

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

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER

I.T.A. No. 2002/HYD/2018

Assessment Year: 2009-10

Polu Jitender Reddy, Vellanki (V), Ramannapet (M) [PAN: AHLPP6612R]	Vs	Income Tax Officer, Ward-1, Suryapet
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(Appellant)

(Respondent)

For Assessee	:	Shri Jella Nagaraj, AR
For Revenue	:	Smt. E.A. Hangal, DR

Date of Hearing	:	13-11-2019
Date of Pronouncement	:	15-11-2019

ORDER

This appeal filed by the assessee for the AY.2009-10, is directed against the order of the Commissioner of Income Tax (Appeals)-3, Hyderabad, dated 10-08-2017.

2. At the outset, it is seen that there is a delay of 322 (Three Hundred and Twenty Two) days in filing of the appeal before the Tribunal. The assessee has filed an application for condonation of delay along with an affidavit, explaining the reasons for the delay. It is stated that the assessee has received the order of CIT(A) on 18-09-2017 and the period of 60 days for filing of the appeal before the Tribunal ended on 19-11-2017. The assessee submitted that the delay is caused for the reason of continuous ill-health of the assessee due to bike accident, which has occurred in his village, while driving to his home on 15-03-2017 and diagnosed as injury to

Rt.Brachial Plexus, due to which, the assessee was continuously undergoing treatment of degenerative changes in the cervical and lumbar spine. He has also enclosed the necessary medical certificates in support of the said contentions.

3. Ld.DR was also heard, who opposed the condonation of delay.

4. Having regard to the fact that the assessee met with an accident and was under a continuous treatment, as is evident from the medical reports filed before the Tribunal, I am inclined to condone the delay of 322 (Three Hundred and Twenty Two) days in filing of the appeal before the Tribunal.

4.1. As regards the merits of the issue, the brief facts are that the assessee along with 8 (eight) others had entered into an Agreement of Sale cum GPA with possession on 15-12-2008 with one Smt. B.Bhavani, and the transaction was registered vide Document No.2559/2008. The Assessing Officer (AO) observed that the assessees have purchased total of 4800 Sq.Ft., plinth area along with un-divided extent of land measuring 540 Sq.Yards for a consideration of Rs.2,20,00,000/- and the assessee's share of the property is Rs.24,73,188/-, after considering the stamp duty of Rs.2,58,700/- also.

4.2. Since the assessee had filed his return of income on 24-06-2010 admitting net income of only Rs.32,089/-, the AO

re-opened the assessment by issuance of a notice u/s.148 of the Income Tax Act. In response to the said notice, the assessee appeared and furnished information and stated that the agreement of sale was subsequently cancelled due to unavoidable circumstances before payment of balance amount. It was also submitted that the sources of the said payment were his personal savings, out of income earned by him from agricultural operations and sale of agricultural lands in earlier years. He also stated that the refund of the said amount on the cancellation of agreement was utilised for his daughter's marriage. In support thereof, he also submitted the details of the agricultural lands held by him and his family members such as Pattadar Pass Books and extent of land-holdings etc. The AO, however, held that the agreement of sale was cancelled subsequently, but the assessee was in possession of the amount paid and that agricultural land-holdings do not prove that the assessee had such huge funds. He therefore treated the sum of Rs.24,17,633/- as 'un-explained money' and brought it to tax.

Aggrieved, the assessee filed an appeal before the CIT(A), who disposed-of by confirming the assessment order since the assessee did not appear before the CIT(A) and the assessee is in second appeal before the Tribunal.

4.3. Ld.Counsel for the assessee reiterated the submissions made before the authorities below and also submitted that all the relevant documents were filed before the AO, who has not considered the same and has treated the entire amount as 'assessee's un-explained money', without giving any weightage

for the agricultural income, which could be earned from such agricultural land to the extent of Rs.45.42 acres.

4.4. Having regard to the rival contentions and material on record, I find that relevant material to prove the agricultural income was filed before the AO, but the AO has not considered the same and the CIT(A) confirmed the order because the assessee did not appear before him. Thus, the evidence filed by the assessee has not been explained at all. Therefore, I am inclined to set aside the issue to the file of AO for the limited purpose of verifying the extent of land-holdings of assessee and his family and if the land-holding as claimed by the assessee found to be correct, then the net income therefrom shall be estimated at Rs.25,000/- per acre, per Annum and the sum of Rs.11,50,000/- can be accepted and also a sum of Rs.4 Lakhs can be considered as reasonable income available with the assessee from the past years. Only the balance can be treated as 'un-explained investment'. The AO is directed accordingly.

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

Order pronounced in the open court on 15th November, 2019

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated: 15-11-2019

Copy to :

- 1. Polu Jitender Reddy, Vellanki (V), Ramannapet (M), Yadadri Bhongir.*
- 2. Income Tax Officer, Ward-1, Suryapet.*
- 3. CIT(Appeals)-3, Hyderabad.*
- 4. Pr.CIT-3, Hyderabad.*
- 5. D.R. ITAT, Hyderabad.*
- 6. Guard File.*