

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

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

I.T.A. No. 521/HYD/2019

Assessment Year: 2010-11

Koppuru Ramesh Babu, Income Tax Officer,
NELLORE Vs Ward-1,
[PAN: AENPK1264M] NELLORE

(Appellant)

(Respondent)

For Assessee : Shri S. Rama Rao, AR
For Revenue : Smt. Komali Krishna, DR

Date of Hearing : 03-07-2019

Date of Pronouncement : 10-07-2019

ORDER

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

This is assessee's appeal for the AY. 2010-11, against the order of the Commissioner of Income Tax (Appeals)-Tirupati, dated 25-02-2019.

2. Brief facts of the case are that, assessee, an individual, engaged in the business of wholesale trading in tea and coffee and Zandu Balm, filed his return of income for the relevant assessment year. As per the information received by the Department, the assessee has purchased immovable property admeasuring 10.50 Ac. In Survey No.76.78 (New Survey No.58/9), Anpallipadu (V) Guruvindapudi Panchayat,

Manobolu (M) by way of Sale Deed dt.06-06-2009 for Rs.10,50,000/- along with one more person Shri Velampalli Jagan Mohan, but as per the return of income, admitted income is only Rs.2,72,720/- and the assessee had not shown the above asset in the Balance Sheet for the year ended 31-03-2010. In order to verify the sources of income for purchase of the land, a notice u/s.148 of the Income Tax Act [Act] dt.31-03-2017 was issued and served on the assessee. As regards the sources for purchase of the said property, the assessee submitted that out of the total consideration of Rs. 10,50,000/-, assessee has paid a sum to the extent of Rs.8,50,000/- from out of his books of account and accounted the same in his Capital A/c. It was submitted that the balance of Rs.2 Lakhs was contributed by Shri Velampalli Jagan Mohan, who is a retail merchant and is also assessed to income tax. However, during the hearings before the Assessing Officer, no other information was filed. From the Capital A/c for the year ended 31-03-2010, the Assessing Officer observed that assessee has brought a fixed amount of Rs.8,50,000/- as advance amount, transferred from his wife Smt. K.Subhashini. But since no corroborative evidence to substantiate this transaction was filed, the Assessing Officer treated the same as 'assessee's income' and brought the same to tax.

2.1. Aggrieved, assessee preferred an appeal before the CIT(A) along with additional evidence in the form of copies of returns of income filed by his wife before the Assessing Officer. The CIT(A) observed that the affidavit and other documents are

additional evidence and that there is no formal request for admission of the same. Therefore, he did not admit the additional evidence but confirmed the addition made by the Assessing Officer. The assessee is in second appeal before us by raising the following Grounds of Appeal:

“1) The order of the learned Commissioner of Income-tax(Appeals) is erroneous both on facts and in law.

2) The learned Commissioner of Income-tax (Appeals) ought to have considered the fact that the appellant invested Rs.8,50,000/- from out of the funds made available by his wife Smt.K.Subhashini.

3) The learned Commissioner of Income Tax (Appeals) ought to have admitted the evidence produced and allowed the appeal.

4) The learned Commissioner of Income Tax (Appeals) ought to have considered the fact that Smt.K.Subhashini confirmed the fact that she gifted an amount of Rs.8,50,000/- to her husband i.e. the appellant and that the said amount was utilised in paying the advance for purchase of the property.

5) The learned Commissioner of Income Tax (Appeals) ought to have deleted the addition made by the Assessing Officer as the necessary proof was provided.

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

3. The Ld. Counsel for the assessee, while reiterating the submissions made before the authorities below, submitted that assessee's wife is an individual assessee and is having independent sources of income from which she has gifted a sum of Rs.8,50,000/- to the assessee. He submitted that necessary evidence was filed before the CIT(A), who did not admit the same and therefore prayed for admission of the

additional evidence and remand to the file of Assessing Officer for reconsideration of the issue.

4. Ld.DR was also heard in this regard.

5. Having regard to the rival contentions and material on record, we find that the assessee had all along been claiming that the sum of Rs.8,50,000/-, is a gift from his wife. The additional evidence is to show that assessee's wife is also assessed to tax and that she had sources to give the gift. Therefore, the additional evidence would go to the root of the matter and needs to be admitted in the interest of justice. Therefore, we admit the additional evidence and remand the issue to the file of Assessing Officer for verification and *Denovo* consideration in accordance with law. Needless to mention that assessee shall be given a fair opportunity of hearing. Hence, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 10th July, 2019

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated 10th July, 2019

TNMM

Copy to :

*1. Shri Koppuru Ramesh Babu, 6-1-9, Proprietor:
Sri Naga Suresh Agencies, Prakash Nagar,
Stonehousepet, Nellore.*

2. The Income Tax Officer, Ward-1, Nellore.

3. CIT(A)-Tirupati.

4. Pr.CIT-Tirupati.

5. D.R. ITAT, Hyderabad.

6. Guard File.