

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD 'SMC-A' BENCH : Hyderabad**

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

**ITA No. 1174/Hyd./2017**

**Assessment Year: 2009-10**

Sri M. Laxmi Rajendra Prasad  
Hyderabad.

vs. ITO, Ward 12 (3)  
Hyderabad.

PAN: ALUPM4236F

**(Appellant)**

**(Respondent)**

**For Assessee:** Sh. P.Murali Mohan Rao, A.R.

**For Revenue:** Sh. N. Murthy Naik, D.R.

**Date of Hearing** : 09/12/2019

**Date of Pronouncement** : 13/12 /2019

**ORDER**

This is assessee's appeal for A.Y. 2009-10 against the order of the Ld.CIT(A)-1, Hyderabad dated 14.02.2017.

**2.** Brief facts of the case are that the assessee an individual and employee in the Ordnance Factory, Yeddumailaram, Medak Dt. filed his return of income on 29.07.2009 for AY 2008-09 declaring Rs.1,18,931/- as income from salary. During the assessment proceedings u/s 143(3) of the I.T. Act, 1961 (the Act), pursuant to selection by CASS, the return was picked up for scrutiny and the assessee filed the information called for.

**2.1.** On verification of the bank account statement, the Assessing Officer observed that there are cash deposits of Rs.19,78,370/- in the account maintained by the assessee in Oriental Bank of Commerce, Chanda Nagar Branch, Hyderabad. When the assessee was asked to explain the sources of these cash deposits, the assessee stated that it is a joint account held by him along with his wife Smt.M. Venkata Lakshmi and that the sources of deposits were personal loans taken by the assessee and his wife of Rs.1 lakh each on 14.10.2008, and gold loans taken by both of them on 07.02.2009 of Rs.2

lakhs totalling to Rs.4 lakhs. With regard to the balance of Rs.14.8 lakhs, the assessee stated that his wife received non-refundable money of Rs.14.8 lakhs from her parents and close relatives. The assessee furnished confirmation letters also to the extent of Rs.11,25,000/-, except for the confirmation letter from Sh. V. Narayana Swamy to the extent of Rs.2,30,000/-. The assessee also enclosed copy of Pattadar Pass books in some cases to demonstrate their credit worthiness. However, the AO was not satisfied with the assessee's explanation and held that the assessee could not provide the reason as to why these amounts were given to his wife by her parents and relatives. He held that there is no consistency in the assessee's stand and the sources for advancing the amounts is not substantiated with proper evidence. He also held that the credit worthiness of the donors for advancing the loans to his wife was not proved. Hence he treated unexplained cash credits of Rs.14,80,000/- as income of the assessee and brought it to tax.

**2.2.** Aggrieved, the assessee preferred an appeal before the CIT(A). The CIT(A) called for a remand report from the AO on the evidence filed by the assessee. The AO submitted his remand report on 05.01.2017 stating that the confirmations filed by the assessee had neither PAN numbers nor bank account numbers and creditors have allegedly given loans in cash and also that the assessee did not produce the donors. Taking the same into consideration the CIT(A) confirmed the order of the AO.

**2.3.** Against the order of the CIT(A), the assessee is in second appeal before the Tribunal by raising the following grounds of appeal.

*"1. The CIT Appeals -1. erred in confirming the additions made amounting to Rs. 14,80,000/- towards the cash Gift received from the relatives and the amount received by the Assessee's wife and not by the Assessee himself which has been added by the Assessing officer while passing the order which is not correct and not justified in facts and in law and both.*

*2. The CIT Appeals -1 erred in confirming the action of the Assessing officer which is not justified as if the gift is to be added/disallowed it should have been added in the hand of the Assessee's wife and in the hand of the Assessee.*

*3. The CIT Appeals -1 erred while not considering that the assessee has already furnished the Confirmation letters from the above relatives who has gifted the cash to the wife of the Assessee*

4. The CIT Appeals - 1 erred in confirming the order where in all the relative are the identified and genuine persons from whom the cash gift has been received by the assessee on various family functions occasion which should have been considered and cannot be added in the hands of the assessee.

5. The CIT Appeals - 1 erred in confirming the additions towards the Cash Gift from the relatives to the wife of the assessee where in all the persons are having MDHAR/PAN No. whose identify and genuineness and their creditworthiness can be established and the additions confirmed is not justified.

6. The Assessee is having Affidavit from the above persons which can also be produced which can be relied upon as Cash Gift has been given by them and the additions can be deleted.

7. The CIT Appeals-1 erred while confirming the additions which is not correct and not justified as the assessee has plans to purchase the House Property but could not purchased due to some difficulties.

8. The CIT Appeals -1 erred in confirming the additions towards the GIFT in the hands of assessee which has not been received by him at all and the same cannot be added in the hands of Assessee.

9. The Assessee may add, alter, or modify or substitute any of the above grounds before or at time of hearing of the Appeal.”

**3.** The Ld.Counsel for the assessee, while reiterating the submissions made before the authorities below, submitted that the gifts were given by the relatives of assessee's wife Smt.M.Venkata Lakshmi so that she and the assessee could purchase a house. He submitted that the identity of the donors is proved by way of their Aadhar Cards and the credit worthiness is proved by the extent of land held by each of them and also the agricultural income derived therefrom. He submitted that it is not necessary that all the creditors have PAN numbers and since all of their income was from agriculture, the same was exempt from tax, and, therefore, there is no requirement of such persons to be having PAN numbers. He submitted that the AO and the CIT(A) have refused to accept the evidence filed by the assessee only on the ground that they have not given the PAN numbers and back account numbers in their confirmations. He submitted that admittedly the gifts were given in cash and as long as the donors have proved their credit worthiness, the same should be accepted and particularly due to the relationship between the donors and assessee's wife. The Ld.Counsel for the assessee also placed reliance upon the following case laws for the proposition

that the assessee has no onus to prove the genuineness of the source of sources and that the gifts from relatives cannot be ruled out.

- (i) CIT vs. Orissa Corporation Pvt. Ltd. (SC) 25 Taxman 80F
- (ii) ITO, International Taxation-II vs. Venu Myneni, ITAT Hyderabad in ITA No.2094/Hyd/17
- (iii) ITO vs. Umesh N Shammana, ITAT, Delhi Bench in ITA 5185/Del/2011
- (iv) ITO vs. Deepak Walia, ITAT Delhi Bench in ITA 3154/Del/2018
- (v) ITO COD vs. Smt. Parul Kapil Jain, ITAT Mumbai Bench in ITA no.6710/Mum/2012.

**3.1.** The Ld.DR, however, supported the orders of the authorities below.

**4.** Having regard to the rival contentions and material placed on record, I find that the relationship between the donors and the assessee and his wife is not questioned by the department. Therefore, the gifts from relatives can be accepted provided the credit worthiness of the donors is proved. The department has also accepted the identity of the donors. As regards the credit worthiness is concerned, I find that though the CIT(A) has called for a remand report from the AO, AO has not given any finding on the acceptability of the agricultural income from the land held by the donors. As seen from the evidence filed before the Tribunal, I find that the one of the donors is holding agricultural land to the extent of 23 acres while some others are holding to the extent of 2.75 acres. Further, it is seen that all of them are cultivating land as is evident from the Certificates given by the Govt. Authorities. In such circumstances, the availability of agricultural income in the hands of such persons cannot be ruled out.

**4.1.** However, since none of the authorities below have examined the evidence, I find it necessary to remand the issue to the file of the AO with a direction to verify the land holdings of each of the persons and if it is found to be correct, then the gifts given by such persons shall be accepted. For the limited purpose of verifying the land holdings of each of the persons, the matter is remitted back to the file of A.O.

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

Order pronounced in Open Court on 13<sup>th</sup> December, 2019.

Sd/-

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

Dated: the 13<sup>th</sup> December, 2019.

*\*G.M.V.\**

Copy forwarded to:

1. Sri Laxmi Rajendra Prasad, C/o P. Murali & Co. Chartered Accountants, 6-3-655/2/3, Somajiguda, Hyderabad 500 082.
2. ITO, Ward 12(3), Hyderabad
3. ACIT, Range 12, Hyderabad
4. The Pr.CIT-1, Hyderabad
5. D.R. ITAT Hyderabad
6. Guard File

// C o p y //

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