

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

श्री वी. दुर्गा राव, 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.184/Viz/2015
(निर्धारण वर्ष/Assessment Year:2011-12)

Mandava Ravi Kumar
D.No.58-14-72/1
Marripalem
Vuda Layout
Visakhapatnam

Vs. Asst. Commissioner of
Income Tax
Circle-4(1)
Visakhapatnam

[PAN :AFVPM0078C]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

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

: Shri G.V.N.Hari, AR
: Shri Ravi Shankar Narayan,
DR

सुनवाई की तारीख / Date of Hearing

: 13.07.2018

घोषणा की तारीख/Date of Pronouncement

: 25.07.2018

आदेश /ORDER

PER D.S. SUNDER SINGH, Accountant Member:

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-2, Visakhapatnam vide I.T.A.No.0099/1237/13-14/ACIT C-4(1) VSP/14-15 dated 23.03.2016 for the assessment year 2011-12.

2. Ground No.1 and 5 are general in nature which does not require any adjudication.

3. Ground No.4 is levy of interest u/s 234A, 234B and 234D which is mandatory. The Ld.AR did not make any argument on this Ground, therefore Ground No.4 is dismissed as not pressed.

4. Ground No.2 and 3 are related to the addition of Rs.85,00,000/- made by the AO towards unexplained cash credits u/s 68 of Income Tax Act (hereinafter called as 'Act'). During the assessment proceedings, the AO found that the assessee has made the cash deposits in the bank account to the tune of Rs.85,00,000/- as under :

Sl.No.	Month	Description of Transaction	Amount
1.	April, 2010	Land Advances Received Back	Rs.25,00,000/-
2.	May, 2010	Land Advances Received Back	Rs.10,00,000/-
3.	June, 2010	Land Advances Received Back	Rs.5,00,000/-
4.	August, 2010	Land Advances Received Back	Rs.20,00,000/-
5.	August, 2010	Land Advances Received Back	Rs.15,00,000/-
6.	September, 2010	Land Advances Received Back	Rs.10,00,000/-
		Total	Rs.85,00,000/-

The AO has requested the assessee to explain the source. Since the assessee failed to offer the nature and source of credits, the AO made the addition u/s 68 of the Act.

5. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and submitted that the assessee has withdrawn the sum of Rs.95,00,000/- from the bank accounts and given the said amount for land advance as per the details given below:

Date	Amount
10.01.2010	Rs.35,00,000
29.03.2010	Rs.50,00,000
31.03.2010	Rs.10,00,000
	<u>Rs.95,00,000</u>

Since the transaction could not be finalized, he has received back the amount during the financial year 2010-11 and deposited the same into bank account. The Ld.CIT(A) observed that though the assessee has stated that he has given land advances he could not furnish any details such as the name of person and there was no mention in the cash book also. In the absence of the details and the cash balance as on 31.03.2010 was only Rs.4,92,787/-, the Ld.CIT(A) disbelieved the submission of the assessee regarding the receipt of land advances and held that that there is no basis for the assessee's claim that the impugned amount was received back and accordingly confirmed the addition.

6. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before this Tribunal. During the appeal hearing, the Ld.AR argued that the assessee has withdrawn sums of Rs.95,00,000/- from 10.01.2010 to 31.03.2010 and the said amounts were given as advances for purchase of lands to various landlords. Since the transaction could not be finalized, the amounts were received back and re-deposited in the bank account. The assessee filed extract of the cash book in paper book and argued that the time gap between the deposits and withdrawals was very less, there is no reason to suspect the sources of credits in the bank accounts, hence, requested to set aside the order of the Ld.CIT(A) and delete the addition.

7. On the other hand, the Ld.DR argued that the assessee has not furnished the details during the assessment proceedings. Though the assessee claimed to have made the deposits out of advances recovered, the assessee failed to furnish any evidence to substantiate the source of Rs.85,00,000/- deposit. Merely because of withdrawals made in the earlier period, the same cannot be accepted as source for the credit unless it is proved by the assessee with tangible evidence. The assessee failed to furnish the identity of the person from whom the land advance was received. Since the assessee failed to establish the identity, genuineness

and credit worthiness of the debtor, the Ld.DR argued that the AO has rightly made the addition and argued that the onus is on the assessee to prove the genuineness, identity and credit worthiness. Accordingly argued that the Ld.CIT(A) has rightly confirmed the addition and there is no case for interference.

8. We have heard both the parties and perused the material placed on record. The assessee has furnished the details of withdrawals made from the bank in page No.4 of the paper book with the date and amount of withdrawal. Similarly in page No.3, the assessee has furnished the details of land advances given for purchase of land date wise. As per the information available from page No.3 and 4 of the paper book, the assessee has made advances for purchase of land as under :

Land Advances Given During F.Y.2009-10

10.01.2010	-	Rs.35,00,000
29.03.2010	-	Rs.50,00,000
31.03.2010	-	Rs.10,00,000
		<hr/>
		<u>Rs.95,00,000</u>

Similarly, the assessee stated to have received the said land advances from the landlords and deposited the said sums in the bank account as per the details given below :

Land Advances Received Back, F.Y. 2010-11

5.4.2010	-	25,00,000
7.5.2010	-	10,00,000
9.6.2010	-	5,00,000
9.8.2010	-	20,00,000
27.08.2010	-	15,00,000
24.09.2010	-	10,00,000

		<u>85,00,000</u>

8.1. Scrutiny of the above information shows that the assessee has withdrawn the amounts and made the payments to land lords during the financial year 2009-10 from January to March on three occasions. Similarly, the assessee has made cash deposits of Rs.85,00,000 from April 2010 to September 2010 and the time gap for withdrawal and deposit was very short. The revenue has not disputed the fact that the assessee had withdrawn the sums from his bank accounts and there were no other investments made by the assessee as per the information available on record, to disbelieve the submission of the assessee. If the AO disbelieves

the land advances, conclusion would be the availability of cash with the assessee unless it is established that the funds were used for some other purpose. Since the assessee had sufficient cash balance available from the withdrawals made from the Bank, there is no reason to suspect the source of deposits made in the bank account. Further, the Ld.CIT(A) in his order stated that the cash balance of Rs.4,92,787/- was declared as on 31.03.2010 has no relevance to the deposits made upto 31.10.2010. In case, the department is of the view that advances given was false the same sum of Rs.95.00 lacs would be available as cash balance and the assessee required to be assessed for wealth tax, but there is no case for disbelieving the source. The fact remains that the assessee has withdrawn the sum of Rs.95,00,000/- and the said amount would be available to the assessee either in cash or advances unless it is proved otherwise. Since the assessee had sufficient withdrawals from the bank account in the immediately preceding assessment year, we do not see any reason to disbelieve the source of credits made in the bank account. Accordingly, we set aside the order of the Ld.CIT(A) and delete the addition made by the AO and allow the appeal of the assessee.

9. In the result, appeal of the assessee is allowed.

The above order was pronounced in the open court on 25th July, 2018.

<p>Sd/- (वी.दुर्गा राव) (V. DURGA RAO) न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER विशाखापटणम /Visakhapatnam दिनांक /Dated : 25.07.2018 L.Rama, SPS</p>	<p>Sd/- (डि.एस. सुन्दर सिंह) (D.S. SUNDER SINGH) न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER विशाखापटणम /Visakhapatnam दिनांक /Dated : 25.07.2018 L.Rama, SPS</p>
---	---

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

1. निर्धारिती/ The Assessee- Mandava Ravi Kumar, D.No.58-14-72/1, Marringalem Vuda Layout, Visakhapatnam
2. राजस्व/ The Revenue –Asst. Commissioner of Income Tax, Circle-4(1) Visakhapatnam
3. The Commissioner of Income Tax-2, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-1, 2(I/c) Visakhapatnam & Rajahmundry
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

// True Copy //

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, VISAKHAPATNAM