

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

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

ITA No.783/Hyd/2019		
Assessment Year: 2010-11		
Shri Ramakrishna Kanderi Chittoor PAN: AHPPK4046A (Appellant)	Vs.	Income Tax Officer Ward 1 Chittoor (Respondent)
Assessee by:	Sri K.A. Sai Prasad	
Revenue by:	Smt. N. Swapna, DR	
Date of hearing:	13/11/2019	
Date of pronouncement:	15/11/2019	

**ORDER**

This is assessee's appeal for the A.Y 2010-11 against the order of the CIT (A)-Tirupati, dated 15.02.2019. At the outset, it is seen that there is a delay of 15 days in filing of the appeal before this Tribunal and the assessee has filed an application for condonation of delay stating that the assessee was suffering from severe heart problem and was taking bed rest due to which he could not inform his Authorised Representative immediately which has resulted in the delay of 15 days. Taking the same into consideration, I am inclined to condone the delay and the appeal is admitted and adjudicated as under.

2. Brief facts of the case are that the assessee, an individual, engaged in the business of real estate, filed his return of income for the A.Ys 2009-10 and 2010-11 on 27.06.2012 declaring total income of Rs.1,63,665/- and Rs.3,30,060/- respectively. Thereafter, the AO received the case on transfer from

ITO Ward-2 (2) Agra on 13.03.2017 and the AO observed that the assessee made SB deposits during the financial years 2009-10 to the tune of Rs.13,06,000/- with Karnataka Bank Ltd, Karnataka. He also observed that as per the balance sheet for the A.Y 2009-10, the opening capital was Rs.12,69,210/- and the closing capital was Rs.41,61,197/-. The increase in capital is explained as gifts amounting to Rs.25,00,000/- received from his brother, sister and wife. As per the balance sheet for the financial year 2010-11, the AO observed that there is an increase in assessee's capital a/c to the tune of Rs.34,71,191/- which again was explained as gifts received to the tune of Rs.30,00,000/- from his brother and sisters. Observing that the assessee is a real estate dealer and is doing ventures at Bangalore, the AO observed that these returns are the first returns of income filed by the assessee and is evidently to capital build up returns.

3. Based on the information received, a notice u/s 148 of the Act was issued to the assessee on 30.03.2017 after obtaining necessary approval from the Pr. CIT, Tirupati Range, Tirupati. The assessee was asked to produce certain details during the course of hearing. The assessee submitted that the gifts are from his brother Tirupal Naidu of Rs.10.00 lakhs for each of the A.Ys from Smt. Vani of Rs.5.00 lakhs for A.Y 2009-10 and from his sister Smt. Vinayakamma of Rs.10.00 lakhs for the A.Ys and from Smt. Muniratnamma (sister-cum-mother-in-law) of Rs.10.00 lakhs for the A.Y 2010-11. The AO observed that the assessee's wife Smt. Vani is an income-tax assessee and filing her returns of income, but the other persons are not income-tax assesseees and are stated to be agriculturists. He observed that the assessee's mother-in-law expired during 2011, and she had 8 acres of

agricultural land consisting of 3 acres of mango gardens and 5 acres of sugarcane and she had transferred 8 acres of land to her son and had given a cash of Rs.10.00 lakhs to her daughter Mrs. Vani which she had advanced to her husband during the A.Y 2009-10. The AO therefore, accepted the gift of Rs.10.00 lakhs from Mrs. Vani.

4. As regards gifts from Shri Tirupal Naidu, AO observed that he owned 12 acres of agricultural wet land in which paddy, sugarcane and groundnut are cultivated. Further, on estimation basis, the net agricultural income from 12 acres of land was estimated by the AO at Rs.6.00 to 7.00 lakhs and hence that the income available for gifting was Rs.5.00 lakhs only per year. Therefore, he treated Shri Tirupal Naidu as unexplained creditor to the extent of Rs.5.00 lakhs for each of the A.Y. As regards gift from Smti Vinayakamma, assessee's sister, the assessee did not produce any evidence to prove her creditworthiness. Therefore, the AO treated the sum of Rs.10.00 lakhs allegedly gifted by her during both the A.Ys as also unexplained. Therefore, he treated the sum of Rs.15.00 lakhs for the A.Y 2009-10 and also Rs.15.00 lakhs for the A.Y 2010-11 as unexplained investment for the A.Y 2010-11 because the assessee had purchased a property at Bingeपुर, Bangalore for Rs.46.91 lakhs during the A.Y 2010-11. Since the assessee had explained the sources for the investment as gifts stated to have been received during the financial years relevant to the A.Ys 2009-10 and 2010-11 he brought the entire sum of Rs.30.00 lakhs to tax in the hands of the assessee in the A.Y 2010-11. Aggrieved, the assessee preferred an appeal before the CIT (A) who confirmed the order of the AO and the assessee is in second appeal before the Tribunal.

5. The learned Counsel for the assessee submitted that the AO himself has recorded that there are gifts/credits received by the assessee during the financial years 2008-09 relevant to A.Y 2009-10 and also during the financial year 2009-10 relevant to the A.Y 2010-11. He submitted that the credits, which according to the AO, are not explained for the A.Y 2009-10, can only be brought to tax in the A.Y 2009-10 and cannot be brought to tax in the A.Y 2010-11. As regards the addition of Rs.5.00 lakhs during the A.Y 2010-11 i.e. gifts/credits received from Shri Tirupati Naidu, the assessee submitted that the AO has accepted the agricultural income of Rs.10.00 lakhs in the hands of Smt. Muniratnamma from 8 acres of agricultural land, whereas Shri Tirupal Naidu had 12 acres of agricultural land. The AO has estimated the income only at Rs.6.00 to 7.00 lakhs. He submitted that the AO ought to have accepted Rs.20.00 lakhs as the income from the agricultural land of 12 acres in the hands of Sri Tirupal Naidu. Therefore, he sought to delete the addition of Rs.5.00 lakhs made in the A.Y 2010-11. As regards the credit from Smt. Vinayakamma is concerned, he expressed his inability to produce any evidence at this stage to prove her creditworthiness.

6. The learned DR, on the other hand, supported the orders of the authorities below and also placed reliance on the decision of the Hon'ble Supreme Court in the case of E. Ummer Bava vs. CIT reported in (2017) 77 Taxmann.com 1 (S.C) and Hon'ble Punjab & Haryana High Court in the case of Tirath Ram Gupta vs. CIT reported in (2009) 177 Taxmann 294 (P&H). He submitted that the assessee could not prove the source of investment during the A.Y 2010-11, due to which the AO has

brought the unexplained investment to tax during the A.Y 2010-11 and therefore, both the additions have to be sustained.

7. Having regard to the rival contentions and the material on record, I find that both the AO as well as the CIT (A) have accepted that there are receipts by the assessee from his relatives both during the relevant A.Ys 2009-10 & 2010-11. Once it is accepted that the receipts are during the F.Y 2008-09 relevant to the A.Y 2009-10, they cannot be brought to tax in the A.Y 2010-11. Therefore, I delete the addition of Rs.15.00 lakhs being the addition towards unexplained receipts for the A.Y 2009-10.

8. As regards the unexplained receipts of Rs.10.00 lakhs from Smt. Vinayakamma is concerned, I find that the assessee has not been able to produce any evidence in support of the creditworthiness of the creditor and therefore, the same is confirmed.

9. However, with regard to the credit from Shri Tirupal Naidu, holding 12 acres of agricultural wet land in which paddy, sugarcane and groundnut is cultivated, the AO has accepted Rs.10.00 lakhs as income available for gifting for both the A.Ys put together. Therefore, I agree with the contention of the assessee that if the AO has accepted that the assessee's mother-in-law could have gifted Rs.10.00 lakhs to her daughter Smt. Vani in a year from out of 8 acres of agricultural land, then he ought to have accepted that Rs.10.00 lakhs per year could be the agricultural income available from 12 acres of agricultural land to be advanced by him. Therefore, the addition of unexplained

investment from Shri Tirupati Naidu of Rs.5.00 lakhs for both the A.Ys is also deleted.

10. The decisions relied upon by the learned DR are distinguishable on facts. In the case of Tirath Ram Gupta vs. CIT (Supra), it is the case of a gift which is unexplained, whereas the assessee though initially has claimed the receipts as gift, but has ultimately, at the time of hearing, had given up the claim and had only claimed it as credit. Further, in this case, the AO and the CIT (A) have accepted partially the creditworthiness of Shri Tirupal Naidu and therefore, the said decision cannot be applied to the case in hand. Even in the case of E. Ummer Bava vs, CIT (Supra), the Hon'ble Supreme Court was considering the case of a gift of Rs.35.00 lakhs from the assessee's brother and NRI and the Hon'ble Supreme Court held that where the assessee failed to establish the creditworthiness of the donor and genuineness of the transactions, the additions deserved to be upheld. In the case of the assessee before us, the genuineness of the transactions as well as the creditworthiness of the creditors has been proved. Therefore, this decision is also not applicable to the case in hand.

11. In the result, assessee's appeal is partly allowed.

Order pronounced in the Open Court on 15<sup>th</sup> November, 2019.

**Sd/-**

**(P. MADHAVI DEVI)  
JUDICIAL MEMBER**

Hyderabad, dated 15<sup>th</sup> November, 2019.

***Vinodan/sps***

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- 3 CIT (A)-Tirupati
- 4 Pr. CIT - Tirupati
- 5 The DR, ITAT Hyderabad
- 6 Guard File

*By Order*