

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

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

I.T.A. No. 2125/HYD/2017

Assessment Year: 2009-10

Sri Syed Masood Hussain, HYDERABAD [PAN: BAUPS5839L]	Vs	The Income Tax Officer, Ward-6(4), HYDERABAD
--	----	--

(Appellant)

(Respondent)

For Assessee	: Shri K.C. Devdas, AR
For Revenue	: Shri A.C. Rout, DR

Date of Hearing	: 04-06-2019
Date of Pronouncement	: 12-06-2019

ORDER

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

This is an assessee's appeal for the AY.2009-10, against the order of the Commissioner of Income Tax(Appeals)-9, Hyderabad, dated 28-08-2017.

2. Brief facts of the case are that assessee, an individual, engaged in the business of retail Trade of Chemicals, Detergents and Absorbents etc., filed his return of income for the AY.2009-10 on 19-08-2009, declaring total income of Rs.2,55,380/-. The case was taken up for scrutiny. By issuance of a notice u/s.142(1) of the Income Tax Act [Act], the assessee was asked to furnish information specified therein.

The assessee was represented by his Authorised Representative and sought time to file the information required. Meanwhile, the Assessing Officer gathered information that the assessee had a bank account with Axis Bank, Mehdipatnam Ring Road Branch. Since the assessee did not file any information as called for. the Assessing Officer, called for the bank account extract u/s.133(6) of the Act and from the statements so furnished, he observed that the assessee has made cash deposits into this bank account. The Assessing Officer observed that the assessee had stated the sources for the same to be out of gifts received from his relatives as defined u/s.56(2) of the Act to the tune of Rs.12,50,000/- and that the balance is from his present and past savings and sale proceeds of retail trade business to the extent of Rs.8,52,715/-. The assessee also filed copies of the gift deeds executed during the Financial Year 2008-09 along with the confirmation letters. The Assessing Officer observed that the assessee is not maintaining books of account for the business but has declared income @13.21% of sales as required u/s.44AF of the Act. The Assessing Officer observed that the details furnished by the assessee did not constitute necessary and sufficient evidence to establish the identity, genuineness and creditworthiness of the persons, who have given gifts to the assessee. He, therefore, brought the unexplained cash deposits to tax. He also made other disallowances u/s.80C and 80GG of the Act and also brought to tax difference in balance of cash in bank and interest earned in Savings Bank A/c.

2.1. Aggrieved, assessee preferred an appeal before the CIT(A), along with necessary evidence. The CIT(A) called for a Remand Report, which was submitted by the Assessing Officer and thereafter, the CIT(A) confirmed the order of Assessing Officer and the assessee is in second appeal before us.

3. Ld. Counsel for the assessee submitted that assessee has furnished relevant confirmation letters of the donors to prove the identity and genuineness of the gifts and also filed the income tax returns of the respective parties to prove their creditworthiness. He submitted that the Assessing Officer, even during the remand proceedings, has not examined the donors as is evident from the final paragraph in the Remand Report dt.19-07-2017, wherein the Assessing Officer clearly reported that the 'CIT(A) has sought only comments on the additional evidence and therefore, the report is restricted to the comments without examination of the donors'. Therefore, it is evident that the creditworthiness of the donors is not examined by the Assessing Officer either at the assessment proceedings or during the remand proceedings.

3.1. Ld. Counsel for the assessee prayed for a remand to the Assessing Officer with a direction to examine the donors and the Ld.DR had no objection to the same.

4. In view of the same, we deem it fit and proper to remand the issue to the file of Assessing Officer with a direction to examine the donors as to their creditworthiness and whether

they have given the alleged gifts to the assessee and the Assessing Officer is directed to decide the issue in accordance with law, thereafter.

5. In the result, the appeal of assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 12th June, 2019

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated 12th June, 2019

TNMM/pvv

Copy to :

- 1. Sri Syed Masood Hussain, Hyderabad. C/o. B. Narsing Rao & Co., Chartered Accountants, Plot No.554, Road No.92, Jubilee Hills, Hyderabad.*
- 2. The Income Tax Officer, Ward-6(4), Hyderabad.*
- 3. CIT(A)-9, Hyderabad.*
- 4. Pr.CIT-6, Hyderabad.*
- 5. D.R. ITAT, Hyderabad.*
- 6. Guard File.*