

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.448/Vizag/2016
(निर्धारण वर्ष / Assessment Year: 2012-13)

The ACIT, Circle-1(1),
Vijayawada

(अपीलार्थी / Appellant)

M/s. Lalitha Bullion
Corporation
Vijayawada
[PAN No.AADFL2327C]
(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by : Shri V. Srinivasa Rao, DR
प्रत्यार्थी की ओर से / Respondent by : Shri G.V.N. Hari, AR
सुनवाई की तारीख / Date of hearing : 12.03.2018
घोषणा की तारीख / Date of Pronouncement : 04.04.2018

आदेश / O R D E R

PER D.S. SUNDER SINGH, Accountant Member:

This appeal filed by the revenue is directed against order of the
Commissioner of Appeals {CIT(A)}, Vijayawada vide ITA
No.120/CIT(A)/VJA/2015-16 dated 23.8.2016 for the assessment year
2012-13.

2. In this case, the assessee filed return of income admitting total income of Rs.53,92,500/- on 31.3.2012. The case was selected for scrutiny and during the assessment proceedings, a survey u/s 133A of the Act was conducted on 14.5.2012. During the post survey proceedings, a statement was recorded on 13.6.2012 from Sri Ramprasad who is the Managing partner of the firm. In the statement recorded, the Managing partner has admitted unexplained income of Rs.1,00,10,000/- for the assessment year 2012-13 relating to introduction of capital in the year under consideration. During the impugned assessment year, the partners have introduced fresh capital of Rs.57,30,000/- by Shri R. Ramprasad and ₹ 79,20,000/- by Shri R. Anjana Rao and in the statement recorded on 13.6.2012 the A.O. has asked to explain the sources of capital and the assessee could not explain the source to the extent of ₹ 1,00,10,000/-, hence, admitted the additional income. Subsequently, Mr. R. Ramprasad, partner of the firm committed suicide on 15.6.2012 and another partner Mr. R. Anjana Rao retracted from the statement and stated that Late R. Ramprasad has introduced the capital from his own sources and explained in his personal assessments. He further stated that Mr. Ramprasad is assessed to income tax regularly before ITO Ward-1(1), Vijayawada with PAN No.ACJBR9563Q. Similarly, in the case of Mr. R. Anjana Rao, he is

also assessed to tax with ITO Ward-1(1), Vijayawada under PAN No.ACJPR9564K and argued that both the partners are assessed to tax and the capital was introduced from their own explained sources, hence, no addition is called for in the hands of the firm. The assessee further argued that if the addition required to be made, the same should be made in the hands of the partners but not in the hands of the firm. It was also explained by the assessee that the withdrawals made by the assesseees were reintroduced as capital but no fresh capital was infused. Not being satisfied with the explanation of the assessee, the A.O. made the addition of ₹ 1,00,10,000/- in the hands of the firm.

3. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and the Ld. CIT(A) deleted the addition.

4. Aggrieved by the order of the Ld. 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. A survey u/s 133A of the Income Tax Act, 1961 (hereinafter called as 'the Act') was conducted in the assessee's case and during the post survey enquiries, the A.O. found that the partners of the firm have introduced capital of ₹ 1,36,50,000/- in the partnership firm. The source was said to be explained from the accretions of their own sources of the partners.

The partners are regularly assessed to tax. The admission was given by Mr. R. Ramprasad, who was expired during the assessment proceedings.

The assessee has explained the sources for introduction of capital before the Ld.CIT(A) as under:

4. *It is pertinent to mention here that, for the Assessment Year under consideration, i.e., 2012-13, the Partners individual returns was also assessed by the respective Assessing Officer examined the sources of capital infusion in the Lalitha Bullion corporation. Sri Ramanadham Anjana Rao was Assessed at ITO Ward 1(1), Vijayawada and Sri Ramanadham Ram Prasad was assessed at DCIT Circle 1(1), Vijayawada. Both the Officers have passed the Assessment orders after examining the sources for investment made by the partners in the Appellant firm M/s Lalitha Bullion corporation. (Assessment Orders enclosed). The following is the table showing the investment made by the two partners in the Appellant firm. It is also evident that the partners have accounted in their individual books of accounts and filed the returns of income by admitting the investment made in the firm.*

Sri Ramanadham Anjana Rao has introduced capital of Rs.79,20,000/-during the financial year 2011-12 and the sources were explained in the following table:

Sl No	Date	Amount in Ps	Remarks
1	06.05.2011	28,30,000	By obtaining loan from Sundaram Finance which is evident in the Balance sheet.
2	10.09.2011	13,00,000	Out of earlier withdrawals from firm Bullion corporation and out of the Balance in the Corporation Bank
3	05.10.2011	1,50,000	out of the Bank Balance in the Bank
4	12.11.2011	1,00,000	out of the Bank Balance in the Bank
5	16.11.2011	2,90,000	Out of the Bank Balance in the Bank
6	29.03.2012	2,50,000	Out of withdrawal from firm Lalitha corporation and out of the Bank Corporation Bank. On the same day both transactions took place which is

			<i>the Bank statement.</i>
7	31.03.2011	30,00,000	<i>The partner Sri Ramanadham Anjana obtained unsecured loan from the D. Vardhan Rao through RTGS.</i>
	<i>Total</i>	<i>79,20,000</i>	

Sri Ramanadham Ram Prasad has introduced capital of Rs.57,30,000/during the financial year 2011-12 and the sources were explained in the following table:

<i>Sl No</i>	<i>Date</i>	<i>Amount in Rs</i>	<i>Remarks</i>
1	20.05.2011	5,00,000	<i>Out of Unsecured Loans from S.V.Ld services obtained through Bank transfer.</i>
2	26.05.2011	2830,000	<i>By obtaining loan from Sundaram Finance which is evident in the Balance sheet.</i>
3	12.11.2011	1,00,000	<i>By obtaining Loan from Corporation Bank invested in M/s Lalitha Bull/ion corporation.</i>
4	17.11.2011	23,00.000	<i>By with dra wing from the Varun Gold Account Prop: Ramanadham Pam maintained at Axis Bank.</i>
	<i>Total</i>	<i>57,30,000</i>	

The above investment is through Bank transfer. Hence during the course of scrutiny proceedings, the Appellant has submitted the account copies of M/s Lalitha Bullion corporation in the Books of the partners, Bank statements etc and stated that the two partners are regular income tax assessee's with PAN.

The Ld. CIT(A) deleted the addition holding that the A.O. has not established the introduction of capital was from unexplained sources and thus the addition was unsustainable. For ready reference, we extract relevant para of the order of the Ld. CIT(A).

"5.1 Admittedly, Assessing Officer simply relied on the statement recorded from one of the partners, namely, Sri Ramanadham Ram Prasad, to arrive at the undisclosed income in the hands of appellant towards capital infusion by the partners in the firm. Assessing Officer did not let in any evidence either by way of incriminating materials found during the course of survey or subsequent enquiries conducted by the Department to suggest that the amounts brought in by the partners were the actual income of the appellant from the undisclosed sources. Further, no excess stock or deficit stock was noticed at the time of survey which may lead to the disclosure of concealed income of appellant.

5.2. A.R. of appellant submitted copies of the following during appeal proceedings which were submitted before AO also

- i. Capital a/c of both partners in the books of appellant for Asst. Year 2012-13 and their bank account statements for Asst. Year 2012-13.*
- ii. Income Tax return copies of both partners for Asst. Year 2012-13 including Profit & Loss Account, Balance Sheet.*
- iii. Copies of Income Tax scrutiny assessment order for Asst. Year 2012-13 in respect of both partners.*
- iv. Copies of partnership deed dated 23.11.2008, 01.04.2012 and retirement deed dated 01.09.2012.*

5.2.1. From perusal of above details, it is evident that the partners had accounted in their individual books of accounts and filed their returns of income by admitting the investment in the appellant firm. Thus, when the investment is reflected in the individual books of the partners and they have admitted the same in their books of accounts and the same was examined during the course of scrutiny assessment proceedings in their cases it will not become undisclosed income in the hands of appellant firm.

5.3. Hon'ble Madras High Court in the case of CIT vs. S.Khadar Khan Son (2008) 300 ITR 157 held that evidence collected and statements recorded during the survey u/s 133A were not conclusive piece of evidence by themselves."

6. On going through the orders of the Ld.CIT(A) and the submissions made by the assessee which is reproduced above, it is established that the sources for the capital accounts were explained and the above transactions were through bank accounts. The Ld.CIT(A) has examined the capital accounts, Income tax returns and Balance sheets of both the partners and observed that scrutiny assessment orders were passed in the case of partners and given a finding that the investment in capital account of the firm reflected in their individual returns and the same cannot be held as undisclosed income in the hands of the firm. The Ld. CIT(A) also relied on the decision of Hon'ble Madras High court in the case of S. Khader Khan supra and held the statement recorded during the course of survey is not conclusive proof of evidence. In the instant case the partners have declared the investments in their individual returns and the same was examined by the respective AOs. Since the AO completed assessments and did not find any infirmity with regard to the individual assessments, there is no case for making addition in the hands of the firm. The department could not controvert the finding of the Ld. CIT(A) with tangible evidence. Therefore, we do not find any infirmity in the order of the Ld. CIT(A) and the same is upheld.

7. In the result, the appeal of the revenue is dismissed.

The above order was pronounced in the open court on 4th Apr'18.

Sd/- (वी. दुर्गराव) (V. DURGA RAO) न्यायिक सदस्य/JUDICIAL MEMBER	Sd/- (डि.एस. सुन्दर सिंह) (D.S. SUNDER SINGH) लेखा सदस्य/ACCOUNTANT MEMBER
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विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 04.04.2018

VG/SPS

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

1. अपीलार्थी / The Appellant – The ACIT, Circle-1(1), Vijayawada
2. प्रत्यार्थी / The Respondent – M/s. Lalitha Bullion Corporation, D.No.11-60-29, Wyuzullah Saheb Street, Vijayawada
3. आयकर आयुक्त / The CIT, Vijayawada
4. आयकर आयुक्त (अपील) / The CIT (A), Vijayawada
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