

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" : HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

I.T.A. No. 1139/HYD/2012

Assessment Year: 2007-08

Mr. Shiv Kumar Sarma, HYDERABAD [PAN: AVLPS2091K]	Vs	The Deputy Commissioner of Income Tax, Central Circle-2, HYDERABAD
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(Appellant)

(Respondent)

For Assessee : Shri K.A. Sai Prasad, AR
For Revenue : Shri Y.V.S.T. Sai, DR

Date of Hearing : 06-02-2019
Date of Pronouncement : 03-05-2019

ORDER

PER Smt. P. MADHAVI DEVI, J.M. :

This appeal of the assessee was earlier disposed-of along with the appeals of the co-owners by a common and consolidated order of this Tribunal. The respective assessees had challenged the orders of the Tribunal in both the Assessee as well as the Revenues appeals and the Hon'ble High Court has remitted the appeals back to the file of this Tribunal with a direction to decide all these appeals afresh independently. That is how all the appeals have been listed before us for hearing and we are thus disposing-of each of the appeals individually.

2. In this case, the assessee is an individual and was covered by the search proceedings in the group cases of Sri Radheshyam Sharma and others on 29-04-2008. During the course of search, certain incriminating material pertaining to assessee were found and seized from the residence of Sri Manoj Kumar Sharma, the assessee's brother. Accordingly, a notice u/s. 153C of the Income Tax Act [Act] dt. 30-03-2010 was issued and served on the assessee and the assessee filed his return of income on 11-08-2010 by admitting total income of Rs. 1,73,760/-

3. During the assessment proceedings, Assessing Officer observed that assessee along with his family members has purchased a property for a total consideration of Rs. 1,26,00,000/- mentioned in the registered agreement of sale but in the final registered sale deed, the sale consideration was mentioned as Rs.1,15,92,000/- only. The Assessing Officer examined the vendors, who stated that the total consideration received by them was Rs.1,26,00,000/- and that sum of Rs. 10,08,000/- was received in cash which was given to one of the vendors Shri Ramavatar Sanghi, who was financially weak. Assessing Officer examined the bank accounts of Shri Ramavatar Sanghi and found that there were cash deposits into his bank account to the tune of Rs.5,50,000/- and therefore, he accepted the statement of vendors and treated the sum of Rs. 10,08,000/- as unexplained investment by all the purchasers and the assessee's share being 1/4th, a sum of

Rs. 2,52,000/- was added as unexplained investment in the hands of assessee.

3.1. Aggrieved, assessee preferred an appeal before the CIT(A), who confirmed the order of Assessing Officer and the assessee is in second appeal before us.

4. Further, Assessing Officer also required the assessee to explain the sources for the investment in the property and the assessee explained it as hand loan of Rs. 32,00,900/- from various parties. However, the Assessing Officer did not accept the sources to the extent of Rs. 18,50,900/- and brought it to tax.

5. Aggrieved, assessee preferred an appeal before the CIT(A), who allowed the appeal partly. Against the confirmations of the additions made by the Assessing Officer, the assessee is in appeal before us, raising the following grounds of appeal:

“1) The learned First Appellate Authority is not justified in sustaining the addition of Rs.2,52,000/- made U/s.69 ignoring the fact that there is no evidence with regard to extra sale consideration paid by the appellant.

2) The learned First Appellate Authority is not justified in sustaining the addition of Rs.1,00,000/- made u/s 68 being the credit from Smt. Mandakini ignoring the fact that the said creditor is assessed to tax and had confirmed the loan given to the appellant.

3)a. The learned First Appellate Authority is not justified in sustaining the addition of Rs.3,00,000 made, u/s 68 being the credit from Sri Sunil Dayal ignoring fact that the said is assessed to Income Tax and

the loan given to appellant is duly reflected in his statement of affairs.

b) The learned First Appellate Authority failed to appreciate the fact that issue of repayment of loan cannot be the sole reason for sustaining the addition u/s 68 especially when the creditor is assessed to tax and the loan given to appellant is reflected in his returns.

4) The appellant craves leave to add amend or alter any of the grounds at the time of the hearing of the appeal”.

6. As regards Ground No.1, we find that this is similar and common with the addition made in the case of Shri Manoj Kumar Sharma, brother of the assessee and we have dealt with the issue extensively in his case in ITA No.1141/Hyd/2012 by order even dated. For the sake of ready reference, relevant paras of the said order are re-produced herein:

“6. In support of the first Ground of Appeal, Ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that in the agreement of sale, the total consideration was mentioned at Rs. 1,26,00,000/- but in the final sale deed, it was mentioned as Rs. 1,15,92,000/- after negotiations between the parties. He submitted that there was no cash paid either at the time of agreement of sale or at the time of execution of the sale deed. He submitted that the addition is only on the basis of statement of vendors and there is no other evidence brought by the Revenue authorities to state that any cash payment was made. He also submitted that the entire payments are through banking channels only and further, that the dates of deposit into the vendor’s bank account do not match with the date of agreement of sale or the sale deed. He further drew our attention to the fact that total deposits made by the vendor into his bank account are only Rs. 5,50,000/-, whereas the addition made in the hands of assessee is Rs. 10 Lakhs. He submitted that the onus is on the vendor to explain the sources for the said deposits and not on the assessee. He submitted that assessee had denied the payment of cash at the time of search itself and therefore, it cannot be treated as an afterthought. The assessee

also submitted that the vendors have admitted to the payment only on account of application of Section 50C and they have also filed revised returns of income, applying the said provision and only to safeguard their interest and avoid levy of penalty etc. Therefore, according to him, the addition of Rs.10 Lakhs in the hands of the all the purchasers and accordingly Rs. 2,52,000/- in the hands of assessee, is not sustainable.

7. Ld.DR, on the other hand, supported the orders of the authorities below and submitted that one of the vendors have given the statement and his bank account shows the deposits of cash are after the period of agreement of sale and the execution of sale deed. Therefore, he submitted that the addition made by the Assessing Officer and confirmed by the CIT(A) should be sustained.

8. Having regard to the rival contentions and material on record, we find that undisputedly the consideration mentioned in the registered agreement of sale is Rs.1,26,00,000/- and the consideration mentioned in the registered sale deed is Rs. 1,15,92,000/-. Thus, there is a difference of Rs.9,08,000/-. The reason for the difference was investigated by the Assessing Officer by calling the vendors and recording their statements. The vendors had admitted that they have received consideration as mentioned in the agreement of sale and that the cash was deposited in one of the vendors' account, but it is seen that the total deposits into the vendors' account is only Rs. 5,50,000/- and not Rs. 10 Lakhs. Further, there is no mention of any payment in cash either in the agreement of sale or the sale deed. It is for the vendor to explain the sources for making the cash deposit into his account and assessee cannot be fastened with the liability of the vendors. In the absence of any evidence to corroborate the statement of the vendors, we are inclined to accept the contention of the assessee that the addition of Rs. 10 Lakhs is not justified. Thus, addition of Rs. 2,52,000/- made in the hands of assessee and confirmed by the CIT(A) is deleted. Thus, Ground No. 1 is allowed".

Respectfully following the same, we delete the addition made in the case of assessee as well. In view of the above, Ground No.1 is allowed.

6.1. As regards Ground No.2, assessee had stated to have received sum of Rs. 1,00,000/- from Ms. Mandakini, who did not file any confirmation letter or bank account copies of the creditors. Assessing Officer had therefore not accepted the creditworthiness of the creditor and brought the same to tax u/s. 68 of the Act. However, before the CIT(A), assessee had filed confirmation letter and also bank account copies of the creditor. The CIT(A), at para 9.1 of his order recorded that the deposits into the bank account were by means of cheques received from HDFC Bank and not in cash deposits and that out of these amounts received, a sum of Rs.1 Lakhs was given to the assessee. However, CIT(A) has also recorded that advancing to Rs.1 Lakh to the assessee was not reflected in the return of income filed by the loan creditor for the AY.2007-08 and therefore, he confirmed the addition made by the Assessing Officer.

6.1.i. After hearing both the parties, we find that the CIT(A) has accepted that the payment of Rs.1 Lakh was made by Ms. Mandakini to the assessee through banking channels as reflected in the bank account statement. Since the loan creditor had not mentioned the same in the statement, accompanying the return, he has confirmed the addition. The assessee cannot be found fault with for the default in the statement filed by the loan creditor along with her return of income. Since advancing of Rs.1 Lakh is proved by way of bank statement and the creditworthiness of the loan creditor is also proved, we are of the opinion that the addition of Rs.1

Lakh is not sustainable. The said addition is accordingly deleted. Hence, Ground No. 2 is allowed.

6.2. As regards Ground No.3, we find that the Assessing Officer had disbelieved the loan of Rs.3 Lakhs advanced to assessee by Shri Sunil Dayal, who has only filed the copies of confirmation letters.

6.2.i. Before the CIT(A), assessee stated that bank account copies and also the relevant income tax returns were filed before the Assessing Officer and had also filed copies of the same before the CIT(A). However, CIT(A) confirmed the addition only on the ground that the loans have not been repaid by the assessee to the creditors, even till the date of assessment or the appellate order. He also observed that Shri Sunil Dayal had also advanced a loan to Ms. Rashmi Sharma and that he did not have the creditworthiness to advance such huge amounts. On the copy of the return filed by the creditor for the AY. 2007-08, CIT(A) observed that the returns were filed only after the search took place against the assessee's family and therefore much credence cannot be given to such return. He therefore confirmed the addition. Ld. Counsel for the assessee submitted that CIT(A) is not justified in confirming the loan taken, solely on the basis of non-repayment of the loan, particularly when the assessee has been shown as a debtor in the creditor's Books of Account and was shown as a debtor in his return of income, which was filed belatedly. Thus, he prayed for deletion of the addition.

6.2.ii. Ld.DR, however, supported the orders of the authorities below.

6.3. Having regard to the rival contentions and material on record, we find that the creditor is not stated to be related to the assessee in any way and has also filed confirmation letter and bank account copies in support of the advancement of loan to the assessee. It is also not recorded that there were cash deposits prior to advancement of loan to the assessee. Therefore, we are inclined to accept the contentions of assessee and direct the Assessing Officer to delete the addition. Hence, Ground No.3 is allowed.

7. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 3rd May, 2019

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated 3rd May, 2019

TNMM

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- 2. The Deputy Commissioner of Income Tax, Central Circle-2, Hyderabad.*
- 3. CIT(A)-I, Hyderabad.*
- 4. CIT(Central)-Hyderabad.*
- 5. D.R. ITAT, Hyderabad.*
- 6. Guard File.*