

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri S.Rifaur Rahman, Accountant Member**

ITA No.1869/Hyd/2017 & SA No.33/Hyd/2019
(Assessment Year: 2010-11)

Shri Brijesh Kumar Singhal Vs Income Tax Officer
Hyderabad Ward 12(3)
PAN: AHOPB7911J Hyderabad
(Appellant) (Respondent)

For Assessee : Shri K.C. Devdas
For Revenue : Shri Nilanjan Dey, DR

Date of Hearing: 20.02.2019
Date of Pronouncement: 13.03.2019

ORDER

Per Smt. P. Madhavi Devi, J.M.

ITA No.1869/Hyd/2017

This is assessee's appeal for the A.Y 2010-11 against the order of the CIT (A)-8 Hyderabad, dated 12/09/2017.

2. Brief facts of the case are that the assessee, an individual and an employee of M/s. MFC Transport Pvt. Ltd, filed his return of income for the A.Y 2010-11 on 02.07.2010 declaring an income of Rs.7,16,750/-. The return was initially processed u/s 143(1) and subsequently it was selected for scrutiny under CASS. Notices u/s 143(2) and 142(1) were issued. However, none appeared on behalf of the assessee and therefore, the assessment was completed u/s 144 of the I.T. Act as per the information

available on record. On verification of the Bank Statement of the assessee, the AO observed that the assessee had made cash deposits of Rs.22,21,000/- in Axis Bank, Dilsukhnagar Branch with A/c No.235010100067209 and an amount of Rs.9,51,000/- in ICICI Bank, Himayatnagar Branch with A/c No./018301508872. Further, the AO also observed that the assessee has purchased a flat vide registered document No.1527/2009 for a consideration of Rs.31,76,000/- and had paid a sum of Rs.2,38,200/- towards stamp duty in cash. The assessee was therefore, asked to explain the sources for cash deposits made into the above Bank A/cs and also the payment of stamp duty and the credit card payment. Further, as per the credit statement of the ICICI Bank, there were cash payments of Rs.2,57,250. However, no information was filed by the assessee, and therefore, the AO treated the total sum of Rs.34,29,250/- as unexplained cash credit and brought it to tax. Since the assessee failed to explain the source of this cash payment, the same was also brought to tax.

3. Aggrieved, the assessee preferred an appeal before the CIT (A). The assessee explained the sources for cash deposits to the tune of Rs.31,72,000/- into the Bank A/c as under:

- i) Gift from Smt. Saroj Singhal Rs.13,25,000/-
- ii) Cash withdrawn and redeposited Rs.9,18,000/-
- iii) Transport commission earned of Rs.9,29,000/-

4. As regards the sources of Smt. Saroj Singhal, the assessee's mother was concerned, it was stated to be agricultural income earned during the year of Rs.3,35,000/- and the sale of jewellery during February and March, 2009 of Rs.9,91,440/-. In

support of the agricultural income, an affidavit of Smt. Saroj Singhal was filed stating that she had taken 29 acres of agricultural land on lease in Rajasthan from one Mrs. Sonu Devi and has earned the agricultural income. A confirmation letter from Smt. Sonu Devi of having given land on lease was filed. With regard to the sale of jewellery, the assessee filed copies of cash memos in the form of 'estimate' from one Sri Gita Jeweller, Vasundhara, Ghaziabad, UP and an affidavit from Sri Subhas stated to be owner of M/s. Gita Jewellers confirming the sale of jewellery was also filed.

5. The CIT (A) therefore, called for a remand report from the AO and the AO observed that with regard to the cash deposits, out of withdrawals made earlier, the assessee's submission appears to be reasonable. With regard to the claim of transport commission earned of Rs.9,29,000, the AO submitted that no such income was declared in the returns filed by the assessee. As regards the cash payment of credit card expenses, the AO stated that the assessee has not submitted any explanation and further that these payments are not reflected in the cash book. With regard to the payment of stamp duty of Rs.2,38,200/-, the AO stated that a credit in this regard was made in the cash book on 24.06.2009. With regard to the gift from his mother, the AO enquired from Sri Subash of M/s. Gita Jewellers, Ghaziabad, UP regarding sale of jewellery and in response to the letter Mr. Subhash submitted that he was not involved and was not aware of any gold transaction and his shop was not functional during the period mentioned in the query as it came into existence in the year 2012 only. When the assessee was confronted with this

information, the assessee reiterated the submissions made earlier. As regards agricultural income, he offered the additional sum of Rs.6,48,000 under the head "income from other sources". The assessee thereafter filed a letter dated 13.04.2015 confirming the sale of jewellery by his mother and that he has voluntarily offered the additional income of Rs.6,48,000 and Rs.2,50,000 on account of cash payments for the credit card totaling about Rs.9,00,000/-. Thereafter, the assessee filed another letter dated 25.01.2016 enclosing the affidavits of Shri Pawan Singhal and Vikas Singhal, the younger brothers of the assessee and residents of Ghaziabad, UP stating that all the family members have jointly taken a decision to dispose of Stridhan/Gold Jewellery belonging to their mother, Smt. Saroj Singhal and handed over the sale proceeds to their elder brother for enabling him to meet his family and personal obligations. He further filed another letter dated 25.01.2016, further submissions along with additional grounds of appeal that the AO had wrongly concluded that the deposits made into the Bank Accounts have no sources and that the sources are available with the assessee as cash gifts received from his mother and also commission derived by the assessee from which the stamp duty and also credit card payments are made. The CIT (A) admitted the additional evidence and after perusal of the material filed by the assessee, held that the assessee has been changing his stands and tried to create a web of evidences to explain the cash deposits into his Bank Account cash payments. He held that a mother would not sell her Stridhan for depositing the cash in the Bank A/c of her son and therefore, it is not believable. As regards the transport commission earned, he held that no such income was offered during the year under consideration and no

evidence or details are furnished with regard to payment of commission earned. Therefore, he disallowed the commission also. Accordingly, he confirmed the entire addition made by the AO. Aggrieved, the assessee is in appeal before us by raising the following grounds of appeal:

“1. The learned CIT (A)-8 Hyderabad confirming the addition of Rs.34,29,250 being cash deposits in Axis Bank at Rs.22,21,000, Rs.9,51,000 in ICICI Bank and cash payments for credit card transactions at Rs.2,57,250 is wholly unsustainable both in fact and in law as being totally contrary to the facts and evidence on record.

2. The CIT (A) erred in confirming the addition of Rs.2,38,200 being registration charges paid towards purchase of flat which were from explained sources of income/funds.

3. Any other grounds that may arise at the time of hearing”.

6. At the time of hearing, the learned Counsel for the assessee drew our attention to the affidavit filed by the assessee and the additional evidence filed therewith. In the affidavit, it is stated that the assessee, due to his employment, was deputed to different locations in India to execute turn-key projects of the company and therefore, was not available in Hyderabad most of the time and the Income Tax Practitioner to whom he had handed over the case had not appeared at the time of hearing and at the time of the appeal before the CIT(A), the Chartered Accountant had misled him to give false evidence and therefore, the CIT (A) has confirmed the additions. He submitted that the assessee had income including the income of Rs.24,00,455 of his wife for the preceding 4 years, as per the enclosures to the affidavit. Therefore, he prayed that the additional evidence explaining the sources be admitted and verified.

7. The learned DR, on the other hand, supported the orders of the AO and submitted that the assessee has all along been changing his stand. He submitted that the assessee did not appear before the AO and the explanation for non-furnishing of the details has been that the relevant material was with his representative, the I.T. Practitioner, but the assessee did appear before the CIT (A) as well, filed the relevant evidence through his C.A. It was submitted that the AO, in the remand report, has clearly brought out that the relevant evidence is not acceptable and therefore, the CIT (A) has confirmed the addition. He submitted that the assessee's claim that he was misled by the Chartered Accountant is nothing but changing of stand and at this stage, such explanation should not be entertained.

8. Having regard to the rival contentions and the material on record, we find that the assessee did not appear before the AO and before the CIT (A), but has filed the evidence explaining the sources for the cash deposits. The CIT (A) had called for a remand report and the AO had conducted necessary inquiries and found the evidence to be not genuine. The assessee is now stating that the C.A. has misled him. However, we are unable to accept this contention of the assessee because the evidence filed by the assessee was relating to his mother and brothers. Even the cash memo submitted by the assessee from one Sri Geeta Jewellers, Ghaziabad has been found to be not genuine since the said shop was not in existence during the relevant A.Y. Therefore, we are not inclined to accept the assessee's plea of the additional evidence because it was clearly a change of stand by the assessee which

cannot be entertained at the stage of second appeal. Therefore, we do not see any reason to interfere with the order of the CIT (A).

9. In the result, assessee's appeal is dismissed.

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10. Since the appeal has been disposed by order even dated, the stay application has become infructuous. Thus, the stay application is rejected.

11. To sum up, both the appeal and stay application filed by the assessee are dismissed.

Order pronounced in the Open Court on 13th March, 2019.

Sd/-
(S.Rifaur Rahman)
Accountant Member

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 13th March, 2019.

Vinodan/sps

Copy to:

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- 2 ITO Ward 12(3) Aayakar Bhavan, Fateh Maidan Road, Hyderabad
- 3 CIT (A)-8 Hyderabad
- 4 Pr. CIT – 1, Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order