

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
AND**

Shri S.Rifaur Rahman, Accountant Member

ITA NoS.170, 171, 182 & 183/Hyd/2017		
Assessment Years:2006-07, 2007-08, 2008-09 & 2009-10		
Shri Duddukunta Sreedhar Reddy, Hyderabad PAN: AHSPD0865H	Vs.	Dy. Commissioner of Income Tax, Central Circle 6, Hyderabad
(Appellant)		(Respondent)
Assessee by:	Sri S. Rama Rao	
Revenue by:	Sri Y.V.S.T. Sai, CIT-DR	
Date of hearing:	01/08/2019	
Date of pronouncement:	29/10/2019	

ORDER

Per Smt. P. Madhavi Devi, J.M.

These are all assessee's appeals for the A.Ys 2006-07, 2007-08, 2008-09 and 2009-10 respectively, against the common and consolidated order of the CIT (A)-11,Hyderabad, dated 09.09.2016. The common issue in all these appeals for the A.Y 2006-07 to 2009-10 is against the disallowance of interest representing 1/3rd interest on loans obtained from Indian Overseas Bank.

A.Y 2006-07

2. Brief facts on this issue are that there was a search and seizure u/s 132 of the I.T. Act on 30.11.2011 and consequently, the assessment u/s 143(3) r.w.s. 153A was

completed. During the relevant assessment proceedings, the AO observed that on the head “income from house property”, the assessee has claimed interest of Rs.1,50,000/-paid on housing loan in the computation statement, but has not produced the Bank statement in respect of loan availed and payment of interest. He therefore, disallowed the claim of interest for all the relevant A.Ys. On appeal, the CIT (A) considered the additional evidence filed by the assessee in the form of copies of certificates dated 20.08.2007 by Indian Overseas Bank, R.P. Road, Secunderabad for the financial years 2005-06 and 2006-07, vide certificate dated 5.5.2008 for the financial year 2007-08, vide certificate dated 20.07.2009 for financial year 2008-09, wherein the payment of interest on housing loan by the assessee was confirmed. A remand report from the AO was called for who submitted that the loan was availed by three persons i.e the assessee, his wife Smt.D.Aparna Reddy and his brother Shri D. Srinivas Reddy and since the share of each persons was evidenced from the certificates, the AO suggested to disallow equally from on each of the assessee’s shares of interest. In rebuttal, the assessee stated that the entire loan taken from Indian Overseas Bank was utilized by the assessee for purchase of a house and therefore, interest amount is allowable from the income of the assessee only. The CIT (A) however, observed that the loan was a housing loan availed by three persons. Therefore, he directed the AO to allow only 1/3rd of the interest paid as being the assessee’s share of interest. The learned Counsel for the assessee submitted that though the loan was taken by three persons, the entire loan was utilized in construction of the house property by two people only, i.e.the assessee and his wife at Plot No.301, GR Elite, Road No.14, Banjara Hills, Hyderabad, and since he was offering the income from house property in his

hands, the entire interest amount were also to be allowed in his hands. These facts need verification by the AO i.e. whether that the entire rental income is offered in the hands of the assessee alone. Only if the assessee is offering the entire income in his hands, then the entire interest paid on the housing loan shall be allowed in the hands of the assessee. Therefore, the assessee's ground in all the AYs on this issue are treated as allowed for statistical purposes.

3. In the result, assessee's appeal for A.Y 2006-07 is treated as allowed for statistical purposes.

A.Y 2007-08

3. In the assessee's appeal for the A.Y 2007-08, the assessee has raised an additional ground against the addition of Rs.30.00 lakhs made by the AO u/s 68 of the Act and also addition of Rs.45,20,000 made by the AO u/s 68 of the Act disputing the credit allegedly received from his father-in-law Sri Rama Subba Reddy inspite of confirmation of his mother-in-law (since his father-in-law has passed away) filed by the assessee and also that the amount paid to the company and there was no cash credit in the a/c of the assessee.

4. Brief facts on this issue are that during the assessment proceedings u/s 143(3) r.w.s. 153A of the Act, the AO observed from the financial statement of the assessee that the assessee has received fresh loan during the year amounting to Rs.84,95,000/-. The assessee was therefore, asked to furnish the details of the creditors such as names and addresses of the

parties, their PAN Nos. etc. The assessee could not furnish the same and therefore, the AO treated the entire amount of Rs.84,95,000 as unexplained and brought it to tax. Aggrieved, the assessee preferred an appeal before the CIT (A) and also filed certain additional evidence in support of his contention explaining the unsecured loans. The CIT (A) called for a remand report from the AO. In the remand report dated 28.12.2015, the AO submitted that the confirmation letter of one Shri G. Somasekhara Reddy did not contain complete address, the confirmation letter of Smt. E. Lakshamma did not contain PAN and the bank statement furnished is not clear and in the case of Shri Madhusudan Reddy, no confirmation letter is filed. In reply to the remand report, the assessee submitted that with regard to the loan of Rs.9,75,000/- received from Shri Somasekhara Reddy, his PAN was provided and the amount was paid through cheque and directly credited to the a/c in the books of Sai Sudhir Infrastructure Ltd (SSIL). It was submitted that the cheque was received by SSIL and not by the assessee. With regard to the amount of Rs.30.00 lakhs alleged to have been received from Sri Rama Subba Reddy, which is confirmed by his wife Smt. E. Lakshamma, since he has passed away, the assessee submitted that her address was clearly mentioned in the letter of confirmation and that the amount was paid through Banking channels and the same was credited to the assessee's a/c. The CIT (A) has accepted the assessee's explanation with regard to the addition of Rs.9,75,000/- received from Shri Somasekhar Reddy and deleted the addition. However, with regard to the sum of Rs.30,00,000/- received from Shri Rama Subba Reddy, the CIT (A) held that the creditor is 85 years old and that the confirmation is by the wife of the person who has allegedly advanced free interest loan to the assessee. Holding that the assessee has not filed evidence with regard to the

creditworthiness of the husband of Smt. E. Lakshamma, he confirmed the addition of Rs.30.00 lakhs. With regard to the addition of Rs.45,20,000/- the loan allegedly received from Shri Madhusudan Reddy, the CIT (A) observed that the confirmation letter filed from Shri Madhusudan Reddy, cannot be accepted.

5. The learned Counsel for the assessee, while reiterating the submissions made before the AO, submitted that the sum of Rs.30.00 lakhs was received by the assessee from his father-in-law Shri Rama Subba Reddy from out of his agricultural income and that the same was received through Bank and the legal heirs confirmed the advance. Though we agree with the relationship of the assessee and creditor, we find that unless the details of the Bank A/c are furnished and it is proven that the amounts have been received through banking channels, the identity and creditworthiness of the said persons cannot be accepted. Therefore, we direct the AO to verify the Bank A/c of the assessee and to verify if the amount has been received through Banking channels and if it is found to have been credited to his Bank A/c, then this addition cannot be sustained. As regards the amount of Rs.45,20,000/- received from Sri G.Madhusudan Reddy, the assessee submitted that he has received the sum through cheque No.707006 on 17.01.2007 and it was deposited in the Bank A/c with M/s. Sai Sudheer Constructions and credited to the capital a/c of the assessee. This fact also needs verification by the AO, hence we direct the AO to verify the same and if it is found to have been credited to the assessee's Bank a/c, the disallowance cannot be sustained. Therefore, assessee's appeal for the A.Y 2007-08 is also partly allowed for statistical purposes.

A.Y 2008-09

6. In the A.Y 2008-09, other than disallowance of interest paid on loan obtained from the Indian Overseas Bank, the assessee has raised another ground against the addition of Rs.10.00 lakhs made by the AO u/s 68 of the Act. During the assessment proceedings, assessee could not establish the unsecured loan to the extent of Rs. 12,88,627/- as he did not furnish any details such as name and addresses of the creditors and their respective PAN Nos etc. Aggrieved by the addition made by the AO, the assessee preferred an appeal before the CIT (A), who granted relief in respect of loan received from assessee's wife Smt. D. Aparna Reddy for an amount of Rs.12,88,627/-. However, in respect of Rs.10.00 lakhs alleged to have been received from Obulapuram Mining Co. (P) Ltd, it was claimed to have been paid through banking channels and that the same was accounted for in the books of Sai Sudhir Infra Co. and the company in turn to the assessee's a/c. The assessee filed additional evidence before the CIT (A) and the CIT (A) had called for a remand report. On receipt of the remand report, the CIT (A) held that the details of the transaction for the alleged payment of Rs.10.00 lakhs are not furnished and therefore, it is not possible to infer that the transaction is not a revenue item. He accordingly confirmed the addition of Rs.10.00 lakhs. Before us, the learned Counsel for the assessee submitted that the amount was paid by Obulapuram Mining Co.(P) Ltd to Sai Sudhir Infra Co. by way of cheques and therefore, it could be accepted as additional evidence and the addition should be deleted. We find that the assessee has not given the details of the Bank A/c and the date on which M/s. Sai Sudhir Infra Co. has received the amount and in in turn, transferred the same to the assessee's company. If the assessee is

able to produce the details, then the addition may be deleted. The issue is therefore, remanded to the file of the AO afresh to enable the assessee to produce the relevant details and on verification of the same, if the AO found that the amount is received from Obulapuram Mining Co. (P) Ltd, into the books of Sai Sudhir Infra Co and from such A/c to the A/c of the assessee, then no addition can be made in the hands of the individual.

7. In the result, assessee's appeal for the A.Y 2008-09 is partly allowed for statistical purposes.

A.Y 2009-10

8. In the A.Y 2009-10, there is only one issue against the disallowance of interest on loan obtained from Indian Overseas Bank. For the detailed reasons given in the A.Y 2006-07, this appeal of the assessee is treated as allowed for statistical purposes.

A.Y 2010-11

9. In this appeal for this year, grounds 1 and 6 are general in nature and hence need no adjudication.

10. As regards Ground No.2, we find that the AO made the addition of Rs.20,00,000/- of the fresh loans received by the assessee during the relevant financial year because the assessee had furnished the information relating to these loans just before completing the assessment and the AO observed that this is done to avoid further enquiry into the genuineness of the loans. Before the CIT (A), the assessee submitted that it is a loan received from one Shri N. Ramaswamy vide cheque No.8821296 drawn on

Canara Bank and furnished the copy of the Bank statements. The CIT (A), however, confirmed the addition as the assessee failed to furnish the confirmation letter of Shri N. Ramaswamy who was also living in the same locality as the assessee.

11. Before us, though the learned Counsel for the assessee reiterated the submissions made before the authorities below and the learned DR supported the orders of the lower authorities, we find that it is not disputed that the amount was received through banking channels, thus identity of the remitter is confirmed. But, it does not prove the nature of the remittance, nor does it prove the creditworthiness of the creditor. The assessee has not filed any evidence to prove these two conditions even before us. Therefore, the addition of Rs.20,00,000/- is confirmed.

12. As regards grounds 4 and 5, brief facts are that during the financial year 2009-10, the assessee received gift of shares of 17,64,874 fully paid up equity shares of M/s. SSIL, whose fair market value was adopted @ Rs.33.20 ps per share, with an aggregate value of Rs.5,85,93,815/- vide separate gift deeds executed on 5.1.2010 in favour of the assessee by Sri E. Yella Reddy and Smt. El Sailaja Reddy also gifted 7,10,271 shares with an aggregate value of Rs.2,35,81,097/-. Thus the total value of the shares received as gift was Rs.8,21,74,914/-. The documents to this effect were found during the course of search and the assessee offered to admit the said sum as his undisclosed income in his individual hands, in the statement recorded during the course of search. However, the assessee failed to disclose the same in his return of income filed in response to the notice u/s 153A of the assessee. Therefore, AO required the assessee to

explain as to why the same should not brought to tax. At the fag end of the assessment proceedings, the assessee claimed it to be the property of the HUF of his maternal uncle and therefore, is a gift from a relative and not taxable. However, the AO did not accept this contention of the assessee and brought it to tax u/s 56(2) of the I.T. Act. Aggrieved, the assessee filed an appeal before the CIT (A) who confirmed the order of the AO and the assessee is in second appeal before us.

13. The learned Counsel for the assessee reiterated the submissions made before the authorities below. He stated that at the time of acquiring the shares worth Rs.3,25,000 in April, 1999 his cousin Shri E. Yella Reddy and his wife Smt. Sailaja Reddy had no funds to acquire such shares and that the funds were provided by the HUF of the assessee's maternal uncle Sri Venugopal Reddy, who is the father of Sri E. Yella Reddy. He submitted that these funds were derived from the agricultural operations carried out in the HUF property and hence the funds invested were HUF funds only and on the instructions of Sri Venugopal Reddy only, the shares were gifted to the assessee and hence it is a gift from a relative and not taxable u/s 56(2) of the Act. The learned DR, on the other hand, supported the orders of the authorities below.

14. Having regard to the rival contentions and the material on record, we find that the assessee is relying only on the affidavits of Sri Venugopala Reddy, Sri Ella Reddy and Smt. Sailaja Reddy in support of the above contentions. It is submitted that this is the only way possible to prove that the property belonged to the HUF, since the transaction was old. But, we are

unable to accept the contentions of the assessee. If the contentions of the assessee were true, then as rightly pointed out by the CIT (A), the assessee could have taken this stand before investigation team. In fact, he offered to admit it as his undisclosed income. He never mentioned that the shares were HUF property, but it was stated so only during the assessment proceedings. Therefore, we agree with the findings of the CIT (A) that the contentions of the persons who have given affidavits to the above effect are not verifiable or acceptable. We also agree with his findings that unless contrary is proved, the investment belonged to the person in whose name it stands. Therefore, the shares standing in the names of E. Yella Reddy and E. Sailaja Reddy belong to them only and though they are the cousins of the assessee, they do not fall within the meaning of a relative u/s 56(2) of the I.T. Act. Therefore, the grounds of appeal Nos. 4 and 5 are dismissed.

15. As regards Ground No.7, the assessee had shown agricultural income of Rs.26,57,500/- after deducting expenses incurred on agriculture of Rs.11,38,500/- but did not furnish any evidence in support of land holding, the expenditure claimed, nature of crops cultivated and evidence in support of sale of agricultural produce etc., Therefore, the AO treated the entire receipt of agricultural income of Rs.37,96,000/- as "income from other sources" . In the appeal before the CIT (A), the assessee produced the evidence that he was in possession of two parcels of land aggregating to 29.86 acres but did not produce any evidence that he has carried out agricultural operations or with regard to the expenditure claimed by the assessee. The CIT (A) had in fact called for a remand report from the AO wherein the AO reported

that the assessee is engaged in the business of construction activity and could not have undertaken agricultural activity on such scale and that there is no record of any agricultural activity that is maintained by the assessee. It was also submitted that there is no evidence of mango garden being there on the land. It was also submitted that the assessee has become the owner of the property only at the beginning of the financial year relevant to the A.Y 2010-11 and the recitals in the sale deed shows that there are two borewells and one well along with electricity connection and water share rights. Since there was no mention of mango garden in the sale deed and observing that the mango trees takes lot of time to grow and give crop, the agricultural income was not accepted by the CIT (A). He therefore, confirmed the addition made by the AO and the assessee is in second appeal before us. While the learned Counsel for the assessee reiterated the submissions made before the authorities below, the learned DR supported the orders of the authorities below.

16. Having regard to the rival contentions and the material on record, we find that the AO in the remand report has confirmed that the assessee is the owner of the land to the extent of nearly 30 acres. However, the possibility of the assessee getting the agricultural income is doubted by the CIT (A). When there are two bore wells and one well along with electricity connection, we doubt whether any person would keep the land idle. However, without any evidence as to records, the nature of the agricultural crops grown and the expenditure claimed by the assessee, the claim of the assessee cannot be accepted in toto. Therefore, the agricultural income can only be estimated at this stage. We therefore, deem it fit and proper to remand the issue to the file of

the AO to consider and estimate the agricultural income which could be derived from the land of 30 acres owned by the assessee for both the A.Ys 2010-11 and 2011-12. We find that this is the only ground of appeal in the case of the assessee for the A.Y 2011-12. Thus, the appeals of the assessee for the A.Ys 2010-11 and 2011-12 are partly allowed.

17. In the result, appeals of the assessee are partly allowed.

Order pronounced in the Open Court on 29th October, 2019.

Sd/- (S. RIFAUR RAHMAN) ACCOUNTANT MEMBER	Sd/- (P. MADHAVI DEVI) JUDICIAL MEMBER
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Hyderabad, dated 29th October, 2019.

Vinodan/sps

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By Order