

**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 Nos. 59 & 60/VIZ/2018  
(Asst. Year : 2003-04 & 2004-05)**

V. Sudarshana Rao, vs. ITO, Ward-4,  
61-1-63, Jayanagar, Rajahmundry.  
Near Sarangadhara Metta,  
Rajahmundry.

PAN No. BHUPS 0816 E (Appellant) (Respondent)

Assessee by : Shri C. Subrahmanyam – FCA.  
Department By : Smt. Suman Malik – Sr.DR

Date of hearing : 18/03/2019.  
Date of pronouncement : 22/03/2019.

**ORDER**

**PER V. DURGA RAO, JUDICIAL MEMBER**

These appeals by the assessee are directed against the separate orders of Commissioner of Income Tax (Appeals), Tirupati, both dated 29/12/2017 for the Assessment Years 2003-04 & 2005-05. Since facts and issues are common, clubbed and heard together and disposed of by way of this consolidated order.

**ITA No. 59/VIZ/2018**

**2.** Facts of the case, in brief, are that assessee is a Pastor and running a religious society named as 'Ramadasupeta Area Church

of Christ Welfare Ministries' in the capacity of President since 1997. He has filed his return of income by admitting total income of Rs. 54,293/- and the same was processed under section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as "Act"). Subsequently a notice under section 148 was issued and assessment was completed under section 143(3) r.w.s. 147 of the Act on 28/12/2006. In the assessment order, the Assessing Officer has noted that during the previous year relevant to the assessment year, the assessee has received the following cheques in respect of which, he has stated that they are received with a specific purpose and transferred to society's account:-

Sl.No.	Date of credit in SBI	Dollars	Amount Rs.	Date	Draft No.
1	02/07/2002	2032	97,836	18/06/2002	2773
2	02/07/2002	1600	70,971	18/06/2002	2774
3	17/02/2002	--	75,468	--	

The assessee has furnished copies of first two cheques. On those cheques the purpose was mentioned as 'reimbursement for school expenses and building fund' respectively. Further, the assessee could not furnish copy of the third cheque and purpose for which it was issued. The assessee has furnished the books of accounts maintained, wherein the assessee simply stated that these amounts are paid to the society by cash only, but not by

cheque or draft. The assessee has not furnished any proof in support that the amounts are received by the society and also not maintained any books of accounts for the society, thereby he failed to establish the transaction of transfer of funds to the society. Accordingly, in the absence of evidential support of the existence of the society, it is inferred that the entire amount of Rs.2,50,275/- received by the assessee from abroad cannot be accepted as funds transferred to the society. Therefore, the said amount is treated as assessee's professional income and added to the total income of the assessee.

**3.** On appeal, Id. CIT(A) confirmed the order of the Assessing Officer by observing as under:--

*"6. I have considered the findings of the AO in the order of assessment, remand report and arguments made by the AR of the appellant carefully. The claim of the appellant was that the donation received from abroad was meant for construction of the Church buildings and to purchase assets for charitable purposes, and same requires to be exempted from taxation. Assessee is a pastor doing preaching activities and also receiving certain money and amount of Rs.1,37,072/- was declared as professional income. However, the appellant did not declare balance amount of Rs.2,50,275/- received as professional income only on the ground that this part of money was spent for religious purposes. First of all, there is no evidence of spending money for charitable purpose. Mere cash withdrawal of money from bank account of the appellant would not establish for spending of money towards religious activities. Moreover, the appellant could not produce any books of account of the society before the AO, to prove that money actually withdrawn from the bank account of the appellant was spent for the purpose of society. Moreover, there was no registration u/s.12A to the society in order to claim exemption from tax. The contention of the appellant that*

*the money was spent for religious activities as directed by donor was not established with any documentary evidence, either before the AO or undersigned. Hence, I do not see any reason to interfere with the findings of the AO. Thus, the addition is confirmed."*

**4.** On being aggrieved, assessee carried the matter in appeal before this Tribunal.

**5.** Ld. counsel for the assessee has submitted that the assessee has received these funds from abroad for specific purpose and therefore, same cannot be treated as assessee's income and submitted that addition may be deleted.

**6.** On the other hand, Id. Departmental Representative has strongly supported the orders of the authorities below.

**7.** We have heard both the parties, perused the material available on record and gone through orders of the authorities below.

**8.** The assessee is a Pastor and he has received an amount of Rs. 2,50,275/-. When the Assessing Officer has asked the assessee about the purpose for which the amounts are received and utilization of the funds, the assessee has submitted that he has received funds from abroad for the purpose of construction of church and building and submitted that the amounts received has been transferred to Ramadasupeta Area Church of Christ Welfare Ministries. The Assessing Officer has asked the details of the

transfer of funds and utilization of funds. The assessee has submitted that he has withdrawn the money from bank account and transferred to the society, however, assessee is not established a fact that the funds received by the assessee have been transferred to the society-Ramadasupeta Area Church of Christ Welfare Ministries. Therefore, the Assessing Officer has treated the entire amount received by the assessee as a professional income in his individual capacity and the same is added to the total income of the assessee. On appeal, Id. CIT(A) confirmed the order of the Assessing Officer. Even before us, the assessee is not established a fact that the amounts received by the assessee from abroad have been transferred to the society for the purpose of construction of the building and maintenance of church. Therefore, we find that the assessee failed to discharge the burden casted upon him to show that the funds received from abroad to his individual savings account and subsequently by withdrawing the amount, the same has been transferred to the society. Therefore, we are of the opinion that the Assessing Officer as well as Id. CIT(A) rightly made the addition. We find no infirmity in the order of the Id. CIT(A). Thus, this appeal filed by the assessee is dismissed.

**ITA No. 60/VIZ/2018**

9. The only ground raised by the assessee is in respect of addition of Rs. 5,50,259/-. In the assessment order the Assessing Officer has noted that on perusal of the capital account filed by the assessee, it was noticed that the assessee has claimed receipt of gifts from abroad to the tune of Rs. 5,50,259/-. When the assessee was asked vide order sheet notings dated 23/11/2009 to explain the nature of the receipt along with necessary supporting evidences, the assessee has submitted a reply vide his letter dated 02/12/2009. The contents of the letter are reproduced hereunder:-

*"The assessee is a pastor and gets income from local devotees and render services to them.*

*Apart from above he got faith from the people abroad who are in the same type of activities. Hence they remit funds from abroad to do certain activities which are in the form of acquisition and construction of churches, run schools for poor and physically handicapped children and other welfare activities.*

*Accordingly, he constructed churches at various places with these funds through Ramadasupeta Area Church of Christ Welfare Ministries to which he has to transfer the funds received from abroad in his name.*

*The said Ramdas Peta Area Church of Christ Welfare Ministries is a society Registered under Societies Registration Act, and applied for recognition u/s. 12A of the Income Tax Act, 1961. It also filed its Income Tax Returns from the Assessment Year 2004-05 prior to this, no returns were filed since there is no taxable income. But it is maintaining books of accounts.*

*For your ready reference an acknowledgement bearing No.024564, dt. 23.03.2007 in support of Income-tax return filed for the A. Y. 2004-05 is enclosed herewith.*

*While sending the fund, the said donor namely "High Land Heights Church of Christ" specifies the purpose on the face of the DD for which it is being sent. According to those directions, the assessee will utilize those funds. For your ready reference photo copies of DD are enclosed herewith. Apart from that an "e-mail" letter from the said donor represented by its member is also enclosed herewith. This letter contained the fact of the case and purpose of the remittances for which they are being sent. As per this letter, it may be noted that the assessee is not receiving/accepting these amounts/or his own sake and he will not get any ownership on these funds.*

*Further, all funds are sent voluntarily and not as a liability. The assessee cannot demand them/claim for a single paise from the donors. They are being sent on humanitarian grounds to do certain welfare activities here. Since the assessee shown his genuineness and got the confidence, they sent in the name of the assessee with confidence of getting things done according to their will/direction. They have also visited the places of the church buildings where they were constructed. They periodically verify the activities being carried out by the assessee in order to satisfy themselves that the funds are properly being utilized.*

*It is being submitted to present the facts of the case before you and to state that all the remittances of funds from abroad are not belonging to the assessee.*

*Considering the above facts, it is requested not to treat the gift amounts as income in their hands of the assessee"*

*Subsequently the assessee has submitted one more letter on 02-12-2009, furnishing further information, contents of the letter are reproduced hereunder.*

*"According to the opinion of the assessee as expressed below and provisions of Income Tax Act, 1961 and under the following circumstances the amounts received for specific purpose from abroad i.e. from "High Land Heights Church of Christ" by the assessee is not taxable as income in his hands.*

*1. He received these funds with a direction from the said High Land Heights Church of Christ through Mr. Harry P Anderson.*

*2. There is no financial relation between the assessee and the said High Land Heights Church of Christ who send the money for a specific purpose. In other words they are not liable to each other in either trading or otherwise.*

3. The assessee has no right to demand/claim/collect money from High Land Heights Church of Christ. Hence the amount received by the assessee is not at the disposal of the assessee to utilize according to his wish.

He has to utilize it for the purpose for which it was received. Otherwise it will be treated as misappropriated /misused by the assessee. But it cannot be treated as his income. In other words he is only a care taker of the funds received. If these funds are not utilized as specified they have to be returned to the sender.

4. It can be seen from the Government Grant (Govt. Schemes), when the Govt. grants (aid) certain funds to certain charitable organization or to others with a direction to utilize those funds for a specific purpose, the charitable Organizations or others, who have received, are not become the owner of those funds as directed by the government order otherwise they have to return the same to the government.

5. Every receipt in the hands of the recipient is not his income. The nature of the transaction, circumstances in existence, trade relations, and other relevant aspects will determine the nature of the receipt.

6. In CIT V Bijli Cotton Mills P Ltd(J 979) 116 1T1? 60('SC), it is clarified that the amounts which were received and held by the assessee under an obligation to spend the same for charitable purpose from the inception, then these receipts,' cannot be regarded as forming any income of the assessee. Similarly in the case Anup Eng. Ltd Vs.CIT (2001) 247 ITR 457(GUJ): It was held that income accrues only when the assessee gets right to receive the same.

7. Since the amounts received by the assessee as a mediator none of the Provisions of Sec.2(24) of the Income Tax Act 1961 are applicable.

8. The assessee had transferred the funds to a charitable institution established and registered in India according to the provisions of Societies Registration Act, in order to fulfill the purpose. This is because funds sent by the said High Land Heights Church of Christ are intended to construct church buildings, perform certain welfare activities etc, but not for the assessee. The existence or non-existence of recognition under Sec. 12A of the Income Tax Act, 1961 to the society does not change the nature of the transaction because is intended to utilize these funds for a specific purpose through the society. The assessee had received these .funds as Trustee/guardian/as an agent to perform a particular activity directed by the High Land

*Heights Church of Christ but not as an owner of funds.*

*9. Mere holding an amount, by accounted for in the books of account, does not become the taxable income of the person as long as the source of the amount and its nature can be explained with regard to the amount and its nature can be explained with regard to the classification of the transaction to which that amount belongs. In other words if the amount received is in the capital nature it cannot be treated as revenue receipt. Similarly, if it is in the nature of loan/advance/otherwise it cannot be taxable in the hands of the person who accounted for in his books. The intention of both parties (receiver and giver) is the main criteria to decide the taxable nature of the transaction.*

*10. In the present case the assessee had not received the amount for his own purpose. Similarly High Land Heights Church of Christ did not send the amount/or the benefit of the assessee. Merely by recording the receipts in his books, of accounts the assessee cannot become the owner of the funds received In the same year, he handed over the funds to another society. Even it is not done, the assessee cannot become the owner of the funds, because there is no intention either side to make it as the property of the assessee.*

*11. In his books of account also the assessee had not shown the funds as his income by crediting it to profit & loss account, but credited to his capital account in order to transfer the same to the intended society for implementation of the directions of the send This shows the intention of the assessee.*

*12. Since the funds are sent directly to the assessee for proper accounting of the transactions, the assessee accounted the same in his account books. This does not enable him to become the owner of the funds.*

*Considering the above facts, funds received by the assessee with a direction may be treated as not his income."*

**10.** The Assessing Officer has considered the detailed submission filed by the assessee and observed that as admitted by the assessee himself vide his letters, the amount of Rs. 5,50,259/- received is not a gift, as against the same was written in the

capital account of the assessee. Therefore, there is no need of treating the same as gift at all. During the previous year relevant to the assessment year, the assessee has received the following cheques in respect of which he has stated that they are received with a specific purpose and transferred to the society's account:-

07/05/2003	Rs. 1,63,989/-
14/10/2003	Rs. 3,45,775/-
23/01/2004	Rs. 25,000/-
23/01/2004	<u>Rs. 15,495/-</u>
Total	<u>Rs. 5,50,259/-</u>

**11.** The assessee has furnished copies of first two cheques. On those cheques the purpose was mentioned as 'building second floor' and 'personal support', the assessee could not furnish copy of the third and fourth cheques and purpose for which the same were issued. The assessee has furnished the books of account maintained in his individual capacity, wherein the assessee simply stated that these amounts were paid to the society on a single day i.e on 01/02/2004, by cash only, but not by cheque or draft. The assessee has not maintained any separate bank account for the purpose of receipt of the amounts under question, which were alleged to be received for a specific purpose. He has deposited the cheques received from abroad in his regular savings bank account

only. As per assessee's version, he has withdrawn the amounts from bank and paid the same to the society Ramdaspet Church of Christ for the purpose of construction of church. As the assessee has not produced any documentary evidence for the same nor does he produce any account statements from the society i.e. Ramdaspet Church of Christ, evidencing these transactions, the genuineness of the transaction is not verifiable. Further, he could not prove that the amounts are received by the society as he has not maintained any books of accounts for the society; thereby he has failed to establish the transaction of transfer of funds to the society. Accordingly, the Assessing Officer has treated the entire amount of Rs. 5,50,259/- as professional income of the assessee and added the same to the total income of the assessee.

**12.** On appeal, Id. CIT(A) confirmed the order of the Assessing Officer.

**13.** Ld. counsel for the assessee has submitted that the assessee has received the amounts for specific purpose, therefore, these amounts cannot be treated as income of the assessee and prayed that addition may be deleted.

**14.** On the other hand, Id. Departmental Representative strongly supported the orders of authorities below.

**15.** We have heard both the sides, perused the material available on record and orders of the authorities below.

**16.** The assessee has received an amount of Rs. 5,50,259/- from abroad. The case of the assessee is that these amounts are received for the purpose of construction of church and maintenance of building. The assessee has submitted before the Assessing Officer that he has received these amounts to his savings bank account. Subsequently, on 01/02/2004 the entire amount is withdrawn and paid to the society. When the Assessing Officer has asked the assessee in respect of details of construction of church and development of church building, the assessee has not produced any evidence, he simply submitted that he has withdrawn the amount from his account and transferred the same to the society. The Assessing Officer disbelieved the version of the assessee and also genuineness of the transaction and treated the entire amount as his professional income and added to the total income of the assessee. On appeal, Id. CIT(A) confirmed the order of the Assessing Officer. Even before us, assessee has not established a fact that the funds received by the assessee have been transferred to the society for the purpose for which the funds are received. We find that the assessee failed to discharge the burden casted upon him to show that he has transferred the

funds from his personal account to the society. His explanation is that on 01/02/2004 the entire amount was withdrawn and handed-over to the society for the purpose for which it is received. There is nothing available on record what is the work carried by the society and what is the expenditure incurred. Under these facts and circumstances of the case the entire transaction is not a genuine transaction. Therefore, we find no infirmity in the order passed by the Id. CIT(A). Thus, this appeal filed by the assessee is dismissed.

**17.** In the result, both the appeals filed by the assessee are dismissed.

Order Pronounced in open Court on this 22<sup>nd</sup> day of March, 2019.

Sd/-  
**(D.S. SUNDER SINGH)**  
**Accountant Member**

sd/-  
**(V. DURGA RAO)**  
**Judicial Member**

**Dated: 22<sup>nd</sup> March, 2019.**

**vr/-**

*Copy to:*

1. *The Assessee - V. Sudarshana Rao, 61-1-63, Jayanagar, Near Sarangadhara Metta, Rajahmundry.*
2. *The Revenue - ITO, Ward-4, Rajahmundry.*
3. *The Pr.CIT, Rajahmundry.*
4. *The CIT(A), Tirupati.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

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