

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.240/Vizag/2014
(निर्धारण वर्ष / Assessment Year: 2009-10)

Manda Markandeyulu
Kakinada
[PAN No.AAESPM1589E]
(अपीलार्थी / Appellant)

ITO Ward-2
Kakinada
(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by : Shri G.V.N. Hari, AR
प्रत्यार्थी की ओर से / Respondent by : Shri D.J.P. Anand, DR
सुनवाई की तारीख / Date of hearing : 02.04.2018
घोषणा की तारीख / Date of Pronouncement : 06.04.2018

आदेश / O R D E R

PER V. DURGA RAO, Judicial Member:

This appeal filed by the assessee is directed against order of the CIT(A), Visakhapatnam vide ITA No.0501/2011-12/ITO W-2/KKd/2013-14 dated 14.3.2014 for the assessment year 2009-10.

2. Ground Nos.1 & 2 are general in nature, which are not pressed. Therefore, the same are dismissed as not pressed.

3. Facts are in brief that the assessee is carrying on wholesale trade in electrical goods had filed his return of income declaring total income of ₹ 4,94,720/-. The case of the assessee was selected for scrutiny and after due process, the assessment was completed u/s 143(3) of the Income Tax Act, 1961 (hereinafter called as 'the Act'). During the course of assessment proceedings, the A.O. noted that from the balance sheet as on 31.3.2009, it is seen that the assessee's capital account is credited with an amount of ₹ 24,30,000/- towards gold and jewellery & gifts from friends and relatives. The A.O., to examine the genuineness of the gifts, issued summons to the assessee and the sworn statement was recorded on 15.10.2010, wherein the assessee was asked to furnish names and addresses of the friends and relatives from whom he has received gold and jewellery and also the details of weight of the articles received. It was submitted by the assessee before the A.O. that the gifts were received from his mother Smt. M.S. Sarojini (₹24,00,000) and his friend T. Prabhakar Reddy of G.Mamidada (₹30,000) but stated that he cannot exactly say the quantum of the gold/gold jewellery received from his mother and his friend. When the A.O. asked the assessee to produce his mother, it was submitted by the assessee that his parents

are very old and cannot come to the office to give a statement and other particulars and his friend T. Prabhakar Reddy is carrying on business at G. Mamidada and assessee does not like to disturb his business for having made some gifts to him out of love and affection and accordingly, he has offered an amount of ₹ 24,30,000/- to tax. Thereafter, the A.O. has deputed the Inspector to verify the genuineness of the gifts received from his friend Sh. T. Prabhakar Reddy, G. Mamidada. When the inspector examined Sh. T. Prabhakar Reddy and asked whether any gift is given to the assessee, he denied having made any gift to the assessee. The A.O. after considering the explanation of the assessee and also after examining Sh. T. Prabhakar Reddy, he has noted that the claim of the assessee regarding receipt of the gift in the shape of gold and jewellery from his mother and friend are not correct. The receipt of gifts is a ploy undertaken by the assessee to bring into books his unaccounted money whether to suppress or not to disclose to the department. Further, the provisions of section 56 clause (1)(vii) are brought into statute w.e.f. 1.10.2009, which was meant for tax in gifts other than cash. The assessee wanted to take advantage of this provision and hurriedly introduced his unaccounted money into books in the shape of gold and jewellery. This was the very reason why he was unable to furnish any details of items,

weight, etc. If it were really gold ornaments received from his mother, they need not be brought into books. The assessee definitely taken advantage of the value of goods by depositing them and converting them into cash in the subsequent years. Accordingly, the amount of ₹ 24,30,000/- offered by the assessee for taxation was treated by the A.O. as bogus and brought to tax.

4. Assessee carried matter in appeal before the CIT(A) and filed additional evidence in the form of affidavit of Smt. M.S. Sarojini, wherein, she has stated that she has gifted 1609 gms. of gold jewellery to his son (assessee) out of love and affection on 15.4.2008, which represents her Shridhana property. The Ld. CIT(A) has admitted the same and referred to the assessing officer for his comments. The A.O. has submitted the report to the Ld. CIT(A) after considering the reference made by the Ld. CIT(A) that the assessee himself offered the amount of ₹ 24,30,000/- for taxation and the additional evidence filed during the appellate proceedings were only self serving affidavit. No evidence was furnished as to the availability of jewellery and source of jewellery, purchase bills, etc. and submitted that addition has to be confirmed. The Ld. CIT(A) after considering the entire facts and circumstances of the case, he has observed that the assessee himself admitted the gifts received for taxation as he was unable to prove

genuineness of the gifts and even in remand proceedings also, no evidence is produced for gold and jewellery and held that the claim of the gifts of jewellery is not proved and confirmed the order of the A.O.

5. On being aggrieved, assessee carried the matter before the Tribunal. The Ld. Counsel for the assessee has submitted that the assessee has only received gold and jewellery and no amount is received, therefore, addition cannot be made u/s 68 of the Act. He further submitted that the assessee's mother has already confirmed the gifts and therefore, the same may be accepted and addition may be deleted.

6. On the other hand, the Ld. D.R. strongly supported the addition made by the authorities below.

7. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. In the second ground, the case of the assessee is that he has received gifts worth ₹ 24,30,000/- from his friend and relatives. When the A.O. has asked the assessee to produce the friend and relatives from whom he received the gifts for verification, he submitted that his parents are old, therefore, they are unable to come to give a statement and so far his friend is concerned, he does not want to disturb him and accordingly, he

offered the entire amount of receipt of gift for taxation. The A.O. deputed the inspector to make enquiry about the genuineness of the gifts. The inspector has directed the A.O. to examine Sh. T. Prabhakar Reddy from whom he has received the gift who has denied having made any gift to the assessee. The assessee also failed to submit a detailed report before the A.O. that what is the jewellery items received or what is the gold received. Therefore, the A.O. has held that the assessee has not received any gold/jewellery, the entire transaction is a bogus transaction and the amount shown of ₹ 24,30,000/- is his own amount and shown as a gift received from friends and relatives and treated as bogus and accordingly, the same is brought to tax. We find that even before Ld. CIT(A) or even before us, the assessee is not able to establish that what is the jewellery items received or what is the gold except affidavit filed by the assessee's mother by stating that he has received gift from her mother having 1609 gms. of gold jewellery, if it is really true, why the assessee has not submitted before the A.O., the quantity received. We find that the additional evidence filed by the assessee in the form of affidavit from his mother is only after thought and it cannot be accepted. Not only that, the assessee himself has accepted the entire gift amount for taxation for the reason that he was not able to establish that he has received a gift from his mother and

friend. In enquiry, it is also proved that he has not received gift from his friend Sh. T. Prabhakar Reddy, therefore, keeping in view of the facts and circumstances of the case, we are of the opinion that the Ld. CIT(A) has rightly confirmed the order of the A.O. and we find no infirmity in the order passed by the Ld. CIT(A). This ground of appeal raised by the assessee is dismissed.

8. The third ground of appeal relates to the excess commission payment. During the assessment proceedings, the A.O. noted that the assessee has made a huge commission payment to the tune of ₹ 10,01,330/- to various persons as follows:

S.No.	Name of the party	Commission	Turnover	% of Turnover
1.	Sri B. Sajjana Rao	80,000	16,34,282	4.90
2.	Sri T. Prabhakara Reddy	1,02,500	7,36,214	13.92
3.	Sri K. Veera Naga Satya Rao	1,06,500	65,83,562	1.62
4.	Smt. M. Venkata Subhadra	7,12,330	1,75,89,235	4.05

The A.O. also noted that major payment of ₹ 7,12,330/- was made to assessee's wife and the same payment was unreasonable in terms of section 40A(2)(b) of the Act. Keeping in view of the facts and circumstances, the A.O. restricted the expenses to 1.62%, accordingly, he has disallowed an amount of ₹ 5,71,482/-. Before the CIT(A), it was

submitted that the amount paid as commission to his wife is reasonable and was made depending upon the profit earned by the assessee. No evidence is filed before the CIT(A). The Ld. CIT(A) by considering the explanation given by the assessee, he has observed that the addition made by the A.O. is correct and reasonable and confirmed the order. Even before us, the assessee is not able to establish that the addition made by the A.O. is not correct to show that the assessee's wife is eligible for more than what is granted by the A.O., except stating that disallowance made by the A.O. is unreasonable, we find that gross profit of assessee itself is 2.59% paying to the agent, particularly his wife @ 4.5% is highly excessive in terms of section 40A(2)(b) of the Act. Under these facts and circumstances of the case, we find that the A.O. has disallowed the excess payment made by the assessee and the same is confirmed by the Ld. CIT(A). We find no infirmity in the order passed by the Ld. CIT(A), therefore, this ground of appeal raised by the assessee is also dismissed.

9. So far as ground No.4 is concerned, the assessee's counsel submitted that the assessee may be granted telescoping adjustment of the addition with that of the different creditors. We find no merit in the argument of the Ld. Counsel and he has not brought any

material/evidence that he is entitled for telescoping adjustment. This ground of appeal raised by the assessee is dismissed.

10. In the result, the appeal filed by the assessee is dismissed.

The above order was pronounced in the open court on 6th Apr'18.

Sd/-
(डि.एस. सुन्दर सिंह)
(D.S. SUNDER SINGH)

Sd/-
(वी. दुर्गराव)
(V. DURGA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

विशाखापटणम /Visakhapatnam:
दिनांक /Dated : 06.04.2018
VG/SPS

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

1. अपीलार्थी / The Appellant – Sri Manda Markandeyulu, D.No.69-17-31, Ravindranagar, SBI Colony, Kakinada
2. प्रत्यार्थी / The Respondent – the ITO, Ward-2, Kakinada
3. आयकर आयुक्त / The CIT, Rajahmundry
4. आयकर आयुक्त (अपील) / The CIT (A), 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