

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

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

**ITA No. 1310/HYD/2018
(Asst. Year : 2009-10)**

Smt. B. Sharmila Reddy,
Flat No. 2A, Sri Sai Krishna
Apartments, Hindi Nagar,
Punjagutta, Hyderabad.

vs. ITO, Ward-6(4),
Hyderabad.

PAN No. AEPPB 6836 C
(Appellant)

(Respondent)

Assessee by : Shri B. Shanti Kumar – 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 23/02/2018 for the Assessment Year 2009-10.

2. Facts of the case, in brief, are that assessee is an individual filed her return of income by admitting total income of Rs.2,27,520/-. The return filed by the assessee was processed u/sec. 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'Act') and after following due procedure assessment was completed u/sec. 143(3) dated 28/12/2011. During the course of

assessment proceedings, the Assessing Officer has noted that assessee has made cash deposits to the tune of Rs. 21,49,010/- in her savings bank account maintained with ICICI Bench, S.R.Nagar Branch. During the course of assessment proceedings, the assessee was asked to explain the sources for the credits in the bank accounts including cash deposits along with necessary and sufficient evidence. The assessee submitted the details of credits in the said bank account on 22/12/2011. As seen from the same, the sources for the cash deposits are mainly out of her cash withdrawals and more specifically amounts received from parents and her husband. The details of the cash receipts are as follows:-

Sri B. Venkat Ram Reddy	Husband	Rs. 6,85,000
Sri V. Venkata Narayana Reddy	Father	Rs. 7,00,000
Smt. V. Girijamma	Mother	Rs. 3,00,000

The Assessing Officer further observed that the assessee failed to file confirmation letter from her husband. Considering the same and also taken into account that he is assessed to income-tax, the sources for cash deposits received from her husband is accepted. However, cash received from her parents, no confirmation letters have been filed, she has filed only Pattadar Passbook, but no details of crops grown, net agricultural income and other relevant evidence are furnished. Except filing of land

documents, the assessee has not given any proof or evidence that her parents are having such substantial income and therefore the assessee failed to prove the genuineness and creditworthiness of the transactions. Accordingly, the amount received from her parents to the tune of Rs. 10.00 lakhs has been treated as unexplained investment and added back in the hands of the assessee.

3. On appeal, Id. CIT(A) has not accepted that the land holdings of the assessee's father and mother and by adopting theory of human probability came to a conclusion that the transactions are not genuine transactions and the assessee failed to prove the creditworthiness and confirmed the order of the Assessing Officer.

4. Ld. counsel for the assessee has submitted that assessee's father is having 16 acres of mango garden and 55 acres of wet land and assessee's mother is also having 16 acres of mango garden and 5 acres of wet land. All the details in respect of these amounts i.e. pattadaar passbook and adangal have been filed before the Id. CIT(A) and submitted that Id. CIT(A) is not correct in confirming the order of the Assessing Officer.

5. Ld.DR relied on the orders of the authorities below.

6. I find that the assessee's father has 16 acres of mango garden and 55 acres of wet land and in wet land he is carrying

agricultural activities of paddy, sugarcane and other commercial crops and assessee's mother is also having 16 acres of mango garden and 5 acres of wet land. The Id. CIT(A) has proceeded with a theory of human probability and observed that genuineness of the transactions and creditworthiness of the parents are not proved, therefore addition is confirmed. When the assessee's parents are having huge extent of lands near about 32 acres of mango garden and 60 acres of wet land, addition confirmed by the Id. CIT(A) by applying human probability theory, in my opinion, is not correct. I find that the order passed by the Id. CIT(A) is on hyper technical manner without considering the huge extent of mango garden and also agricultural activities carried by the parents. When the assessee's parents are carrying agricultural activities and gifted money to their daughter, it has to be understood in the context of relationship between the parents and the daughter and not in a commercial angle by applying human probability theory. If the Assessing Officer or the Id. CIT(A) having any doubt, they have to establish that money has been transferred from assessee to her parents, there is no finding at all to show that the assessee's money has been transferred to the parents of the assessee and the same money has gifted to the assessee. Therefore, by considering the entire facts and

circumstances of the case and by considering the relevant details i.e. pattaadar passbook, adangal and documents to the extent of land holdings of the assessee's parents, I hold that gifting of Rs.10.00 lakhs to the assessee is within the financial capacity of the assessee's parents, therefore theory applied by the Id.CIT(A) in hyper technical manner cannot survive. I find that the Id.CIT(A) has failed to give reasons why he has not able to consider the source of income of the parents from the huge extent of agricultural land as well as commercial land and why he has applied human probability theory not explained. Therefore, I find that the gift received by the assessee from her parents is genuine and creditworthiness is proved and therefore addition cannot survive. Accordingly, the addition made by the Assessing Officer and confirmed by the Id. CIT(A) is deleted. Thus, this appeal filed by the assessee is allowed.

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

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

Sd/-
(V. DURGA RAO)
Judicial Member

Dated: 22nd January, 2020.

vr/-

Copy to:

1. *The Assessee – Smt. B. Sharmila Reddy, Flat No. 2A, Sri Sai Krishna Apartments, Hindi Nagar, Punjagutta, Hyderabad.*
2. *The Revenue – ITO, Ward-6(4), 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.