

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

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

ITA No.	Asst. Year	Appellant	Respondent
1140/Hyd/12	2007-08	Smt. Rashmi Sharma, HYDERABAD [PAN: AZKPS1254R]	The Deputy Commissioner of Income Tax, Central Circle-2, HYDERABAD
1131/Hyd/12	2007-08	Asst. Commissioner of Income Tax, Central Circle-2, HYDERABAD	Smt. Rashmi Sharma, HYDERABAD [PAN: AZKPS1254R]

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. :

These appeals of the assessee and the Revenue were earlier disposed-of along with the appeals of the co-owners by a common and consolidated order of this Tribunal. The respective assessee had challenged the orders of the Tribunal in both the Assessee as well as the Revenue 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. These are cross-appeals for the AY.2007-08. In her appeal, the assessee has raised 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 to the extent of Rs.2,85,900/- on account of the claim of cash in hand as sources for the purchase of property .

3) The learned First Appellate Authority officer is not justified in sustaining the addition of Rs.2,00,000/- U/s.68 ignoring the claim that the lender of the money i.e., the creditor Smt. Manju Sharma is assessed to tax and had confirmed the loan given to appellant.

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

5) The learned First Appellate Authority failed to appreciate the fact that issue of subsequent non repayment of the loan cannot be the sole reason for sustaining the addition made uls 68, especially when the creditors have filed the confirmation letters and copies of their Income Tax returns.

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

3. As regards Ground No.1, we have dealt with this issue extensively in the case of the co-owner, Shri Manoj Kumar Sharma, 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".

For the detailed reasons given therein, the addition made u/s. 69 of the Act is deleted. In view of the above, Ground No.1 is allowed.

4. As regards Ground No.2, brief facts are that assessee was asked to explain the sources for investment in the property mentioned in Ground No.1. The assessee explained that the sum of Rs.4,85,900/- was from her past savings. However, the Assessing Officer did not accept the same and added the entire amount, after observing the fact that the total income disclosed by the assessee for the earlier four years was only Rs.3,50,060/-.

4.1. Aggrieved, assessee preferred an appeal before the CIT(A), stating that during the course of search proceedings itself, she had filed cash flow statements, which disclosed that the assessee had sufficient funds. The CIT(A) considered that the assessee is deriving income from certain sources and there is marked increase of income from year to year. Therefore, he accepted the sources to the extent of Rs. 2 Lakhs and sustained addition of Rs.2,85,900/-.

4.2. Ld. Counsel for the assessee has placed reliance upon the contentions made by the assessee before the CIT(A) but has not referred to any evidence in support of her contentions that the assessee had past savings to the extent of Rs.4,85,900/-. Since the CIT(A) has verified the facts and granted relief to the assessee and there is no evidence in support of assessee's contentions, we see no reason to interfere with the order of CIT(A). The addition of Rs.2,85,900/- is accordingly sustained.

5. As regards the addition of Rs.2 Lakhs, on account of loan taken by the assessee from Smt. Manju Sharma, we find that Assessing Officer has brought it to tax on the ground that confirmation from the loan creditor was filed before the DDIT only. Before the CIT(A), assessee had argued that the said loan was paid to her by means of DD and that the creditor has mentioned her PAN and also other details of income tax assessment in her confirmation letter. The CIT(A) confirmed the addition only on the ground that assessee has not repaid the alleged loan amount to the creditor.

6. Similarly, the addition of Rs.2 Lakhs on account of loan from Shri Sunil Dayal Dadu, was confirmed by the CIT(A) on the ground that assessee has not made repayment of the loan and this issue was raised in Ground No.4. We have dealt with similar issue in the case of Shri Shiv Kumar Sharma, in ITA No.1139/Hyd/2012 by order even dated. For the sake of ready reference, relevant paras of the said order are re-produced herein:

“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”.

6.1. For similar reasons, the additions of Rs.2 Lakhs towards loan from Shri Sunil Dayal Dadu and Rs.2 Lakhs from Smt. Manju Sharma are also deleted because, the assessee had filed confirmation letters and also the income tax returns of the respective parties. Therefore, Ground Nos.3, 4 & 5 are allowed.

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

Revenue's Appeal in ITA No.1131/Hyd/2012:

8. As far as the appeal of Revenue is concerned, the Revenue has raised the following grounds:

- “1. The order of the CIT(A) is erroneous both on facts and on law.*
- 2. The CIT(A) is not justified in deleting the addition made u/s. 68 of the I.T.Act.*
- 3. The CIT(A) is not justified in admitting additional evidence in respect of bank account without affording an opportunity to the AO to go through the evidence.*
- 4. The CIT(A) is not justified in deleting the addition made u/s.68 of the I.T.Act even when the creditworthiness of the creditors was not provided by the assessee.*
- 5. Any other ground that may be urged at the time of hearing”.*

9. Since we have already confirmed the order of CIT(A) in partly deleting addition of Rs.2 Lakhs, after considering the cash flow statement and also capacity of the assessee in earning additional income, which has increased from year to year, we do not see any reason to interfere with the same. Hence, Revenue's appeal is dismissed.

10. To sum-up, the appeal of assessee is partly allowed and the appeal of Revenue is dismissed.

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

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated 3rd May, 2019

Copy to :

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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.*