

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “B” SMC BENCH: HYDERABAD

BEFORE SHRI D. MANMOHAN, VICE PRESIDENT

ITA. No.1095/Hyd/2017
Assessment Year: 2010-2011

P. Divyasri, Hyderabad. PAN: ANVPP 1609 A (Appellant)	vs.	ITO, Ward-12(3), Hyderabad. (Respondent)
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For Assessee:	Shri P. Murali Mohan Rao
For Revenue :	Smt. N. Swapna, DR

Date of Hearing :	19.02.2018
Date of Pronouncement :	16.03.2018

ORDER

PER D. MANMOHAN, VP.

This appeal is directed against the order passed by Ld. CIT(A)-1, Hyderabad and it pertains to A.Y. 2010-2011. Though several grounds were urged before the Tribunal, essentially they all pertain to one issue i.e., whether the addition of Rs. 20 lakhs made by the A.O. and confirmed by the Ld. CIT(A) towards ‘unexplained cash deposits’ is in accordance with law.

2. Brief facts of the case are as under. Assessee is an employee in M/s. Software Technology Parks of India at Hyderabad. For the year under consideration, assessee declared a total income of Rs. 1,63,693/- and the same was processed accordingly. Subsequently, the case was selected for scrutiny under CASS and notices were issued from time to time and information was called for. Essentially the A.O. verified the bank account statement of the assessee, held with Axis Bank, wherein the assessee is having cash deposits to the tune of Rs. 1,10,82,600/-.

During the proceedings the assessee was asked to furnish the explanation for the sources of cash deposits. In response thereto the assessee submitted that she had entered into an agreement for sale of property with Sri K. Chandra Sekhar Rao for a consideration of Rs. 30 lakhs and received an amount of Rs. 10 lakhs on 02.04.2009 and another sum of Rs. 10 lakhs on 11.09.2009. The amount received on 02.04.2009 was deposited into bank account and subsequently the amount was withdrawn and redeposited into the bank account. Similarly the amount received on 11.09.2009 was withdrawn and redeposited into bank account. The assessee furnished the cash flow statement.

3. A.O. called upon the assessee to produce Sri K. Chandra Sekhar Rao for cross verification of his identity, genuineness of the transaction and explanation for the sources of money. The assessee failed to produce Sri K. Chandra Sekhar Rao. Therefore, summon u/s 131 of the Act was issued to Sri K. Chandra Sekhar Rao but there was no response from the assessee. Therefore, the A.O. was of the opinion that the assessee failed to establish the genuineness of the transactions and in this regard he observed that merely Xerox copies of sale agreement/cancellation agreement, cash flow statement and Xerox copies of money advanced are available from which genuineness of the transaction cannot be ascertained. He accordingly made addition of Rs. 20 lakhs under the head 'income from other sources'.

4. Aggrieved, assessee contended before the Ld. CIT(A) that the amount was received through banking channels from Shri K. Chandra Sekhar Rao as per the agreement of sale entered into with him. The agreement was only to sell a property on particular terms and for a particular price and it is not the actual sale deed and hence the A.O.

was not justified in terming it as insufficient evidence. He further submitted that A.O. ought to have appreciated that the assessee is having all the relevant details, supporting the source of credits in the bank account, but due to paucity of time the same could not be furnished.

5. It may be noticed that the Assessing Officer issued summons to Sri K. Chandra Sekhar Rao, calling upon him to appear on 25.03.2013 and when he did not appear, no further opportunity was given to the assessee but proceeded to complete the assessment on 28.03.2013 without informing the assessee about the non-appearance of Sri K. Chandra Sekhar Rao.

6. Before the Ld. CIT(A) assessee contended that a sum of Rs. 20 lakhs was received as advance from Sri K. Chandra Sekhar Rao in two instalments towards proposed sale of property but since the sale agreement was cancelled by the proposed purchaser, the assessee agreed to return this amount in two instalments and accordingly refunded the same on 13.04.2010 and 24.04.2010. It was also contended that the assessee fully complied with all the three basic conditions laid down by the Hon'ble Supreme Court i.e., (a) nature of the transaction / identity of the creditors; (b) The genuineness of the transaction and (c) The creditworthiness of the transaction.

7. Ld. CIT(A) observed that the sale agreement and cancellation of sale agreement was only on Hundred Rupees Stamp Paper and there is no identity proof of Sri K. Chandra Sekhar Rao as to whether he is a genuine person or has capacity to make purchase. Whole transaction of payment is in cash. Even amounts were stated to have been returned in cash. The confirmation letter for receipt of money by Sri K. Chandra Sekhar Rao does not hold any details of the recipient i.e., it is not

confirmed that Sri K. Chandra Sekhar Rao has received the amount. She therefore concluded that the whole transaction is doubtful and not genuine. She further stated that amount received / paid in cash is in contravention of section 269SS of the Income Tax Act, 1961. Even the assessee has not submitted the bank account details to confirm that the money was received or repaid. Thus the addition made by the Assessing Officer was confirmed by the Ld. CIT(A). Further aggrieved, assessee is in appeal before the Tribunal.

8. Learned Counsel for the Assessee submitted that the A.O. completed assessment in hurry without giving the assessee a proper opportunity of being heard. He placed before the Bench agreement of sale dated 02.04.2009 wherein the complete address of Sri K. Chandra Sekhar Rao was mentioned, wherein there is a reference with regard to the instalments paid / payable. Thereafter the agreement was cancelled and accordingly they have entered into a cancellation agreement and the assessee agreed to return an amount of Rs. 20 lakhs, which was received earlier. Learned Counsel for the Assessee submitted that in order to prove veracity it is not necessary that the agreement should be registered, so long as the parties have faith in each other. He also placed before the Tribunal a copy of PAN of Sri K. Chandra Sekhar Rao along with Pattadar Pass Book to indicate that he has got sufficient land holding and capable of advancing Rs. 20 lakhs. Learned Counsel for the Assessee also placed a copy of the receipt duly signed on a Revenue Stamp indicating that Sri K. Chandra Sekhar Rao has received the impugned amount which was refunded by Smt. Paladugu Divya in two instalments. It was thus contended that the identity and creditworthiness is proved beyond doubt and in such cases, it is for the Revenue to issue summons and call the creditors to seek further details whereas in the instant case, a letter was addressed to the cash creditor

just before completion of the limitation period. Though last day of hearing was 19.03.2013, Sri K. Chandra Sekhar Rao was directed to appear on 25.03.2013 and when Sri K. Chandra Sekhar Rao did not appear, the assessee was not called upon to produce him. The fact that Sri K. Chandra Sekhar Rao did not appear was not put to the assessee but proceeded to doubt the identity of the person, which is not in accordance with law. In this regard, Learned Counsel for the Assessee relied upon the decision of the Hon'ble Supreme Court in the case of CIT vs. Orissa Corpn. (P.) Ltd (159 ITR 78) (SC) wherein the Court observed that when the assessee has given name and address of the creditors and their PAN details, it is the duty of the Revenue not only to issue notice u/s 131 of the Act but to pursue the matter further. In the aforecited case, the Revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy. There was no effort to pursue the so-called creditors and merely drew an adverse inference that the amount of cash credits is the income of the assessee. The Hon'ble Court observed that the assessee has to discharge its burden that lay upon him and the Tax Authorities were not justified in taking an adverse inference merely because the creditor did not appear in response to the notice u/s 131 of the Act. Learned Counsel for the Assessee strongly submits that in the instant case also the details of agricultural holding of Sri K. Chandra Sekhar Rao and the proof that the amount was paid as advance and returned to the creditor was placed before the Tax Authorities and in fact summons were issued u/s 131 of the Act to the creditor but without giving sufficient time to the creditor and without informing the assessee, the assessment was made in hurry by taking an adverse inference that the creditors are not genuine and thus the addition made deserves to be set aside.

9. On the other hand, Learned Departmental Representative placed reliance upon the following decisions in support of her contention that u/s 68 of the Act, the initial burden is upon the assessee to prove that three ingredients i.e., identity, genuineness and creditworthiness, and in the absence of proving the same, the Tax Authorities are entitled to treat the cash credit as unexplained income in the hands of the assessee.

(i) *CIT vs. Korlay Trading Co. Ltd., (232 ITR 820) (Calcutta) and*

(ii) *CIT vs. Maithan International (375 ITR 123) (Calcutta).*

She thus strongly supported the orders passed by the Tax Authorities.

10. In the rejoinder, Learned Counsel for the Assessee submitted that the decisions rendered by the Hon'ble Calcutta High Court are distinguishable as they involve different facts; in the case of Korlay Trading Co. Ltd., assessee failed to furnish confirmation letters from the creditors and income tax file number of creditor was filed at appellate stage, whereas in the assessee's case the complete address of the creditor was available along with the PAN and the Assessing Officer having issued summons he could have proceeded further to examine the creditworthiness. In fact the details of the land holding were also available on record. Similarly in the case of Maithan International (supra), the issue is with regard to the power of Revisional Authority in the case of improper enquiry by the A.O., concerning creditworthiness of a loan creditor, and in this regard the Court observed that the Assessing Officer was required to make proper investigation to determine whether the money was really lent by the third party or it has come out of the resources of the assessee himself. Learned Counsel for the Assessee submits that in the case of the assessee, the A.O. having not examined further, the order was found to be erroneous. However, second appellate proceedings cannot be equated to revisionary

proceedings if an addition is made without proper verification and the same requires to be quashed / deleted.

11. I have carefully considered the rival submissions and perused the record. I have also carefully gone through the case law relied upon by both the parties. In the instant case, the Pattadar Pass Book, name and address of the creditors, agreement of sale and cancellation agreement and also the account copies were placed before the A.O. as well as the Ld. CIT(A). This fact is not controverted by the Learned Departmental Representative. It is also not in dispute that the Assessing Officer has issued summons to the creditor but when the creditor has not responded, the A.O. neither called upon assessee to produce the creditor nor gave further opportunity to the creditor to appear in person and assessment was made in a hurry on 28.03.2013. The fact remains that assessee represented before A.O. on 19.03.2013 whereas the assessee called Sri K. Chandra Sekhar Rao on 25.03.2013 and completed the assessment on 28.03.2013. This shows that the Assessing Officer has taken an adverse opinion without giving a proper opportunity to the assessee. Under these circumstances, I am of the opinion that the ratio laid down by the Hon'ble Supreme Court in the case of Orissa Corporation (P.) Ltd (supra) deserves to be applied. Merely because the creditor did not respond to the notice, no adverse inference can be taken with regard to the creditworthiness of the creditor. The complete particulars and the source of income earned by the creditor were available on record and if there is any doubt with regard to the source, the assessee could have been given further opportunity. Under the peculiar circumstances of the case, I am of the opinion that the Assessing Officer has not made out a case for making addition u/s 68 of the Act. By respectfully following the judgment of the Hon'ble Supreme Court in the case of Orissa Corporation (P.) Ltd

(supra) I hereby set aside the order of the A.O. as well as the Ld. CIT(A) and direct the A.O. to delete the addition of Rs. 20 lakhs.

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

Order pronounced in the open court on 16th March, 2018.

Sd/-
(D. MANMOHAN)
VICE PRESIDENT

Hyderabad, Dated: 16th March, 2018.

OKK, Sr.PS

Copy to

1.	P. Murali & Co., Chartered Accountants, 6-3-655/2/3, I Floor, Somajiguda, Hyderabad-82.
2.	ITO, Ward-12(3), Hyderabad.
3.	CIT (A)-1, Hyderabad.
4.	Pr. Commissioner of Income Tax-1, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File