

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH 'A', HYDERABAD**

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

ITA No. 2286Hyd/2017  
Block Period: 1990-91 to 1999-2000

Chava Prakash Rao, vs. Asst. Commissioner of  
Hyderabad. Income-tax, Circle – 7(1),  
Hyderabad.

PAN – ACVPC 5809N

Assessee

Respondent

Assessee by: Shri S. Rama Rao  
Revenue by: Shri Dinesh Paduchuri

Date of hearing: 08/05/2019  
Date of pronouncement: 27/05/2019

**ORDER**

**PER S. RIFAUH RAHMAN, AM:**

This appeal filed by the assessee is directed against the order of CIT(A) – 3, Hyderabad, dated, 23/10/2017 for Block Period 1990-91 to 1999-2000 & up to 04/11/1999.

2. Brief facts of the case are, the assessee, an individual, retired as a Junior lecturer and is deriving income from pension from Govt of Andhra Pradesh. The Department conducted search and seizure operations in the case of Dr. B. Chandrakantha Rao on 4.11.1999. The assessee was staying with Sri B. Chandrakantha Rao at the relevant point of time as the assessee is the father-in-law of Dr. B. Chandrakantha Rao. The Department found that the assessee acquired some shares. The Assessing officer issued notice u/s 158BD and in response thereto the assessee filed the return of income in Form 2B admitting the undisclosed income to be Rs. Nil. The Assessing Officer later issued notices and completed the

assessment on 27.9.2002 determining the total undisclosed income at Rs.9,60,690/-. While doing so, he treated the entire pension received as the undisclosed income. Besides a part of the investments made were also added as unexplained.

2.1 The assessee filed details before the learned Commissioner of Income-Tax (Appeals). The learned CIT (Appeals) deleted the addition made by the Assessing Officer on account of pension whereas the investments made is confirmed by the learned CIT(A) on the ground that the investment was not properly explained.

2.2 Both the assessee and the department filed appeals before the Hon'ble ITAT. The Hon'ble ITAT vide order in IT(SS) A No.94/H/05 dated 19.6.2009 set aside the issue and directed the AO to verify the investment afresh whether made by assessee or HUF. Based on the direction, AO issued notice u/s 142(2) and called for the relevant information.

2.3 In so far as investments are concerned, the assessee submitted before the Assessing Officer that:

a) The assessee has dual status - one as "individual" and another as "Kartha of HUF" consisting of himself, his wife and his daughter;

b) He inherited agricultural lands situated at Chirunomula village of Bonkal Mandal, Khammam Dist and the said agricultural lands yielded income;

c) As the assessee was deriving separate income from salary and as the dependents are only two i.e. his wife and daughter, the entire agricultural income derived was saved and was invested.

The assessee prepared Receipts and Payments account for both "Individual" and "HUF" and explained the receipts and payments which include the investments made.

2.4 It was also explained that there was substantial surplus for the HUF because of the agricultural income and on account of sale of certain assets including a house situated at Khammam and, therefore, the assessee as Kartha of HUF possessed required funds. The assessee filed all the details before the Assessing officer. The Assessing Officer accepted the existence of the HUF. However, he refused to accept the source of investment by the HUF to the extent of Rs. 4,03,700/-. According to the Assessing officer, the agricultural income should be only Rs.6,95,000/- and not Rs.9,38,700/- over a period of time and, therefore, held that the difference of Rs.2,43,700/ and the opening balance of Rs. 1,60,000/- could not be explained properly. Accordingly, he arrived at the undisclosed income at Rs. 4,03,700/-.

3. When the assessee preferred an appeal before the CIT(A), the CIT(A) deleted the addition of Rs. 2,43,700/- made towards agricultural income and sustained the addition of Rs. 1,60,000/-by holding that no evidences or material were furnished by the assessee in support of the claim for having an opening balance of Rs. 1,60,000/-.

4. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising the following grounds of appeal:

*"1) The order of the learned Commissioner of Income-tax (Appeals) is erroneous to the extent it is prejudicial to the appellant.*

*2) The learned Commissioner of Income-tax (Appeals) erred in confirming the addition of Rs.1,60,000/- as representing undisclosed income without considering the fact that the said amount represents opening balance in the capital account of the appellant.*

*3) The learned Commissioner of Income-tax (Appeals) ought to have seen that the Assessing Officer accepted the existence of the HUF and, therefore, ought not to have confirmed the addition of Rs.1,60,000/-.*

*4) Any other ground or grounds that may be urged at the time of hearing.”*

5. Before us, the Id. AR submitted that Assessing Officer failed to see that if the agricultural income were to be estimated and if there were to be any difference from the assessment year 1989-90 to 1998-99 or for the later period, the difference is below the taxable minimum for each of the assessment year and is not liable for taxation. He further, submitted that the Assessing Officer also failed to appreciate the fact that the agricultural income is arrived at by him on a mere estimate without reference to any basis and whereas the assessee worked out the agricultural income based on the certificates issued by the MRO. Therefore, AR submitted that the Assessing Officer is not justified in arriving at the undisclosed income at Rs 1,60,000/- and further erred in taxing the same as the undisclosed income.

6. The Id. DR, on the other hand, relied on the order of CIT(A).

7. Considered the rival submissions and perused the material on record. We notice from the assessment records that AO has accepted the existence of HUF and accepted the investments made out of agricultural income. AO made two additions, first difference in arriving sources for investment to

the extent of Rs. 2,43,700/-, which was deleted by Id. CIT(A). but, the second part of Rs. 1,60,000/-, which is the opening balance of HUF, which was not believed by AO, as the source for making investment. When AO accepted that there is existence of HUF, he could have made the addition only in the hands of HUF and not in the hands of individual. Particularly, assessee has clearly submitted the receipts & payments of HUF and individual separately for the block period. It is clear that the opening balance of Rs. 2,50,000/- was declared only in HUF. Therefore, AO is directed to make the addition of Rs. 1,60,000/- in the hands of HUF and not in the hands of individual. Accordingly, the grounds raised by the assessee are allowed.

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

Pronounced in the open court on 27<sup>th</sup> May, 2019.

Sd/-  
(P. MADHAVI DEVI)  
JUDICIAL MEMBER

Sd/-  
(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER

Hyderabad, dated 27<sup>th</sup> May, 2019.

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Copy forwarded to:

1. *Shri Chava Prakash Rao, 10-2-8/6A, AC Guards, Hyderabad – 500 004*
2. *ACIT, Circle – 7(1), Hyderabad*
3. *CIT(A) - 3, Hyderabad*
4. *Pr. CIT - 3, Hyderabad*
5. *The DR, ITAT, Hyderabad*
6. *Guard File*