

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "SMC" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.1053/PUN/2017
निर्धारण वर्ष / Assessment Year : 2011-12

Subhash Ramrao Alone,
Flat No.103, Sayali Construction,
Chandrama Classic, Dhayari,
Pune - 411041
PAN : AATPA5904E

.... अपीलार्थी / Appellant

Vs.

ITO, Ward-6(2),
Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri M.K. Kulkarni
प्रत्यर्थी की ओर से / Respondent by : Dr. Vivek Aggarwal

सुनवाई की तारीख / Date of Hearing : 11.06.2018	घोषणा की तारीख / Date of Pronouncement: 15.06.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This is the appeal filed by the assessee against the order of CIT(A)-4, Pune, 01-12-2016 for the Assessment Year 2011-12.

2. The grounds raised by the assessee read as under:

"1. On the facts and circumstances of the case and in law the Ld.CIT(A) was not justified in confirming the addition made by the A.O. of Rs.5,50,000/- u/s.69 of the Act. The provisions of S.69 are not applicable to the facts of this case as the assessee was not obliged to maintain books of account to attract S.69 of the Act. The addition be deleted.

2. On the facts and circumstances of the case and in law the land sold was an agricultural land and the extra consideration received of Rs.5,50,000/- was in connection with the said land. There is no allegation from the A.O. that the consideration of Rs.5,50,000/- was received over and above settled consideration. In such circumstances no addition can be made and confirmed by the Ld.CIT(A) as in case of land consideration of Rs.2,70,000/- it has been deleted by him. The addition is not sustainable. It be deleted.

3. *On the facts and circumstances of the case and in law the Ld.CIT(A) was not justified in confirming the addition of Rs.5,50,000/- made by the A.O. without passing a "speaking order" as mandated by S.250(6) of the Act. The addition be deleted.*

4. *The appellant craves to leave, add/amend or alter any of the above grounds of appeal."*

3. Briefly stated relevant facts are that the assessee is an individual and filed the return of income on 24-06-2011 declaring total income of Rs.3,28,037/-. Assessee's case was selected for scrutiny under CASS for verifying the cash deposits in bank account. Assessee made cash deposits in his bank account maintained with State Bank of India aggregating to Rs.26,49,000/-. In the assessment, the source of this deposit is the subject matter. Assessee retired from government service on 31-10-2010. During the year under consideration, assessee along with 4 co-owners sold the agricultural income for a sum of Rs.4,50,000/-. Assessee's share comes to Rs.90,000/-. Assessee explained that his 3 sisters and mother relinquished their rights and they did not accept any consideration out of the said sale transaction. AO accepted the sum of Rs.90,000/-, i.e. share in respect of mother as she lives with the assessee. However, the AO rejected the explanation of the assessee that his sisters relinquished their rights and thus disallowed Rs.2,70,000/- as unexplained investment in cash deposit. Assessee further stated that he received Rs.5,50,000/- in respect of sale of "other items" in connection with the said land. In absence of proper explanation and the details for explaining these other items, AO rejected the same and made addition of Rs.5,50,000/- u/s.69 of the Act.

4. Aggrieved with the order of AO, assessee filed an appeal before the CIT(A) contesting the additions, i.e. (1) addition of Rs.2,70,000/- made

on account of unexplained investment; and (2) addition of Rs.5,50,000/- made on sale of other items attached to the land.

5. In the First Appellate proceedings, the CIT(A) deleted the addition of Rs.2,70,000/-. Contents of Para No.5.3 are relevant. However, the CIT(A) confirmed the addition of Rs.5,50,000/- as per the discussion given in Para No.6.3 of his order.

6. Aggrieved with the order of the CIT(A) confirming the addition, the assessee filed the present appeal before the Tribunal with the aforesaid grounds.

7. Ld. Counsel for the assessee submitted that the agricultural land co-owned by the assessee along with 4 others was sold for a recorded sum of Rs.4,50,000/-. However, in the assessment proceedings, AO noticed cash deposit of Rs.5,50,000/- in the saving bank account of the assessee with SBI and enquired into the source of the said cash deposit. Assessee submitted that this amount constitute sale proceeds earned by the assessee on account of attachments/other items with the said land transaction which was subject matter of the same in the assessment as well as in the appellate proceedings. Factually, the assessee could not demonstrate the details of the said attachments/other items, which is the source for earning of the cash of Rs.5,50,000/-. Considering the failure to discharge the onus, the AO made the said addition and CIT(A) confirmed the same. On these facts, Ld. Counsel for the assessee requested for "one more round" of proceedings before the AO and promised to supply the relevant details of said attachments the said land which gave rise to the cash deposit of

Rs.5,50,000/-. In this regard, Ld. Counsel filed the following note and the same reads as under :

“1. The assessee had owned agricultural lands at Dhanara Tal.Yewatmal and were under cultivation for the crops like Soyabin, Jawar, Tur about 03H 27R along with other family members. The various trees such as chiku, Lemon, Mango and others were planted alongside the said agricultural land. It is common knowledge that the Trees planted and grown on such Agricultural land do not get mentioned in the Revenue Records/ 7/12 extracts. It is also a general faith professed by the agriculturists that such grown up trees are not separately sold. **The purchasers pay for them separately.**

2. The sale of agricultural land has been accepted. So long as the trees are uncut they form a part of the land. (Vishnudatta Antharjanam (AKTKM) v. CIT (1971) 78 ITR 58 (SC). It is also held in CIT v. Ramaih Reddy (1986) 158 ITR 611 (Kar) that "if land with forest thereon be entirely sold in one transaction, the sales proceeds would be on capital account. But in this case since it was agricultural land with forest thereon their sale is also exempt from taxation. The appellant assessee was owner of the tree and land and trees were sold in one transaction.

3. Therefore, the sale of trees (not so specifically mentioned in the sale-deed because of the faith of the farmers that trees are not to be sold) is being part of the land is exempt. In view of this the amount of Rs. 5,50,000/- added by the A. O. under S. 69 and confirmed by Ld. CIT(A) was not correct. The consideration of Rs. 5,50,000/- though received over and above the settled consideration was on account of trees and was part of the sale of land. The assessee is not having any other source of income except service-pension.

4. Since this issue was not so properly argued before the lower authorities and in order to do complete justice to the Govt. Pensioner it is requested to give one more opportunity to the assessee to plead his case properly before the Assessing Authority.

5. Copy of 7/12 extract is filed herewith.

8. Ld. DR for the Revenue vehemently opposed the assessee's requested for one more opportunity before the AO. Ld. DR submitted that the it is for the assessee to discharge the onus on the source of funds on the details of attachments if any and the assessee failed to adduce any evidence in support of the said cash deposit of Rs.5,50,000/-. Therefore, opposing the said new explanation, Ld. DR prayed for confirming the addition.

9. On hearing both the parties on this limited issue, I find the assessee failed to give basic details on the alleged “attachments/other items” sold along with the sale of land transaction in question. The submissions made by the assessee’s counsel do not indicate the existence of any direct evidence on the same which gives the relevant facts about the said transaction for proper adjudication of the issue. Therefore, I am of the opinion that the submissions made by the assessee are general in nature. Assessee has obligation to demonstrate the (1) existence of the said trees; (2) the sale of the said trees; (3) furnishing of details or confirmation if any from the said buyer of the trees; (4) the flow of funds amounting to Rs.5,50,000/- to the account of the assessee linking to the said transaction of land; (5) the reasons for not furnishing the evidence of cultivation of Chiku, Lemon, Mango etc., before the AO/CIT(A); and (6) the reasons for furnishing the same before the Tribunal without sustainable cause. In the light of these observations, the request of the assessee’s counsel for remanding the issue to the file of AO for “one more round” of proceedings has to be rejected.

10. Further, I perused the contents of Para No.6.3 of the order of CIT(A) and proceed to extract the same here as under :

“6.3 DECISION – I have perused the assessment order and the submissions made by the appellant as above. The AO had noted in the assessment order that the appellant has not been able to provide the further details of the other items sold along with the agricultural land amounting to Rs.5,50,000/-. The primary onus to prove the source of investment is on the appellant. The appellant has failed to provide the required documentary evidence and has also failed to offer satisfactory explanation about the sources. I therefore hold that the addition of Rs.5,50,000/- made by the assessing officer u/s.69 of the Act is upheld. Ground No.2 as raised by the appellant is dismissed.”

Considering the same, I am of the opinion, on the addition of Rs.5,50,000/-, the finding given by the CIT(A) is fair and reasonable. Hence, I uphold the order of the CIT(A). Accordingly, the grounds raised by the assessee are dismissed.

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

Order pronounced on this 15th day of June, 2018.

Sd/-

(D.KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 15th June, 2018.
Satish

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-4, Pune
4. आयकर आयुक्त / The Pr.CIT-3, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune