

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.318/Viz/2015
(निर्धारण वर्ष/ Assessment Year: 2011-12)**

Dy. Commissioner of Income Tax
Circle-2(1)
Vijayawada

Vs. Sri Vemulapalli Radha
Krishna
D.No.39-01-58, M.G.Road
Vijayawada
[PAN : AAYPV7448P]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri T.S.N.Murthy, CIT DR
प्रत्यर्थी की ओर से/ Respondent by : Shri C.Subrahmanyam, AR

सुनवाई की तारीख / Date of Hearing : 11.02.2019

घोषणा की तारीख/Date of Pronouncement : 13.02.2019

आदेश /ORDER

PER D.S. SUNDER SINGH, Accountant Member:

This appeal is filed by the revenue against the order of the Commissioner of Income Tax (Appeals) [CIT(A)], Vijayawada vide Appeal No.226/CIT(A)/VJA/2014-15 dated 15.06.2015 for the Assessment Year (A.Y.) 2011-12.

2. A search u/s 132 was carried out in this case on 18.03.2011 and the assessment was completed u/s 143(3) r.w.s. 153A on total income of Rs.73,09,411/- against the returned income of Rs.4,32,250/-. The Assessing Officer (AO) made the addition of Rs.21,05,000/- relating to unaccounted cash found at the time of search and a sum of Rs.47,72,161/- representing unexplained jewellery found at the time of search.

3. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) partly allowed the appeal of the assessee.

4. Against the order of the Ld.CIT(A), the revenue is in appeal before this Tribunal.

5. Ground No.1 and 6 are general in nature which does not require specific adjudication.

6. Ground No. 2 and 3 are related to the addition of Rs.21,05,000/- being the cash found in the premises of the assessee at the time of search. During the assessment proceedings, the AO asked the assessee to explain the sources of cash found at the time of search and the assessee furnished the cash flow statement explaining the source of cash. The AO observed

deficit cash on some occasions and personal drawings were also not shown in the cash flow statement. Therefore viewed that there were deficit sources of income compared to the outflow of cash. Accordingly, the AO held that the cash found during the course of search as unexplained and made the addition of Rs.21,05,000/-.

7. On appeal before the Ld.CIT(A), the assessee submitted cash flow statement which was furnished before the AO and explained the sources. The Ld.CIT(A) examined the cash flow and found that the assessee has accounted the cash of Rs.20,00,000/- in the cash flow statement, hence treated the same as as explained and deleted the addition made by the AO.

8. Aggrieved by the order of the Ld.CIT(A), the revenue is in appeal before us.

9. We have heard both the parties and perused the material placed on record. During the appeal hearing, the Ld.DR submitted that a sum of Rs.21,05,000/- cash was found during the course of search for which there was no source. The contention of the Ld.AR is that the said cash was generation of assessee's own income over a period of time and the assessee is having sufficient cash balance and there is no case for making addition.

The assessee furnished cash flow statement as on 31.03.2011 in page No.13 of the paper book, out of which, opening balance was shown at Rs. 5087/- and there were inflows of cash evidenced by some sale instruments and the seized cash of Rs.20,00,000/- was shown as outflow and the cash on hand as at the end of the year was Rs.40,332/-. Thus, as per the cash flow, there was sufficient cash balance available to the assessee to explain the source to the extent Rs.20,40,332/-. As per page No.13 of the paper book, there was generation of cash from various other source such as rental income, agriculture income, sale of land and the receipts from daughter, son and brother which was not disputed by the AO. Taking into consideration of all the sources, it is found that the assessee had sufficient cash balance to explain the sources for availability of cash of Rs.20,00,000/- which was seized on 18.03.2011 and there was balance of Rs.40,332/- as at the end of the year. Thus sources to the extent of Rs.20,40,332 stands explained and the order of the Ld.CIT(A) for deletion of addition of Rs.20,40,332/- is sustained. Accordingly, out of the addition of Rs.21,05,000/-, a sum of Rs.20,40,332 is deleted and the appeal of the assessee is partly allowed.

10. Ground No.4 and 5 are related to the addition on account of gold jewellery belonging to family members. During the search proceedings, the Income Tax Department found gold jewellery to the extent of gross weight of 2189.17 gms. The assessee explained the AO that the gold was belonging to his wife which was acquired over a period of time, out of agricultural income and gifts received on various occasions. Since there was no evidence in the form of bills etc., the AO made the addition of Rs.47,72,161/- to the returned income as unexplained jewellery.

11. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) deleted the addition relying on Board Instruction No.1916 dated 11.05.1992 and the explanation of the assessee.

12. Aggrieved by the order of the CIT(A), the revenue is in appeal before the Tribunal. During the appeal hearing, the Ld.DR supported the orders of the AO and the Ld.AR relied on the orders of the Ld.CIT(A).

13. We have heard both the parties and perused the material placed on record. During the course of search, gold weighing 2189.17 gms. were found belonging to the family members of the assessee. During the assessment proceedings, the assessee submitted that gold belongs to his

wife. The assessee also explained that the gold was acquired over a period of time by his wife out of agricultural income and the gifts received on various occasions. The assessee's family consists of three married women and three male members and the gold found during the course of search is within the limits of the Board Circular. The assessee at the time of search as well as at the time of assessment proceedings submitted that the gold was belonging to his wife, but not belonged to him. As a customary practice also, the gold ornaments belonged to the female members of the family. There is no dispute on this fact. The assessee explained that the gold was acquired by his wife over a period of time out of agricultural income and the gifts received on various occasions. Therefore, if at all the gold is required to be assessed, the same should be assessed in the hands of his wife, but not in the hands of the assessee. The AO did not bring any evidence to establish that the gold found in his residence does not belong to the wife of the assessee. Therefore, taking into consideration of the Board circular and the explanation of the assessee, we do not see any reason to interfere with the order of the CIT(A) and the same is upheld.

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

Order pronounced in the open court on 13th February, 2019.

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 13.02.2019

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

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

1. निर्धारिती/ The Assessee- Sri Vemulapalli Radha Krishna, D.No.39-01-58, M.G.Road, Vijayawada
2. राजस्व/ The Revenue – Dy.Commissioner of Income Tax, Circle-2(1), Vijayawada
3. The Pr.Commissioner of Income Tax, Vijayawada
4. The Commissioner of Income-Tax (Appeals), Vijayawada
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM