

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

BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER

**ITA No. 2070/HYD/2018
(Asst. Year : 2012-13)**

Venkata Satya Surya Sree vs. ITO, Ward-14(1),
Ranganadha Raju Alluri, Hyderabad.
Plot No. 226, R.No. 78, Jubilee
Hills, Hyderabad.

PAN No. AXXPA 0703 E (Appellant) (Respondent)

Assessee by : Shri K.C. Devdas – AR.
Department By : Shri Kiran Katta – Sr.DR

Date of hearing : 02/12/2019.
Date of pronouncement : 22/01/2020.

ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-6, Hyderabad, dated 18/06/2018 for the Assessment Year 2012-13.

2. Facts of the case, in brief, are that a search and seizure operation u/sec. 132 of the Income Tax Act, 1961 (hereinafter referred to as "Act") was conducted in the case of M/s. Arihant Educational Society at Bommakal Village, Karimnagar on 25/07/2013 which is running a medical college in the name of Chalimeda Ananda Rao Institute of Medical Science (CAIMS).

During the course of search and seizure operation evidences indicating collection of capitation fees/donation over and above the regular fee fixed by the Government for management quota seats in medical college were found and seized. As per the information received from the office of the DCIT, Central Circle-2(2), Hyderabad, it was noticed that the assessee has paid Rs.30.00 lakhs (over and above the regular fee) towards admission of his son Dr. Alluri Rajesh Verma in P.G. course for the academic year 2011-12. The information received by the DCIT, Central Circle-2(2), Hyderabad, is extracted as under:-

Student's Name	Father's Name	Prescribed fee paid	Address and contact No.	Amount paid in cash over and above prescribed fee	Dates of payments
Dr. Alluri Rajesh Verma	A. Venkata Sathya Surya Rangananda Raju	15,75,000	Plot No. 226, Road No. 78, Jubilee Hills, Hyderabad.	30,00,000	03/05/2012 (Rs. 5.25 lakhs online)
					15/04/2011 (Rs.10.00 lakhs)
					27/05/2011 (Rs. 5.00 lakhs)
					28/05/2011 (Rs. 5.00 lakhs)
					31/05/2011 (Rs. 5.00 lakhs)
					07/07/2011 (Rs. 5.00 lakhs)

In view of the above, a notice u/sec. 153C dated 15/03/2017 was issued and served on the assessee. In reply, the assessee filed his return of income for the A.Y. 2013-14 on 26/04/2017 by

declaring NIL income. Subsequently, the Assessing Officer has issued notices u/sec. 143(2) & 142(1) and called the assessee to file certain information. During the course of assessment proceedings, the assessee has submitted that he has not paid any amount from his source to M/s. Arihant Educational Society towards fee/capitation fee and paid the same from the following family members:-

Date	Name of Payer	Amount (Rs.)	Mode of payment
28/04/2011	A. Rajesh Verma (Son)	5,79,600/-	DD
02/05/2012	A. Satyavathi Raju (wife)	5,25,000/-	RTGS
05/11/2013	A. Rakesh Verma (Son)	5,25,000/-	DD

The assessee was asked to produce the source of income of his son. However, the assessee failed to produce the source of income neither in his own hand nor in the hands of his son. Hence, addition of Rs. 35,79,600/- (Rs. 30,00,000 + Rs.5,79,600) is treated as unexplained cash credits in the hands of the assessee and added the same to the total income of the assessee.

3. On being aggrieved, assessee carried the matter in appeal before the Id. CIT(A). So far as entry of Rs.30.00 lakhs found in the books of account of M/s. Arihant Educational Society is concerned, the Id. CIT(A) gave a finding that the documents seized by the department u/sec. 132 is corroborative by the

statement given by the cashier of the college. It is conclusively proved that the assessee has made payment to the extent of Rs.30.00 lakhs during the F.Y.2011-12 relevant to the A.Y. 2012-13 in connection with getting P.G. admission under the management quota in the medical college. This amount was paid by the assessee over and above the regular fee prescribed by the Government. With this observation, the Id. CIT(A) confirmed the order of the Assessing Officer.

4. Before me, Id. counsel for the assessee has submitted the entry made in the books of account of the medical college and also the statement given by the cashier of the college, cannot be considered as conclusive proof. As per section 292C, any material found in the possession of a person is presumed to be belonging to that person whose possession the material is found. In this case, the seized material was found in the premises of the college and therefore it has to be presumed that the seized material is belonging to the college. The addition solely based on the seized material is not valid, if at all the addition has to be sustained, an opportunity should be given to the assessee to cross-examine the cashier of the college who gave statement u/sec. 132(4) of the Act. For that, he relied on the decision of the Hon'ble Supreme

Court in the case of *Andaman Timber Industries Vs. Commissioner of Central Excise* [(2015) 281 CTR 214 (SC)] and submitted that addition cannot be survived.

5. Ld.DR submitted that addition is made on the basis of seized material, therefore no interference is warranted.

6. I have heard both the parties, perused the material available on record and gone through the orders of the authorities below.

7. There is a search and seizure carried on in the case of M/s.Arihant Educational Society where seized material was found to the extent of Rs. 30.00 lakhs. A statement of the cashier was recorded u/sec. 132(4) and accordingly issued notices to the assessee calling explanation in respect of cash payment made by the assessee relating to the admission of his son into P.G. medical course under management quota. The assessee categorically explained that he has not paid any amount over and above the fee as prescribed by the Government. However, the Assessing Officer not accepted the explanation of the assessee and based on the seized material and statement of the cashier, addition of Rs. 30.00 lakhs was made as unexplained source in the hands of the assessee, the same is confirmed by the Id. CIT(A) in appeal. According to the Id. CIT(A), seized material and statement given

by the cashier of the medical college is conclusive proof, hence, addition made by the Assessing Officer was confirmed. I find that when the seized material was found in the premises of the college, it has to be presumed that it belonging to the college. When the addition is proposed in the hands of the assessee and when assessee has specifically denied, the Assessing Officer should have given opportunity to cross-examine the cashier and thereafter he has to pass the assessment order. In this case, without giving opportunity to the assessee to cross-examine the person who has given statement u/sec. 132(4) on behalf of the college, simply addition was made on the basis of seized material, in my view, is not correct. I, therefore of the opinion that the addition made by the Assessing Officer and confirmed by the Id. CIT(A) cannot survive. Accordingly, addition is deleted.

8. So far as the judgment of the Hon'ble Supreme Court in the case of *Andaman Timber Industries (supra)*, the Apex Court has expressed a view that failure to give the assessee the right to cross-examine witnesses whose statements are relied upon results in breach of principles of natural justice. It is a serious flaw which renders the order a nullity. In the present case, the Assessing Officer based on the seized material and statement given by the

cashier of the college addition was made. Therefore, the addition is based on the statement of the third party though assessee has not specifically asked for cross examination, it is the duty of the Assessing Officer to give opportunity to the assessee and allow him cross-examination. In this case, the assessee specifically denied that he has not paid any amount other than the amount paid by him as per the Government prescribed fee. Keeping in view of the principles laid down by the Hon'ble Supreme Court in the above referred to case, the addition made by the Assessing Officer has to be deleted and the order of the Id. CIT(A) has to be cancelled. Accordingly, I find that the order passed by the Id.CIT(A) is not correct therefore same is cancelled.

9. So far as addition in respect of Rs. 5,79,600/- is concerned, though the assessee has not explained the source before the Assessing Officer, it is submitted that assessee's son has received gift from his close relatives and the same is paid through demand draft. The Id. CIT(A) has simply discarded the explanation given by the assessee by saying that there is no source of income for payment made by the assessee's son to the extent of Rs.5,79,600/- and confirmed the addition. The case of the assessee is that his son has received gifts from his relatives for

admission in P.G. college and the amount was paid through demand draft. The assessee also filed all the bank statements in the form of paper book at page Nos. 25 to 32. By considering the explanation given by the assessee and also bank statements, I find that Id. CIT(A) simply rejected the explanation of the assessee without giving any reason that the transaction is not genuine and the assessee's son has no other source. The assessee has given a detailed explanation and filed bank statements and particularly payment is made through demand draft. The assessee particularly submitted before the Id. CIT(A) that his relatives have contributed for payment of fee and the same is deposited in the bank account and paid through demand draft, in my opinion, addition cannot be made on the basis of suspicious without there being any basis. If at all, the Assessing Officer is having any doubt about the donations received by the assessee, he ought to have summoned the donor and called the explanation and thereafter decide the issue. Without making any effort, simply making the addition on the basis of suspension is not correct. Thus, I find that the addition made by the Assessing Officer cannot survive and the same is deleted. In view of the

above, I reverse the order passed by the Id. CIT(A) and allow the appeal of the assessee.

10. In the result, appeal filed by the assessee is allowed.

Order Pronounced on this 22nd day of Jan., 2020.

Sd/-
(V. DURGA RAO)
Judicial Member

Dated: 22nd January, 2020.

vr/-

Copy to:

1. *The Assessee – Venkata Satya Surya Sree Ranganadha Raju Alluri, Plot No. 226, Road No. 78, Jubilee Hills, Hyderabad.*
2. *The Revenue – ITO, Ward-14(1), Hyderabad.*
3. *The Pr.CIT-6, Hyderabad.*
4. *The CIT(A)-6, Hyderabad.*
5. *The D.R., Hyderabad.*
6. *Guard file.*

By order

Sr. Private Secretary,
ITAT, Visakhapatnam.