

**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
1141/Hyd/12	2007-08	Mr. Manoj Kumar Sarma, HYDERABAD [PAN: AVRPS1569G]	The Deputy Commissioner of Income Tax, Central Circle-2, HYDERABAD
1132/Hyd/12	2007-08	Asst. Commissioner of Income Tax, Central Circle-2, HYDERABAD	Shri Manoj Kumar Sharma, HYDERABAD [PAN: AVRPS1569G]

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. :

The appeal of the assessee and cross appeal of 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 assessees had challenged the orders of the Tribunal in both the Assesseees 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. The brief facts of the case in the case of assessee before us are that there was a search and seizure operation u/s. 132 of the Income Tax Act [Act] in the group of Shri Radhe Shyam Sharma and others on 29-04-2008. The residence of the assessee was also searched and certain incriminating evidence pertaining to the assessee and his family members was found and seized. Accordingly, notice u/s. 153A of the Act dt. 30-03-2010 was issued and duly served on assessee. However, since the assessee failed to furnish return of income till August, 2010, a show cause notice was issued, explaining the provisions of Section 276CC of the Act and calling for a return of income. In response to the same, assessee filed his return of income on 11-08-2010 by admitting total income of Rs. 1,80,585/-.

3. During the assessment proceedings u/s. 153A of the Act, Assessing Officer observed that the assessee and his family members have purchased a property admeasuring 844 Sq. Yards at D.No. 4-1-234, Hanuman Tekdi, Troop Bazar, Hyderabad by way of registered agreement of sale dt. 02-09-2006 and the sale consideration mentioned therein was Rs. 1,26,00,000/-. He observed that the said property was registered on 17-11-2006 and assessee was asked to explain the sources of investment. Assessing Officer observed that the

entire transaction was looked-after by the assessee and therefore he was asked to explain the sources for the same. Assessee stated that though in the agreement of sale, the consideration is mentioned as 1.26 Crores, only a sum of Rs. 1.16 Crores was paid to the vendors as is mentioned in the registered sale deed and the balance sum was not paid by them. Thus, he denied the payment of difference of Rs. 10,08,000/-. To verify the same, the Assessing Officer summoned the vendors of the property and asked them to furnish the details of actual consideration received in the transaction and the bank in which the consideration was deposited and their assessment particulars. The vendors submitted that the consideration mentioned in the agreement of sale was Rs. 1.26 Crores but the registration of the sale deeds took place on 17-11-2006, mentioning the total consideration as 1,15,92,000/-. It was submitted that the difference between the agreed consideration and the amount registered was paid to them by the purchasers in cash and since one of the co-sharers Shri Ramavatar Sanghi was financially weak, the whole amount of Rs. 10,08,000/- received in cash was contributed to him by all of them to enable him to settle his matters. It was also submitted that they filed revised returns, sharing the capital gains as per the value of the property, after including the expenses of stamp duty and registration etc.

3.1. Taking the above statements into consideration, the assessee was again summoned by the Assessing Officer and

his sworn statement was recorded, during the course of which, the assessee stated that no amount, over and above the sum of Rs.1.16 Crores mentioned in sale deed was paid. The Assessing Officer, however, did not accept the contentions of assessee, because after verifying the bank amount of one of the vendors, Shri Ramavatar Sanghi in Punjab National Bank, he noticed that there were cash deposits of Rs. 3,50,000/- on 04-09-2006, Rs. 50,000/- on 16-10-2006 and Rs. 1,50,000/- on 23-11-2006. He opined that no vendor would accept the cash over and above the consideration mentioned in the sale deed and therefore, the assessee is considered to have paid cash payment of Rs. 10,08,000/-. He quantified the share of the assessee out of such payment to be at Rs. 2,52,000/- and brought it to tax as unexplained investment u/s. 69 of the Act.

Further, assessee was also directed to explain the sources for his share of investment in the property i.e., Rs. 28 Lakhs. Assessee explained the sources as under:

S.No.		Amount (Rs)
1	Own fund out of earlier savings	5,00,900
2	Drawings from RMR Pearls	8,50,000
3	City Bank loan	4,50,000
4	Hand loan from Mrs. Badanthi Devi	6,00,000
5	Hand loan from Smt. Hema Soni	5,00,000
6	Hand loan from Smt. Rama bai	3,00,000
		32,00,900

4. As regards the funds available out of earlier years' savings, the assessee submitted the cash flow statement. On perusal of the same, Assessing Officer observed that in the

earlier three years i.e., from 2003-04 to 2005-06, assessee disclosed income only of a sum of Rs. 3,26,221/- and if the life style of assessee and his family members is taken into consideration, the Assessing Officer held that the assessee could not have accumulated any savings for such huge investment. Therefore, he did not accept this as a source and treated the sum of Rs. 5,00,900/- as unexplained investment and brought it to tax u/s. 68 of the Act.

4.1. As regards the drawings from RMR Pearls and loan from Citi Bank are concerned, Assessing Officer accepted the contentions of assessee.

4.2. As regards the loan from Mrs. T. Basanthi Devi of Rs. 6 Lakhs, AO observed that it is in fact loan taken by assessee from Shri T. Jayaprakash and that assessee has furnished the copy of return of income of Shri T. Jayaprakash for the relevant assessment years. He found that the total income returned by the Creditor was Rs. 97,035/- only. He observed that before the DDIT(Investigation), assessee has filed written submissions, stating that loan was taken from Mrs. Basanthi Devi, but during the assessment proceedings, he enclosed returns of Shri T. Jayaprakash, submitting that the loan was taken from him. He also perused the bank account copy of Shri T. Jayaprakash and found that a sum of Rs. 6 Lakhs in cash was deposited into the account on 17-10-2006 and on 19-10-2006, a cheque was drawn in the name of assessee. He observed that there were no other huge cash

deposits in the bank account as creditor and therefore he concluded that the creditor had no creditworthiness to advance such huge amounts as interest free unsecured loans, to the assessee particularly when he himself was having meagre income of Rs. 97,035/-. Thus, the Assessing Officer made addition of Rs. 6 Lakhs as unexplained cash credit u/s. 68 of the Act.

4.3. As regards the loan from Smt. Hema Soni of Rs. 5 Lakhs is concerned, the Assessing Officer observed that assessee had filed copies of returns of income filed by Smt. Hema Soni and on perusal of the same, he found that income returned by her was only Rs. 1,30,708/-. He also observed that a sum of Rs. 10 Lakhs was credited on 09-11-2006 and immediately on 10-11-2006, a sum of Rs. 5 Lakhs was given to assessee and the balance of Rs. 5 Lakhs was given to Shri Shiva Kumar Sharma (Brother of the assessee). Therefore, Assessing Officer concluded that Smt. Hema Soni, had no creditworthiness and accordingly treated the sum of Rs. 5 Lakhs as unexplained cash credit u/s. 68 of the Act.

4.4. As regards the loan of Rs. 3 Lakhs from Smt. Rama Bai, mother of the assessee, is concerned, assessee furnished bank account copy of Smt. Rama Bai which revealed that Rs. 3,85,000/- and Rs. 1,15,000/- were credited into her bank account through two different cheques on 13-11-2006 and 14-11-2006 respectively and on the same day a sum of Rs. 3 Lakhs was advanced to the assessee and the balance was

given to Sunitha Sharma. The Assessing Officer concluded that Smt. Rama Bai is not having any creditworthiness to advance such huge amount of unsecured loans to the assessee. Thus, Assessing Officer treated the sum of Rs. 3 Lakhs also as unexplained cash credit u/s. 68 of the Act.

4.5. Aggrieved, assessee preferred an appeal before the CIT(A), who granted partial relief to the assessee. Against the relief granted by the CIT(A), Revenue is in appeal before us while against the additions confirmed by the CIT(A), assessee is in appeal before us.

5. In his appeal, the assessee has raised the following grounds:

“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.4,00,900/- on account of the claim of cash in hand as sources for the purchase of property.

3) The learned First Appellate Authority is not justified in ignoring the claim of the appellant that cash availability is indicated in the cash flow statement filed before the assessing officer and taken into consideration by the assessing officer for making certain other additions and hence rejecting a part of the evidence filed is not justified.

4) The learned First Appellate Authority officer is not justified in sustaining the addition of Rs.3,00,000/- U/s.68 ignoring the claim that the lender of the money i.e., the creditor Smt. Rama bai explained the sources with regard to the jewellery sale and evidence there on.

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

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.

8.1. As regard the Ground Nos. 2 & 3, we find that while the Assessing Officer has disbelieved the contention of assessee that a sum of Rs.5,00,900/- is from his earlier savings and that the CIT(A) has given partial relief of Rs.1 Lakh and has sustained the addition to the extent of Rs. 4,00,900/-.

8.1.i. Ld. Counsel for the assessee had relied upon the revised cash flow statement, wherein the assessee, while filing the return of income, pursuant to search, had offered income of Rs. 15 Lakhs for the FY. 2003-04 and Rs. 3,50,000/- for the FY. 2004-05. He submitted that assessee had paid taxes on such income, which has been offered and therefore that should be considered as income available with the assessee for making the investment in the next assessment years.

8.1.ii. Ld.DR, however, supported the order of the Ld.CIT(A), who had taken into consideration the revised cash flow statement as well. We find that the assessee's contentions

that he had already paid taxes as additional income offered in the earlier assessment years need to be considered, because if the assessee had already offered the income to tax, not accepting the additional income as a source would again result in double taxation. Therefore, we deem it fit and proper to remand the issue to the file of Assessing Officer for verification of assessee's contentions and if it is found that assessee had offered amounts of Rs. 18,50,000/- to tax in the earlier assessment years, the same should be considered as a source or funds available for making investment in purchase of the property during the relevant financial year. Thus, Ground Nos. 2 and 3 are treated as allowed for statistical purposes.

8.2. As regards Ground No. 4, it is brought to our notice by both the parties that in the earlier proceedings, ITAT had remanded the issue to the file of Assessing Officer for verification of the assessee's contentions and pursuant thereto the Assessing Officer had verified whether Smt. Rama Bai had sold gold ornaments to M/s. Bajranglalsons and also wrote a letter to the said concern to confirm the transaction of purchase of gold from Smt. Rama Bai and also to furnish bank account copy, through which the amount has been paid; and that vide letter dt.30-01-2014, M/s. Bajranglalsons has confirmed the purchase of gold from Smt. Rama Bai and also furnished copies of invoices issued along with bank account copies, through which the cheques were paid. Taking the same into consideration, Assessing Officer has accepted the sale and also the gifting of the sale proceeds to the assessee and his

sister. Since the Assessing Officer had himself verified the transaction and has accepted the source of Rs. 3 Lakhs from Smt. Rama Bai, Ground No.4 raised by the assessee is accordingly treated as allowed.

Revenue's Appeal in ITA No. 1132/Hyd/2012:

9. 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 deleting the addition made u/s. 68 of the I.T. Act even when the creditworthiness of the creditors was not proved by the assessee.*
- 4. Any other ground that may be urged at the time of hearing”.*

10. The Ld.DR relied upon the order of the Assessing Officer while the Ld. Counsel for the assessee relied upon the findings of the CIT(A).

11. Having regard to the rival contentions, we find that the CIT(A) had deleted the additions of Rs. 6 Lakhs and Rs. 5 Lakhs made by the Assessing Officer being the loans taken from Shri T. Jayaprakash and Smt. Hema Soni respectively on the ground that they did not have the creditworthiness to make the advances. We find that the CIT(A) has considered the fact that both the above creditors were assessed to tax and have shown the assessee as a debtor in their books, even prior

to the date of search and also that the assessee has repaid the loans to the creditors' along with interest. After taking the same into consideration, the additions were deleted by the CIT(A). The Revenue has not been able to bring any material on record to rebut this factual finding of the CIT(A). Therefore, we find that there is no reason to interfere with the order of CIT(A) on these issues. Accordingly, the Revenue's appeal is dismissed.

12. In the result, the appeal of Revenue is dismissed.

13. To sum-up, appeal of assessee is allowed for statistical purposes and appeal of Revenue is dismissed.

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

Copy to :

- 1. Mr. Manoj Kumar Sarma, Hyderabad. C/o. Ch. Parthasarathy & Co., 1-1-298/2/B/3, 1st Floor, Sowbhagya Avenue, St.No.1, Ashoknagar, Hyderabad.*
- 2. The Deputy Commissioner of Income Tax, Central Circle-2, Hyderabad.*
- 3. The Asst. Commissioner of Income Tax, Central Circle-2, Hyderabad.*
- 4. CIT(A)-I, Hyderabad.*
- 5. CIT(Central)-Hyderabad.*
- 6. D.R. ITAT, Hyderabad.*
- 7. Guard File.*