, Visakhapatnam
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

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Sr. Private Secretary
ITAT, VISAKHAPATNAM

