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

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

ITA No.	A.Y.	Appellant	Respondent
1864/Hyd/13	2002-03	Shri Sudhir Kumar D.Shah–Individual, HYDERABAD [PAN: CBNPS2483M]	Deputy Commissioner of Income Tax, Central Circle-2, HYDERABAD
1865/Hyd/13	2003-04		
1866/Hyd/13	2004-05		
1867/Hyd/13	2005-06		
1868/Hyd/13	2006-07		
1869/Hyd/13	2007-08		
1870/Hyd/13	2008-09		

For Assessee : Shri K.C.Devdas, AR
For Revenue : Shri Y.V.S.T.Sai, CIT-DR

Date of Hearing : 21-10-2019
Date of Pronouncement : 25-10-2019

O R D E R

PER BENCH :

The first common issue raised by assessee in all these appeals is the addition made by the Assessing Officer (AO) on account of drawings.

2. The facts of all the appeals are identical and for the sake of convenience, we extracted the facts from the appeal of the AY.2002-03. During the assessment proceedings, the AO found that the assessee has not declared the drawing to meet the domestic household expenditure. Hence, the AO proposed to make the addition of Rs.1 Lakh on account of no drawings for the AY.2002-03. The Ld.AR of the assessee appeared on 28-12-2009 before the AO and submitted that Shri Sudhir Kumar D.Shah (HUF) has met all the household expenses and the assessee was leading a normal life, having little expenses, thus argued that no addition is warranted on account of less drawings. The AO observed that the assessee is living with his wife and son and having lot of immoveable properties and getting rental income. The AO asked to submit the cash flow statement and also requested to file statement of affairs of HUF and explain the drawings with the details of domestic expenses. Since the assessee failed to furnish the information called-for, the AO made the addition of Rs.1 Lakh on account of no drawings for the assessment year 2002-03. Identical addition was made for the AYs.2003-04, 2004-05 & 2006-07. A sum of Rs.2 Lakhs was added for the AYs.2007-08 and 2008-09 on account of no drawings. The details of additions made for the impugned assessment years for no drawings, year-wise as under:

Sudhir Kumar D.Shah (Individual)

A.Y.	Drawing added as Income in Individual Hands in Rs.
2002-03	1,00,000
2003-04	1,00,000
2004-05	1,00,000
2005-06	NIL
2006-07	1,00,000
2007-08	2,00,000
2008-09	2,00,000

2.1. Against the said order, assessee went on appeal before the CIT(A) and the Ld.CIT(A) confirmed the order of AO. Against which the assessee filed appeals before the Tribunal.

2.2. During the appeal hearing, the Ld.AR argued that the assessee is having rental income, agricultural income and received the income from sale of agricultural lands in the relevant assessment years under consideration. The details of the income admitted by the assessee year wise asunder:

	Income returned by the HUF in the original return			
A.Y.	Rental Income (Gross) Rs.	Agricultural Income Rs.	Income from agricultural land sale (claimed as exempt) Rs.	Total Income Rs.
2002-03	1,03,000	1,50,000	--	2,53,000
2003-04	2,25,100	1,50,000	45,00,000	48,75,100
2004-05	3,46,620	1,50,000	--	4,96,620
2005-06	3,58,620	1,50,000	--	5,08,620
2006-07	2,89,200	1,45,700	96,00,000	1,00,34,900
2007-08	3,18,000	1,50,000	21,09,893	25,77,893
2008-09	3,04,200	1,60,000	--	4,64,200

Since the assessee is having substantial income from various sources and also is having substantial exempt income, the Ld.AR submitted that the assessee had sufficient drawings and no addition is required and hence, requested to delete the addition.

2.3. On the other hand, Ld.DR supported the orders of lower authorities.

2.4. We have heard both the parties and gone through the material placed on record. The AO made the addition for non-submission of information explaining the expenditure sources for house-hold drawings. Assessee during the assessment proceedings has neither submitted the cash flow statement nor furnished the required information before the AO. The Ld.CIT(A) has also examined the issue in detail and confirmed the order of AO. Before us, the assessee except furnishing the information with regard to the income returned by the assessee in HUF status, no other information such as cash flow statement, expenditure incurred for drawings, nature of expenses etc., and the sources thereof were furnished. Therefore, we hold that the assessee did not explain the actual expenditure for domestic purposes and the sources thereof were also not furnished. The expenditure estimated by the AO @ Rs.1 Lakh p.a. for the AYs.2002-03 to 2006-07 @ Rs.2 Lakhs for the AYs.2007-08 & 2008-09 is reasonable, keeping in view of the status of assessee being the owner of the large tracts of lands and we do not see any reason to interfere with the order of Ld.CIT(A) and the same is uphold.

2.5. In the result, the appeals of assessee for the AYs.2002-03, 2003-04, 2004-05, 2006-07 to 2008-09 are dismissed on this issue.

3. The next issue is related to the addition of Rs.20 Lakhs for extra consideration received on sale of agricultural land at Chilkoor Village, Moinabad Mandal. This issue is related to the AY.2005-06. Brief facts of the case are that during the assessment proceedings, the AO found that the assessee filed return of income on 18-12-2009 and admitted the sale of 2.00 acres of agricultural land at Chilkuru Village of Rajendra Nagar Mandal for Rs.6 Lakhs. The assessee did not furnish the documentary evidence for purchase of land as well as the source of investment. The assessee and his brother Shri Sunil Kumar D.Shah, have jointly sold 4 acres of landed property situated at Chilkuru Village to M/s.Anuradha Properties Pvt. Ltd., for a registered value of Rs.12 Lakhs, out of which, assessee's share was Rs.6 Lakhs. However, as per the documentary evidence found during the course of search, the total sale consideration was Rs.52 Lakhs, out of which, assessee's share was Rs.26 Lakhs. The AO accepted the sum of Rs.6.00 disclosed by the assessee as exempt income and taxed the remaining amount of Rs.20.00 Lakhs as 'un-disclosed income'.

3.1. Against the order of the AO, the assessee went on appeal before the CIT(A), who confirmed the order of AO. Against the order of Ld.CIT(A), assessee filed an appeal before us.

3.2. During the appeal hearing, the assessee has raised additional grounds vide petition dt.21-10-2019. The additional grounds raised by the assessee reads as under:

"1. The learned Commissioner of Income Tax (Appeals)-1, Hyderabad ['Ld.CIT(A)'] erred in confirming the addition of Rs 20,00,000 being extra consideration received on sale of Agricultural lands at Chilkoor Village, Moinabad Mandal when the Assessing officer has not taxed the recorded consideration of Rs 6,00,000 and claimed as exempt in the return of income since it is agricultural lands not falling within the definition of the capital asset.

2. Without prejudice to grounds raised, the Ld.CIT(A) failed to note that the Assessing Officer erred in charging tax on the undisclosed income on sale of land added at Rs. 20,00,000 at normal rates as against the special rate of 20% applicable to long term capital gains.

3. Any other ground(s) that may be urged at the time of hearing".

Along with the appeal memo, the assessee raised the ground challenging the confirmation of addition of Rs.20.00 Lakhs in respect of undisclosed income on sale of agricultural land. By the additional grounds, the assessee raised objection, stating that the assessee had sold the piece of agricultural lands and received the consideration of Rs.26 Lakhs. The admitted sale consideration of Rs.6.00 Lakhs, was accepted by the AO and allowed the exemption, which establishes that sale of agricultural land was accepted by the Department. Having allowed the exemption of Rs.6 Lakhs, the assessee contended that the AO ought to have allowed the entire sale consideration as exempt, since, receipt represent the sale consideration of agricultural land.

On the other hand, the Ld.DR objected for admission of additional grounds.

3.3. We have heard to the parties and find merit in the submissions made by the Ld.AR. In this case, the entire material is available on record and no enquiry or investigation is required to adjudicate the additional ground. Hence, we admit the additional grounds raised by the assessee.

3.4. During the appeal hearing, Ld.AR submitted that the assessee had sold agricultural land and received the total consideration of Rs.26 Lakhs, out of which Rs.6 Lakhs was disclosed, in the registered sale deed. The remaining Rs.20 Lakhs was not disclosed since, the land-in-question was agricultural land and the entire sale consideration required to be allowed as exemption. Ld.AR further submitted that the AO allowed Rs.6 Lakhs as exempt income and taxed only the balance sum of Rs.20 Lakhs, which was received over and above the registered sale deed consideration. The Ld.AR also submitted that the total sale consideration was Rs.26 Lakhs for sale of agricultural land. Since, the sale of agricultural land is exempt, the Ld.AR argued that the addition made by the AO as 'un-disclosed income' is required to be deleted. Alternatively, Ld.AR argued that since the sale was on account of capital asset, the same is required to be taxed @20% of normal rates.

3.5. The Ld.DR supported the orders of the lower authorities and argued that the AO had assessed the receipt as undisclosed income, since, the said receipt was not disclosed in the return of income filed thus argued that the AO has

rightly taxed the same as 'un-disclosed income' which the Ld.CIT(A) confirmed and no interference is called for.

3.6. We have heard both the parties and gone through the material placed on record. In the instant case, the assessee had sold the property for a consideration of Rs.76 Lakhs and disclosed the sum of Rs.6 Lakhs in the registered sale deed. During the assessment proceedings, the AO found that the assessee had received Rs.26 Lakhs and the consideration received over and above the sale deed document was not disclosed in the return of income. Therefore, the AO made an addition of Rs.20 Lakhs as 'un-disclosed income'. Though it is rebuttable presumption, as per Section 114(e) of the Indian Evidence Act, the admission made before the Sub-Registrar Office is valid evidence. Since the assessee had registered the land for a consideration of Rs.12 Lakhs and the assessee's share being 50%, the consideration to be considered for exemption under agricultural income is only Rs.6.00 Lakhs, (the assessee's share) but not Rs.26.00 Lakhs. Accordingly, the argument of the assessee that having accepted Rs.6 Lakhs as agricultural income the remaining amount of Rs.26 Lakhs required to be considered as 'exempt income' on account of sale of agricultural land does not hold waters. Therefore, the assessee's submission to allow exemption for the entire amount of Rs.26 Lakhs is rejected. The identical issue was considered by the Co-ordinate Bench of this Tribunal ('B' Bench) in the case of Chiluvuri S.R.K. Raju Vs. ITO in ITA No.415/Hyd/2016 for the AY.2011-13, dt.13-07-2017 and held that - *the consideration received over and above the*

registered sale deed is to be taxed as un-disclosed income. For the sake of clarity and convenience, we extract the relevant part of the order of the Co-ordinate Bench on the similar facts, wherein this Tribunal held that *the sale consideration received over and above the registered sale deed has to be taxed as un-explained income*.

"7. We heard the rival submissions and perused the material placed on record. The assessee has sold the property situated at Athreyhapuram in Survey No. 166/11 admeasuring 0.25 for a sum of Rs. 50,000/- by sale deed dated 10-06-2009, which was registered in the O/o the Sub-Registrar, Athreyapuram. The document was signed by assessee and duly registered and the stamp duty was paid for Rs. 50,000/- which was accepted by the Sub-Registrar. The assessee also sold 0.77 acres of the agricultural land situated at Athreyapuram in Survey No. 166/13 wet land 0.50 acres for a consideration of Rs. 1.00 lakh and Survey No. 166/11 wet land admeasuring 0.27 acres for a sum of Rs. 54,000/- and Registered with the Sub-Registrar. As per the Registered sale deed, the assessee had received a sum of Rs. 2.04 lakhs for a sale of 1.02 acres of land situated at Athreyapuram. The said land was duly registered by the assessee and stamp duty was paid for Rs. 2.04 lakhs. No other evidence, except a copy of agreement written on plain paper, dated 08-08-2009, was produced by the assessee evidencing for sale consideration of Rs. 12.00 lakh. The copy of the agreement was on a plain paper and it was not registered and signed by the assessee but not signed by the second party (purchaser). The agreement was said to be for sale of land at Athreyapuram in Survey No. 166/11, the said land was already sold on 10-06-2009 and hence, no further agreement is necessary. The copy of sale agreement, which was produced by the assessee, was signed by the assessee but there was no signature of the buyer (second party). For valid agreement consent of both the parties is necessary and without the consent of the second party the agreement is invalid and cannot be enforced. In the instant case, the agreement was signed by the assessee himself and the document was neither duly registered nor even written on stamped paper. Therefore, we are unable to accept the genuineness of the sale agreement produced by the assessee

and in our considered opinion, the said document is a self-serving document to evade the income tax as rightly argued by the Ld. DR. Further any agreement of sale of immovable property is required to be registered as per the amended provisions of A.P. Government. For ready reference, we reproduce here under Sec. 17(1) clause (g) of the Registration Act, 1988.

> *17. Documents of which registration is compulsory.—(l) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—*
>
> *(g) Agreement of sale of immovable property of he value of one hundred rupees and upwards]; ** [inserted by A.P. amendment Act 4 of 1999 w.e.f .1-4-1999 rovided that the State Governemnt may, by order published in the Officeal Gazatte exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rent reserved by which do not exceed fifty rupees.*
>
> *{(1A) the documents containing contracts to transfer for consideration, any movable property for the purpose of section 53A of the Transfer of property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after t he commencement of the Registration and the Related Laws (amendment Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said Section 53A}*

8. In the instant case, the agreement produced by the assessee was not registered and hence, we are unable to accept the same as valid evidence. In this case, the assessee has received Rs.2.04 lakhs towards sale of land as discussed above. Once the immovable property is registered, the sale consideration in the registered sale document is considered to be the final consideration, since the stamp duty and other taxes for transfer of property was paid as per the consideration recorded in the registered sale deed. The contention of the assessee that he has received Rs.12 lakhs, but registered the document only for Rs. 2.04 lakhs is not acceptable argument and such double standards are not acceptable as held by Hon'ble Supreme Court in the case of Coimbatore Spinning & Weaving Co. Ltd (supra) relied upon by the

Ld. DR. Further, the Ld. AR did not place any evidence to show that the buyer has paid the amount of Rs. 12 lakhs and admitted the said amount in his (buyer) return of income Further Hon'ble Punjab and Haryana High court in [2010] 195 TAXMAN 273 (PUNJ. & HAR.) Paramjit Singh .v.Income-tax Officer on similar facts held that

> "*It is a well-known principle that no oral evidence is admissible once the document contains all the terms and conditions. Sections 91 and 92 of the Indian Evidence Act, 1872 incorporate the aforesaid principle. According to section 91, when terms of a contract, grants or other dispositions of property have been reduced to the form of documents, then no evidence is permissible to be given in proof of any such terms of such grant or disposition of the property except the document itself or the secondary evidence thereof. According to section 92, once the document is tendered in evidence and proved as per the requirements of section 91, then no evidence of any oral agreement or statement would be admissible as between the parties to any such instrument for the purposes of contradicting, varying, adding to or subtracting from its terms. Therefore, it follows that no oral agreement contradicting/varying the terms of a document can be offered. Once the aforesaid principal is clear, then in the instant case, ostensible sale considerationdisclosed in the sale deed had to be accepted and it could not be contradicted by adducing any oral evidence. Therefore, the order of the Tribunal did not suffer from any legal infirmity in reaching to the conclusion that the amount shown in the registered sale deed was received by the vendors and deserved to be added to the gross income of the assessee.* [Para 4]."

9. In the instant case Sale deed was registered with all the terms and conditions of sale which is a conclusive proof of sale consideration and squarely covered by the decision cited (Supra) and no other evidence was provided by the Ld. A.R. Therefore, we hold that the assessee has received only Rs. 2.04 lakhs but not Rs. 12.00 lakhs. The source of cash balance as on 01-04-2010 amounting to Rs. 14,79,100/- remained unexplained and rightly confirmed by the Ld. CIT(A). Therefore, we do not find any infirmity in the order of the CIT(A) and the same is confirmed. Accordingly, appeal of the assessee is dismissed".

3.7. In the instant case, the fact is that the assessee had registered the sale deed for Rs.6 Lakhs, which is undisputed. The assessee had received the sum of Rs.26 Lakhs, therefore, the sale consideration received over and above the registered sale deed was rightly taxed as 'un-disclosed income' in the hands of the assessee. Accordingly, the appeal of assessee on this issue including the additional ground raised by the assessee is dismissed.

4. The next issue raised by assessee for the AY.2006-07 is the addition of Rs.1.00 Crore made on account of commission. During the assessment proceedings, the AO found that the assessee had received the commission of Rs.1.00 Crore from M/s.Dakshin Shelters Pvt. Ltd., as per the documents found and seized as Annexure C/PCS/RES/1 at Pg. Nos.162 & 163. The AO was of the view that the it was nothing but commission as per the agreement entered into between Shri M.P.Agarwal, represented by M/s.Platinum Properties Pvt. Ltd., and Ambience Properties Pvt. Ltd., with Mrs.Anjana Shah, W/o.Sudhir Kumar D.Shah, dt.20-07-2005. As per the said agreement, the assessee and his wife supposed to receive the amount of Rs.7.00 Crores as commission for arrangement landed properties situated at Sy.No.159 of Vattinagulapally Village, Rajendra Nagar Mandal on 06-12-2007 from various other owners. Originally, M/s.Platinum Properties Pvt. Ltd., had entered into such agreement, subsequently, the company, M/s.Dakshin Shelters Pvt. Ltd., was formed as Special Purpose Vehicle (SPV) for the project of Vattinagulapally land, where all the assets and liabilities of M/s.Platinum Properties

Pvt. Ltd., were transferred to M/s.Dakshin Shelters Pvt. Ltd. As per the agreement, an amount of Rs.1 Crore was paid to Shri Sudhir Kumar D.Shah and the amount paid to the assessee was treated as commission in the hands of assessee by the AO and taxed the same as 'un-disclosed income'.

4.1. Against the said order of AO, assessee went on appeal before the CIT(A) and the Ld.CIT(A) confirmed the order of AO. Against the order of Ld.CIT(A), the assessee filed the appeal before the Tribunal.

4.2. During the appeal hearing, Ld.AR argued that assessee had agreed to procure the lands for M/s.Dakshin Shelters Pvt. Ltd., and for procurement of lands, M/s.Dakshin Shelters Pvt. Ltd., had accepted for payment of commission. However, the assessee failed to procure the lands in view of the Government's Order in G.O.Ms.No.111, issued by the Government of Andhra Pradesh, which restricts the construction activity in the cited lands. Therefore, the assessee was obliged to return the money. Ld.AR further submitted that assessee had submitted a letter to the AO regarding failure to procure the lands due government policies for conversion of land in view of GO No.111. This fact was communicated to M/s.Dakshin Shelters Pvt. Ltd., vide letter dt.31-08-2006 and M/s.Dakshin Shelters Pvt. Ltd., also requested to refund the amount paid, therefore, submitted that there was no commission received by the assessee and the same cannot be taxed as 'commission' and it was treated as advance in the hands of the assessee. Had it been

commission, the developer would have deducted the tax at source u/s.194H of the Act, thus, argued that there is no case for making the addition and accordingly requested to delete the addition. In this regard, the Ld.AR also taken the support of the decision of the ITAT in ITA No.481/Hyd/2014 in the case of ITO Vs. Dakshin Shelters Pvt. Ltd., dt.08-04-2015, wherein the Hon'ble ITAT held that the payment made by M/s.Dakshin Shelters Pvt. Ltd., was advance payment and no tax was required to be deducted at source.

4.3. On the other hand, Ld.DR submitted that the Hon'ble ITAT held the issue in favour of assessee not to deduct the tax at source, since the payment was advance payment and not debited to the Profit & Loss A/c. Thus, the case law relied upon by the assessee does not help the case of assessee. Ld.DR further argued that the payment-in-question was commission payment as evidenced from the agreements, therefore, strongly supported the order of lower authorities and requested to confirm the addition made.

4.4. We have heard both the parties and gone through the material placed on record. In the instant case, the assessee had received a sum of Rs.1 Crore for procurement of land in Vattinagulapally Village. It is a fact that the Government had issued the G.O. vide G.O.Ms.No.111, which bars the construction of the building in the cited lands. Therefore, the assessee expressed his inability to procure the land and requested M/s.Dakshin Shelters Pvt. Ltd., to treat the sum paid as ‘advance’ for which the company had accepted. During

the appeal hearing, the assessee placed the copy of the letter of M/s.Dakshin Shelters Pvt. Ltd., dt.24-08-2006 requesting the assessee to refund the amount paid and assessee's letter dt.31-08-2006, requesting to treat the amount of Rs.1 Crore as 'an advance' before us. The decision of the Hon'ble ITAT in ITA No.481/Hyd/2014 in the case of ITO Vs. Dakshin Shelters Pvt. Ltd., dt.08-04-2015, relied upon by the assessee supports that the sum paid was an advance. Therefore, there is no reason to dis-believe the contention of assessee. Accordingly, we hold that the amount paid to the assessee is an advance and no addition is warranted. Hence, we set aside the order of Ld.CIT(A) and delete the addition made by the AO. The assessee succeeds on this ground.

5. To sum-up, the appeals for the AYs.2002-03, 2003-04, 2004-05, 2005-06, 2007-08 & 2008-09 are dismissed and the appeal for the AY.2006-07 is partly allowed.

Order pronounced in the open court on 25th October, 2019

Sd/-	Sd/-
(V. DURGA RAO)	**(D.S. SUNDER SINGH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Hyderabad, Dated: 25-10-2019

TNMM

Copy to :

1. Sri Sudhir Kumar D.Shah – IND., 4-3-345, 1st Floor, RBH Lane, Koti,Hyderabad.

2.The Deputy Commissioner of Income Tax, Central Circle-2, Hyderabad.

3. CIT(Appeals)-1, Hyderabad.

4. The CIT(Central), Hyderabad.

5. D.R. ITAT, Hyderabad.

6. Guard File.