IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM

BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER

ITA No. 450/VIZ/2017
(Asst. Year : 2011-12)

Kanimeraka Prakash, Prop: Sri Sai Wines, Dasari Street, Salur, Vizianagaram District. PAN No. ALOPK 4841 J (Appellant)	vs.	ITO, Ward-2, Vizianagaram. (Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.
Department By : Shri V. Appala Raju – Sr.DR

Date of hearing : 25/07/2018.
Date of pronouncement : 31/07/2018.

O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-2, Guntur, dated 26/05/2017 for Assessment Year 2011-12.

2. The only effective ground raised by the assessee in this appeal is relating to addition of Rs. 43,38,500/-.

3. Facts of the case in brief are that the assessee is in the business of IMFL. During the financial year relevant to the

Assessment Year 2011-12, the assessee has made total payments to the tune of Rs. 45,29,354/- in the month of June, 2010 & July, 2010 towards first instalment of licence fee, fixed deposit, bank guarantee commission and towards first purchase of liquor stock from APBCL. When Assessing Officer has questioned the source of these payments, it was submitted that the payments which were made out from the capital which are explained as under:-

> *"Regarding sources of capital contributed by the assessee in his wine shop business, it is hereby submitted that the asses-see contributed the above capital out of his the then available funds which represented his capital and quasi capital. Some of his friends and relatives contributed quasi capital to his wine shop business with a mutual understanding that the impugned wine shop business should be carried on in assessee's name only and he should only be declared as licensee in all official records. The quasi capital contributed by them should be credited to his capital account and such contributions should not be shown separately as creditors in the books of the assessee. Moreover, their accounts including their share profits in respect of contributions made by them to the assessee's wine shop business should settled after expiry of the tenure of wine shop. So with this mutual understanding the assessee carried on business with his own capital (available by way of accumulate balance) as well as with quasi capital of/ifs friends and relatives as narrated above.*
>
> *The details like names and addresses of friends and relatives who contributed quasi capital are as under:*
>
> *(i) Mr Appikonda Ayyappa Naidu, Kottaki (V)*
> *(ii) Mr G Rama Krishna, Dattirajeru (M)*
> *(iii) Mr G Suryanarayana, Palavalasa (V)*
> *(iv) Mr GJagan Mohana Rao, Kotturu (V)*
> *(v) Mrs. G Bharathi, Maradam (V)*

(vi) Mr. Peddinti Satyam, Mamidipalli (V)
(vii) Mr Kanimeraka Nageswara Rao, Ramabhadrapuram (V)
(viii) Mr. Pasum arty Eswara Rao, Salur
(ix) Mr Gullipalli Venkata Ramana, Salur.
(x) Mr N Venu Gopala Rao, Dattirajeru (M)

However, a copy of Memorandum of Understanding entered by the assessee with them is hereby enclosed for your kind consideration. So it can be appreciated from the above facts and circumstances that there was no unexplained capital introduced by the assessee to his wine shop in any view of the matter and hence your honours proposal in this regard to treat the entire capital of the assessee contributed to his wine shop business as unexplained may kindly be dropped in the interests of justice.

However, the assessee vehemently objects against your proposal to treat his capital in wine shop business as unexplained. So the assessee earnestly prays your honour to kindly drop your proposal of treating the capital of the assessee as unexplained in the interest of justice."

4. The Assessing Officer has not agree with the explanation filed by the assessee and addition of Rs. 43,38,500/- was made by observing as under:-

"5.1. I have carefully considered the submissions made. The assessee is made payments towards initial licence fee, 1st purchase, FDR towards bank guarantee, bank guarantee commission etc., amounting in total to Rs.4,54,29,354/- during the months June 2010 & July 2010. The capital contribution of the assessee as shown in the balance sheet filed during the course of assessment proceedings is Rs. 43,38,500/-. The assessee has not filed Return of Income for the previous years. It goes to show that the assessee is not an existing assessee having substantial capital balance brought forward as on 01.04.2010. The assessee also failed to furnish airy bank account of earlier years to support that he is having regular transactions and to say that he has

> *sources. The assessee also failed to furnish any evidences regarding quasi capital from friends and relatives. In view of the above, capital contribution of the assessee is treated as from out of unexplained sources and added under the head "income from other sources".*
>
> *Accordingly, the amount of Rs.43,38,500/- is treated as capital introduced during the year 2010-11 the sources of which are not explained and brought to tax under the head "Income from Other Sources"*

5. On appeal, ld. CIT(A) confirmed the order of the Assessing Officer.

6. Before us, the assessee has submitted that the source of the capital introduced by the assessee is from his own source and also received from his friends. The assessee neither filed return of income of his own nor his friends. The assessee except stating that he and his friends are having sufficient funds and from that funds, capital is introduced. The assessee neither explained his creditworthiness nor his friends. The assessee has not filed any details of his own or his friends. Therefore, we are of the opinion that the assessee failed to discharge the burden casted upon him to prove that the capital introduced by him from his own funds as well as the funds received from his friends. Therefore, the Assessing Officer has rightly made the addition, which was confirmed by the ld. CIT(A). We find no reason to interfere with

the order passed by the ld. CIT(A). Thus, this appeal filed by the assessee is dismissed.

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

Order Pronounced in open Court on this 31st day of July, 2018.

Sd/-	sd/-
(D.S. SUNDER SINGH)	**(V. DURGA RAO)**
Accountant Member	**Judicial Member**

Dated : 31st July, 2018.

vr/-

Copy to:

1. *The Assessee - Kanimeraka Prakash, Prop: Sri Sai Wines, Dasari Street, Salur, Vizianagaram District.*
2. *The Revenue – ITO, Ward-2, Vizianagaram.*
3. *The Pr.CIT-1, Visakhapatnam.*
4. *The CIT(A)-2, Guntur.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.