

**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. 328 to 332/VIZ/2017
(A.Ys. : 2001-02, 2003-2004, 2004-05, 2006-07 & 2007-08)**

T. Appa Rao, vs. DCIT, Central Circle-2,
M/s. Rowe & Pal, CAs, Visakhapatnam.
D.No. 14-36-1, Krishna Nagar,
Visakhapatnam.

PAN No. AAWPT 1727 h
(Appellant)

(Respondent)

Assessee by : Shri Y.A. Rao – CA.
Department By : Shri D.K. Sonawal – CIT DR

Date of hearing : 20/03/2019.
Date of pronouncement : 27/03/2019.

ORDER

PER V. DURGA RAO, JUDICIAL MEMBER

These appeals by the assessee are directed against the separate orders of Commissioner of Income Tax (Appeals)-3, Visakhapatnam, all dated 28/11/2016 for the Assessment Years 2001-02, 2003-2004, 2004-05, 2006-07 & 2007-08. Since facts and issue are common, clubbed and heard together and disposed of by way of this consolidated order for the sake of convenience.

ITA No. 328/VIZ/2017

2. Facts of the case, in brief, are that the assessee is working as an Executive in A.P. Tanners Ltd. and he is also proprietary concern called M/s. Raja Cable Network & Raju Networks and also partner in M/s. R.K. Constructions. A search & seizure operations were conducted in the case of M/s. R.K. Real Estate Group on 06/10/2006. During the course of search & seizure proceedings some incriminating documents and cash relating to the assessee were found and seized. Hence, notice under section 153C of the Income Tax Act, 1961 (hereinafter referred to as 'Act') was issued to the assessee on 14/08/2007 for six assessment years i.e. from A.Y. 2001-02 to 2006-07 immediately preceding the financial year in which search action was initiated, to file his return of income on or before 31/08/2007. The Assessing Officer after following due procedure, assessment was completed under section 143(3) r.w.s. 153C of the Act on 31/12/2008. During the course of assessment proceedings, the Assessing Officer has noted that a show-cause notice dated 22/12/2008 was served by affixture at the residential premises of the assessee, as the assessee was not available at that time and the local enquiries revealed that he is out of country. Before the Assessing Officer, the assessee's counsel appeared and submitted that the assessee is not carrying on

business and as such regular books of accounts are not maintained. However, the bank accounts available with the assessee were already furnished before the Assessing Officer. Insofar as the source of the deposits made in the bank accounts the Assessing Officer need not be considered the deposits and unexplained cash credits. The Assessing Officer after considering the above submission of the assessee observed that the assessee has not established the identity of the loan creditor because except for a name and address of a person, nothing else is produced. Creditworthiness of the loan creditor is not proved because no document in support of the income is filed. The non-satisfaction of the above two conditions are adopted to conclude that genuineness is not proved. Accordingly, the Assessing Officer has treated the total amounts deposited in the bank to the extent of Rs. 5,00,000/- as unexplained income and the same is added to the total income of the assessee.

3. On appeal before the Id. CIT(A), the assessee has filed a tabular form which shows, the amounts deposited in the bank, name and addresses of the loan creditors, lender sources and confirmation letters. The Id. CIT(A) admitted the additional evidence filed by the assessee and the same is forwarded to the Assessing Officer for consideration. The Assessing Officer filed his

remand report before the Id. CIT(A), which is reproduced as under:-

"As directed by the Commissioner of Income-tax (Appeals), the additional evidences filed by the assessee is carefully verified and the following inferences can be made.

- a) Names and addresses of the loan creditors is given.*
- b) Genuineness of transaction is not proved as amounts are deposited in cash in some bank statement produced, mere filing of confirmation does not prove the genuineness.*
- c) Credit worthiness of the loan creditor is not proved as no documents like agricultural land holdings, copies of Income tax Returns filed etc. are not produced.*

(It may be noted that none of the papers prepared and submitted are signed by the assessee nor the assessee's A. R).

From the above it is seen that the decision of the assessing officer in adding the entire loan amount as unexplained cash credits u/s 68 for all the assessment years 2001-02,2003-04,2004-05 & 2006-07 is in order as the assessee could not furnish evidences to prove the transaction as genuine and also creditworthiness of the creditors.

In the light of the above, the Hon'ble Commissioner of Income-tax (Appeals) is requested to decide the case on merits."

4. The Id. CIT(A) asked the assessee to file objections, if any on the remand report. In response to that, assessee has submitted that the assessee has filed confirmation letters, source of income of the creditors, genuineness of the transaction, but the Assessing Officer without making any enquiry simply submitted a remand report justifying the additions, is not correct. It was also submitted before the Id. CIT(A) that all the papers filed in the form of additional evidence signed by the assessee and the Id.CIT(A) only sent Xerox copies, therefore non-appearing of

signatures on the details filed by the assessee, for that assessee cannot be faulted. The Id. CIT(A) has considered all the arguments and confirmed the order of the Assessing Officer by observing as under:-

"I have carefully considered the facts, grounds of appeal, written submissions, remand report and the averments of Assessing Officer in the assessment order dated 31.12.2008. This is a search related assessment u/s. 153C of the Act consequent to a search on 6.10.2006 against M/C R.K. Real Estate group. The solitary issue in this case is the assessment of loan creditors namely Sri K.V.G.K. Prasad of Rs.3,00,000/- and Sri T.Satyanarayana of Rs. 2,00,000/- The Assessing Officer has issued a show-cause notice on 22.12.2008 to the appellant to prove the credits appearing in the bank account of the appellant for the Asst. Year 2001-02.

9.2) The appellant filed a letter on 29.12.2008 stating that he is not carrying on any business nor maintaining any books of account but he is in possession of bank account. The AR of the appellant also stated that he is not in a position to produce the creditors as the appellant is way in USA. Thus, the Assessing Officer has made an addition u/s.68 stating that the appellant has not discharged his "burden of proof" during the assessment proceedings.

9.3) During the appellant proceedings, the appellant had filed additional evidence dated 'nil' under Rule 46A, but duly signed letter along with enclosures such a tabular format indicating name and address of loan creditor, date of loan, date o return of loan, amount of loan, details of agricultural land belonging to the creditors confirmation Letters of the creditors and copies of documents of agricultural Land was furnished. It is the contention of the appellant that he has discharged his burden b filing these details. He also contended that the Assessing Officer must bring something contrary to these details in order to bring the credits u/s.68 of the Act. The AR also contended that the Assessing Officer has failed to examine the evidence by not conducting enquiry or bringing rebuttal without any facts contradicting the claim of the appellant.

9.4) On the other hand, the Assessing Officer held that the appellant has mere filed the confirmation letters without establishing the 'creditworthiness' at 'genuineness' of the creditors.

9.5) I have carefully examined the facts and the additional evidence filed by the appellant, remand report of the Assessing Officer and the rejoinder of the appellant. The rigors of Section 68 of the Income-tax Act are strict and stringent due to the fact that it is a charging section by itself. The section imposes certain legal responsibility on the appellant with regard to the nature and source thereof to the satisfaction of the Assessing Officer. In this background, let me examine the case at hand. In the first instance, the appellant had failed to explain or establish two crucial factors i.e. creditworthiness and genuineness of loan creditors due to the fact that he is away in USA during the assessment proceedings. The appellant was given adequate opportunity under Rule 46A to explain the case or establish his claim before the Assessing Officer in the remand proceedings. The appellant has filed confirmation letters of loan creditors which is repetition and nothing new about it. Besides, the bank account of appellant and loan creditors and details of lands held by loan creditors were furnished in a tabular form which is not signed by the appellant. By filing these details, the AR of the appellant felt that he has discharged his legal obligation. According to me, these documents by themselves have no meaning unless they are correlated and corroborated with the entries in the bank account of appellant especially when the appellant claims that he is not maintaining regular books of account. Further, all the entries are in the form of cash. It is not known whether the Assessing Officer has invoked Section 269SS of the Act in this case.

9.6) I have perused the bank account copy of appellant and found that there was credit of Rs.5,00,000/- cash in his account on 30.06.2000 and the same amount was withdrawn by self on 07.07.2000. Whereas the appellant made claim that he borrowed Rs.3,00,000/- from Sri K.V.G.K Prasad and Rs.2,00,000/- from Sri T. Satyanarayana one hails from Krishna District and the other from Vizianagaram. The nature and the manner in which the appellant managed himself on a single day from two individuals from distinct and far of places is not explained.

9.7) Scrutiny of confirmation letter of Sri K.V.G.K. Prasad who is brother-in-law of appellant revealed that the loan amount was repaid on 07.07.2000. It means the appellant had borrowed Rs.3,00,000/- for a period of 6 days. The confirmation letter further revealed that the money was paid to the appellant for purchase of site for his brother-in-law. It is claimed that the money was returned since the deal for purchase of site was not materialized. There are no corroborative evidences regarding this theory.

9.8) *The confirmation letter of Sri T. Satyanarayana revealed that the money Rs. 2,00,000/- was paid to the appellant as advance to purchase land on 28.06.2000. strange coincidence that both the lenders have given advance to the appellant 8.06.2000 and the appellant had deposited the same amount on 28.06.2000 and withdrawn on 07.07.2000 which is not convincing as conclusive that it is genuine the sense that a person of earning Rs.30,000/- per month can pay Rs.2,00,000/- as loan amount. In view of the facts and circumstances of the case, I agree with the finding of the Assessing Officer that the appellant has not established the 'creditworthiness' and 'genuineness' of creditors by merely filing the confirmation letters. In the case of cash credits, the satisfaction of the Assessing Officer is sine quonon while examining the credits u/s.68 of the Act. Regarding the rebuttal or any other material that the Assessing Officer has not brought on record to deny claim of the appellant, it is my finding that the appellant has not fully discharged his legal obligation to prove the three factors i.e. 'identity', 'creditworthiness' and 'genuineness' of creditors. Accordingly, concurring with the view of the Assessing Officer, the addition of Rs.5,00,000/- is confirmed."*

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

6. Ld. counsel for the assessee has submitted that the assessee has filed an application for admission of additional grounds and submitted that assessment order passed under section 143 r.w.s. 153C is not correct. The Assessing Officer ought to have been passed assessment order under section 153A of the Act. For the sake of convenience, the relevant grounds for admission of additional evidence are reproduced as under:-

"1) *The appellant/applicant preferred appeal against the order passed by the Deputy Commission of Income Tax, Central Circle-1, Visakhapatnam dated 31/12/2008 under section 143(3) r.w.s. 153C of the Income Tax Act.*

- 2) *The appellant /applicant submit that the assessment under section 143(3) r.w.s. 153C was passed in pursuance of notice under section 153C dated 14/08/2007 issued.*
- 3) *The appellant /applicant now raised additional grounds of appeal challenging the notice issued by the department.*
- 4) *The appellant /applicant would like to submit that no additional evidence or papers are required to be submitted in support of the additional grounds now raised. The additional issues now raised are purely on legal grounds.*
- 5) *The appellant /applicant request the Hon'ble Members of Income Tax Appellate Tribunal to consider sympathetically and admit additional grounds now raised."*

7. The assessee filed an application for admission of additional ground, however no reasons are mentioned. When we asked the assessee's counsel why this ground has not raised before the Id.CIT(A), it was submitted that he has not aware about the legal provisions at that point of time, therefore he could not raise this ground before the Id. CIT(A) and prayed that same may be considered.

8. We find that when the assessee has not raised a ground before the Id. CIT(A), if he wants to raise a fresh ground in the form of additional ground, he has to give justifiable reason why he has not raised such ground before the Id. CIT(A). In the present case, no justifiable reasons are given by the AR of the assessee. On this count alone, the additional ground raised by the assessee deserves to be rejected. However, we noticed from the panchanama at page Nos. 31 to 34 of the paper book, it is very

clear that warrant was issued in the case of M/s. R.K. Real Estates and not in the name of the assessee. In the assessment order, it has been mentioned that *"search & seizure operations were conducted in the case of M/s. R.K. Real Estate Group on 06/10/2006. During the course of search & seizure proceedings some incriminating documents and cash relating to the assessee were found and seized. Hence, notice under section 153C was issued to the assessee on 14/08/2007 for asking him to file returns of income for the six assessment years i.e. 2001-02 to 2006-07."* From the above, it is clear that search was not conducted in the case of assessee, it is only conducted in the case of M/s. R.K. Real Estates, therefore, the Assessing Officer has passed assessment order under section 143(3) r.w.s. 153C of the Act. We find that the order passed by the Assessing Officer is in accordance with law. We find that the AR of the assessee submitting that the assessment order passed by the Assessing Officer under section 143(3) r.w.s. 153C is not correct, is no basis and deserves to be rejected. Accordingly, the additional ground raised by the assessee is rejected.

9. Insofar as merits of the case is concerned, the assessee has not produced the creditors before the Assessing Officer because the assessee was not available in India and he was in abroad.

Therefore, the identity of the party, creditworthiness and genuineness of the transaction was also not proved. Before the Id. CIT(A), the assessee has filed a tabular form which shows the name and details of the creditor, land holding of the creditor, business carried by the creditor and filed confirmation letter. The same was forwarded by the Id. CIT(A) to the Assessing Officer for his comments. The Assessing Officer has examined all the details and submitted a remand report to the Id. CIT(A) that the assessee failed to prove the creditworthiness of the creditor, genuineness and veracity of the transaction except filing of confirmation letter. So far as details filed by the assessee during the appellate proceedings are concerned, the Assessing Officer gave a categorical finding that no single paper was signed neither by the assessee nor by the AR of the assessee, therefore, the same cannot be considered. When this was pointed out to the AR of the assessee, it is submitted before the Id. CIT(A) that Xerox copies of the papers are forwarded to the Assessing Officer during the course of remand proceedings, therefore, no signatures are available on the papers. The very same fact has been considered by the Id. CIT(A) and gave a categorical finding that the confirmation letters of the loan creditors which is repetition and nothing new about it. Besides, the bank account of assessee and

loan creditors and details of lands held by loan creditors were furnished in a tabular form which is not signed by the assessee. By filing these details, the AR of the assessee felt that he has discharged his legal obligation. From the above, it is very clear that the Id. CIT(A) has considered the submissions made by the assessee in respect of Xerox copies forwarded to the Assessing Officer, the same is accepted and he gave a categorical finding that it is only a repetition, no signatures are available, therefore the Assessing Officer has rightly considered all the issues in the remand report, the same is forwarded to the Id. CIT(A). The Id.CIT(A) has considered the same and confirmed the order of the Assessing Officer. We have gone through the order of the Id.CIT(A) and also the order of the Assessing Officer. We find that the assessee except confirmation letters, no relevant details are filed either before the Id. CIT(A) nor before us to show that the creditworthiness of the creditors, genuineness of the transaction, simply filing the details in a tabular form which shows the extent of land and business carried by the assessee is not sufficient to discharge the burden casted upon him to show that the deposits in his bank account are a genuine transactions and the same is received from the creditor who is having a sufficient funds. Under these facts and circumstances of the case, we are of the opinion

that the Assessing Officer and the Id. CIT(A) has considered the issue in detail and addition was made under section 68 of the Act. We find no reason to interfere with the order passed by the Id.CIT(A). The facts and issues involved in respect of addition made under section 68 of the Act in ITA Nos. 329 to 331/VIZ/2017 are similar, and in ITA No. 332/VIZ/2017 except an amount of Rs.4.00 received from Smt. C. Varalakshmi are also similar. The assessee is not able to establish creditworthiness of the creditors and genuineness of the transactions, therefore we find that no infirmity in the order passed by the Id.CIT(A) except the following grounds, adjudicated separately.

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10. Ground Nos. 7 & 8 raised by the assessee relates to sale of lorry at Rs. 3,20,000/-. In the assessment order, the Assessing Officer has noted that the AR of the assessee show-caused as to why the sale of lorry is not to be treated as his income as he is filing his return of income under section 44AE. The AR of the assessee did not produce any evidence in respect of claim and he is not able to explain the genuineness of the claim. Accordingly, the Assessing Officer has treated the sale of lorry as unexplained income amounting to Rs. 3,20,000/-, the same is added to the total income of the assessee.

11. On appeal, Id. CIT(A) gave a find that *'regarding addition on account of sale of lorry, the appellant, except stating that the Assessing Officer has made the addition without taking into consideration the explanation offered by the appellant's auditor, no evidence was brought on file. However, on this issue no explanation was offered by the AR of the appellant before me in the letter dated 04/03/2016. It is also not know from the records that whether it is a case fallen u/s 44AE of the Act or otherwise. On one hand, the appellant states that he is not doing any business activity and on the other hand he claims that he filed return of income u/s 44AE of the Act. In view of the conflicting and contradicting facts, the addition made by the Assessing Officer is confirmed''*.

12. Before us, Id. counsel for the assessee has submitted that the assessee has filed return of income under section 44AE of the Act and therefore the amount on account of sale of lorry cannot be considered as income of the assessee. The assessee has not filed any details such as, date of purchase of lorry, date of sale of lorry and details of depreciation like, what is the depreciation claimed and upto what date depreciation claimed and total depreciation claimed, therefore we find that the assessee neither filed any details before the Assessing Officer nor before the Id. CIT(A), even

before us. Therefore, the argument of the Id. counsel for the assessee cannot be considered. We find no infirmity in the order passed by the Id. CIT(A).

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13. The ground No.7 raised by the assessee relates to amount received from Smt. C. Varalakshmi Rs. 4.00 lakhs. During the course of assessment proceedings, it was submitted before the Assessing Officer that particulars in respect of Rs. 4.00 lakhs are not available. However, Smt. C. Mahalakshmi W/o T. Apparao realized chit fund with Margadarsi a sum of Rs. 3,79,700/- which was credited in her bank (joint) with Karnataka Bank. Balance amount provided by Smt. C. Mahalakshmi. She is assessed to income tax. PAN is ABFPC 0515 N. The Assessing Officer has not satisfied with the explanation given by the assessee and made the addition of Rs. 4.00 lakhs under section 68 of the Act.

14. Ld. CIT(A) has considered the issue in detail and held as under:-

"9.3) On perusal of the excel sheet filed by the appellant, it is seen that the appellant is holding account in Karnataka Bank Ltd. It is seen that on 08.05.2006, there is a deposit of Rs.1,00,000/-, on 15.05.2006, Rs.10,00,000/- was deposited, on 18.05.2006, Rs.1,00,000/- was deposited (this entry was not found in the bank account), on 24.05.2006, Rs.3,00,000/- was deposited, on 13.06.2006 Rs.5,500/- was deposited and on 21.08.2006 Rs.4,00,000/- was deposited. The total deposits of Rs. 19,05,500/- are by nature cash deposits. It appears from the

details filed before the Assessing Officer and also before me that the said loan amounts were received from various persons such as Sri K. Satya Mahendra, Sri V. Gandhi, Sri Y. Vishnu Vardhana Rao, Sri A. Venkata Rao, Sri C. Satyanarayana, Smt. K. Krishna Kumari, Sri M. Basava Sanakara Rao and Smt. C. Varalakshmi without any interest. It is also seen from the bank account that the appellant had withdrawn these amounts by 'self' either immediately or with small passage of time. All the entries are in the form of cash. It is not known whether the Assessing Officer has invoked Section 269SS of the Act in this case.

9.4) I have also perused the confirmation letters filed by the appellant before the Assessing Officer as well as before me. The confirmation letters of different persons (as cited supra) reveals that they have lent money to the appellant on different dates during the year under consideration. The confirmation letters also reveal that the appellant has repaid the said loans but no entries were found in the bank account of the appellant corresponding to the repayment. No corroborative entries were found in the bank account of appellant. It is the burden of the appellant to prove the manner in which he paid the amounts as he claimed that deposits in bank represent loans. It can be inferred that the appellant would have repaid the loan outside the transactions of the bank. Such inference is possible since the appellant claims that he is not maintaining any books of account. In order to prove the 'genuineness' of the through the bank account only. It is the legal obligation of the appellant to satisfy with the evidences as to the sources of credit and debit if not directly but circumstantial evidence to the apparent belief that the loans were indeed obtained from such creditor and repayments were made to them. In the absence of such satisfactory proof, it is the Assessing Officer's discretionary domain to treat the explanation of appellant as untrue and reject it. In such circumstances, the Assessing Officer can reasonably infer that the credits are unexplained and they represent the income of the appellant. It is seen from the written submission of appellant that the Assessing Officer has failed to bring any evidence or fact or failed to examine the explanation. I do not agree with this contention of the appellant in view of the finding given in analysis of bank account. The appellant failed on this account in establishing the repayment theory at the threshold.

15. Before us, it was submitted that the assessee's wife has received money from Margadarshi chit fund and the same is

deposited in the assessee's bank account. We have gone through the assessment order and Id. CIT(A)'s order and find that the assessee has deposited various amounts totalling to Rs.19,05,500/- are in the nature of cash deposits. From the details filed by the assessee and also the order of the Id. CIT(A), it is very clear that the amounts have been withdrawn from the bank. We find that the assessee has failed to establish a fact that the amount received by the assessee on account of Margadarshi chit fund, the very same amount has been received by the assessee and deposited in the bank. Due to cash amount was deposited and immediately withdrawn the same. Therefore, the argument of the Id. counsel for the assessee is rejected. The order of the Id. CIT(A) on this count is also confirmed.

16. The assessee has raised one more objection in respect of ground No.1 relates to total addition of Rs. 2,28,690/-. It was submitted before the Assessing Officer that the amount is not belonging to him and was received from his niece, who is residing in USA for the purpose of repayment of her educational loan, the same is not accepted by the Assessing Officer. The Id. CIT(A) confirmed the order of the Assessing Officer by observing that the amounts received from his niece for repayment of educational loan. As there is a festival in Vizianagaram, the assessee has

withdrawn the amount and subsequently the same was found during the course of search and seizure operations. The Assessing Officer in the assessment order has narrated the reasons for not accepting the explanation offered by the assessee such as the parents of the assessee's niece was residing at Vijayawada and it is impractical to travel for 8 hours from Vizianagaram to Vijayawada only to clear a bank loan and hence, added back to the same to the income returned and accordingly confirmed the order of the Assessing Officer.

17. Before us, Id. counsel for the assessee has submitted that the amount of Rs. 2,28,690/- has deposited in the account of the assessee on 13/09/2006, the same is withdrawn on 27/09/2016 and search was conducted on 06/10/2016 for a period of 10 days that the same amount is repaid and what are the reasons. The assessee has not explained anything, simply stated that he has withdrawn and he wanted to repay the very same amount to clear educational loan of his niece. We find that no reasons in the submissions of the assessee. That apart, when parents of the assessee's niece are residing at Vijayawada, why this amount was deposited in the account of the assessee, no explanation is offered and therefore we find that the Assessing Officer has rightly made the addition, which was rightly confirmed by the Id. CIT(A). We

find no reason to interfere with the order passed by the Id. CIT(A) on this specific ground raised by the assessee. Thus, this ground of appeal raised by the assessee is dismissed.

18. In the result, all the appeals filed by the assessee are dismissed.

Order Pronounced in open Court on this 27th day of March, 2019.

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

sd/-
(V. DURGA RAO)
Judicial Member

Dated: 27th March, 2019.

vr/-

Copy to:

1. *The Assessee - T. Appa Rao, M/s. Rowe & Pal, CAs, D.No. 14-36-1, Krishna Nagar, Visakhapatnam.*
2. *The Revenue - DCIT, Central Circle-2, Visakhapatnam.*
3. *The Pr.CIT (Central), Visakhapatnam.*
4. *The CIT(A)-3, Visakhapatnam.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

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