

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD 'A-SMC' BENCH : Hyderabad
(Through Video Conference)**

Before Smt. P. Madhavi Devi, Judicial Member

**ITA No. 951/Hyd./2019
Assessment Year: 2010-11**

Smt. Palaparthi Srilakshmi
H.No.33-15/F 503
Habitat Vemuri Apartments
Officers Colony
R.K. Puram
Secunderabad 500 056

vs. ITO, Ward 15(1)
Hyderabad

PAN: BFAPS2620J

(Appellant)

(Respondent)

For Assessee: Shri G.Kalyan Das, A.R.
For Revenue: Sh. Kiran Katta, D.R.

Date of Hearing (through Video Conferencing) : 02/06/2020
Date of Pronouncement : 11/06/2020

ORDER

This is assessee's appeal against the order of Ld.CIT(A)-7, Hyderabad dated 22.03.2019 for A.Y. 2010-11. The assessee has raised the following grounds of appeal.

1. *The Order of the Ld.CIT(A) is contrary to the law and the facts.*
2. *The ld.CIT(A) erred in making the addition of Rs.12.00 Lakhs received from the Bank Account of the Assessee's brother and Rs.1.00 Lakh from out of savings of the Assessee both aggregating to Rs.13.00 Lakhs as unexplained income u/s.68 of the IT Act.*

3. *The ld. CIT(A) failed to note that the appellant received Rs.9.00Lakhs and Rs.3.00 Lakhs both aggregating to Rs.12.00 lakhs from the HDFC Bank Account of Assessee's brother Sri. ANND Srinivas and confirmation of Transfer of the amount from the Banker was filed on record and therefore CIT(A) erred assessing the sum as undisclosed income.*
4. *The ld. CIT(A) failed to note that the identity of the Assessee's brother, source and genuineness of the transaction since was established the addition u/s. 68 of the Act is bad in law.*
5. *The ld. CIT(A) further failed to note that assessee had savings of Rs.1.00 Lakh which was also not considered and assessed the amount as undisclosed income.*
6. *The ld. CIT(A) further failed to note that the impugned amount Rs.12.00 Lakhs represented gift by father to the assessee for payment through her brother Sri. ANND Srinivas and the Assessee's father since passed away, the fact of gift is confirmed by the Assessee's sister and therefore erred in ignoring the above fact.*
7. *In the above facts and circumstances the ld.CIT(A) erred in assessing the aggregate amount Rs.13.00 as undisclosed income.*
8. *For these and other grounds that may be urged before the disposal of the appeal, Assessee prays the additions be deleted in accordance with law.*
9. *The order of the learned AO u/s 144 r.w.s 147 of the Income Tax Act is contrary to law and the facts.*

In addition to above, the assessee has also raised the following additional grounds of appeal along with an Application to admit and adjudicate the same.

10. *The ld AO erred in initiating the proceedings u/s . 147 of the Act on the alleged ground that income chargeable to tax escaped assessment.*
11. *The ld AO further erred in holding that the Assessee had earned Income Rs.15.48 Lakhs in the share transactions and such Income escaped Assessment and made the impugned Addition by initiating proceedings u/s. 147 of the Act.*

12. *The ld.AO failed to note that the Assessee had incurred loss in share transactions and the ld. CIT(A) by orders upheld fact, the Assessee has incurred loss in the above share transaction and deleted the impugned addition.*
13. *The ld. AO thus erred in initiating the Proceedings u/s. 147 of the Act and in making addition of Rs.15.48 Lakhs in a routine manner without application of the facts and the evidence on record.*
14. *The ld. AO therefore ought to have noted that Proceedings initiated for Assessment u/s. 147 of the Act based on conjectures, suspicion and guesswork without any evidence or material on record is bad in law and the order requires to be annulled/vacated.*
15. *For these and other grounds that may be urged before the disposal of the appeal, Assessment Order be held as bad in law and the order be quashed.*

1.1. At the outset, it is noticed that there is a delay of 12 days in filing the appeal before the Tribunal. The assessee has explained that the delay of 12 days had occurred as the assessee was consulting its auditors about filing of the appeal before the Tribunal and that the delay is bonafide and beyond the control of the assessee.

1.2. The Ld.DR was also heard.

1.3. I find the reasons mentioned for the delay to be reasonable and therefore, the delay in filing the appeal is condoned.

2. Brief facts of the case are that the assessee is an individual. The AO received the information that the assessee has transacted in shares through Bombay Stock Exchange to the tune of Rs.43,96,84,412/- during the F.Y. 2009-10 relevant to AY 2010-11 but has not filed her return of income for A.Y. 2010-

11. Therefore, believing that the income chargeable to tax has escaped from assessment, notice u/s 148 of the Income Tax Act, 1961 (the Act) was issued and served on the assessee on 31.3.2017. In response to the notice, the assessee filed her return of income on 04.09.2012 declaring total income as 'nil' and claimed loss of Rs.15,48,151/- under the head 'short term capital gains'. Subsequently the AO issued notices u/s 143(2) /143(1) of the Act and called for information. In response, the AR of the assessee appeared and furnished information called for. On 28.12.2017 the AR of the assessee was asked to furnish detailed note of the transactions of the assessee along with documents and also along with source of investments with proof thereof, but there was no response from the assessee and since assessment was getting time barred, the AO completed assessment treating loss of Rs.15,48,151/- as income of the assessee and brought it to tax.

2.1. Aggrieved, the assessee preferred an appeal before the CIT(A) stating that the ITO has converted the actual short term loss on shares as income in spite of documentary evidence brought to the notice of the ITO and the ITO had passed order within a day of calling for information pertaining to 10 years back and hence sufficient time was not given for producing the information. The CIT(A) took the information filed by assessee into consideration and called for a remand report from the AO. The AO submitted the remand report stating that the assessee has not furnished information called for and also that the assessee has not explained the sources of investment to the tune of Rs.13,00,000/-. In reply to the remand report, the assessee submitted that the assessee has received a sum of Rs.12 lakhs on 22.07.2009 from her brother Shri Anand Srinivas's bank account and that the same was given to her stock broker in two installments i.e., Rs.9,99,999/- on 22.07.2009 and Rs.2 lakhs on 4.9.2009 for the purpose of trading in shares in Stock Exchange and Rs.1 lakh was transferred to M/s Anand Rathi share and stock brokers Ltd on 18.7.2009 out of her hard earned savings and in total an amount of Rs.13 lakhs was transferred to her stock broker for trading in securities. In proof of receiving the amount from her

brother, the assessee also filed the certificate of the bank. It was also submitted that out of this fund of Rs.13 lakhs only, buying and selling of shares has taken place and assessee had in fact incurred loss of Rs.15,48,151/- from the said business and prayed for deletion of addition made by AO. The CIT(A) considered submissions of the assessee and also examined the evidences filed by assessee and accepted that there is short term capital loss of Rs.15,48,151/- Accordingly he directed the AO to accept the short term capital loss as declared by assessee in the return of income.

With regard to source of investments of Rs13 lakhs, the CIT(A) did not accept the sources both to the extent of Rs.1,00,000/- being assessee's own savings, and also the balance of Rs.12 lakhs. The CIT(A) observed that there is no confirmation from donor Sri Annd Srinivas and also that there is no proof of assessee's own savings. He therefore held that this is required to be added to the returned loss. He directed AO to compute the assessed loss at Rs.2,48,151/-.

3. Against the order of CIT(A) the assessee is in appeal before us.
4. The Ld.Counsel for assessee submitted that the additional ground is against the validity of re-assessment proceedings and the grounds being legal, they should be admitted and adjudicated.
5. Ld.DR however, opposed the admission of additional grounds of appeal stating that the assessee did not raise any objections to the notice issued u/s 148 of the Act, nor did she raise any grounds before the CIT(A) and, therefore, she cannot raise this ground at this stage before the Tribunal.
6. Having regard to rival contentions and material placed on record, I find that the validity of re-assessment proceedings is a legal ground and can be challenged at any point of time as held by *Hon'ble Supreme Court in the case of National Thermal Power Company Limited vs. CIT - 229 ITR 383 (SC)*. Therefore I admit the additional ground.

7. Ld.Counsel for the assessee submitted that the AO has reopened the assessment merely on suspicion that there is escapement of income and, therefore, the initiation of re-assessment proceedings itself is not proper. In support of this contention, he placed reliance upon the judgement of Hon'ble Supreme Court in the case of Chugamal Rajpal vs. S.P.Chalitha and others (1971) 79 ITR 603 (SC) and the decision of Co-Ordinate Bench at Mumbai in DCIT vs. M/s Kargwal Products P Ltd. In ITA No.1461/Mum/2017 dated 26.9.2018.

8. He further argued that the loss as returned by the assessee has been accepted by the CIT(A) and, therefore, the reason for which the assessment is reopened itself did not survive and therefore the assessment order itself gets nullified and the reassessment proceedings also have to be held as invalid. For this proposition, he placed reliance upon the following decisions:

- i. Hon'ble Mumbai High Court in the case of Ankita A.Choksey vs. ITO and others reported in 411 ITR 207 (Bom).
- ii. ITA 232/Pune (2015) in the case of Ulhas Shataram Ghosalkar vs. ITO-ITAT Pune Bench.
- iii. Hon'ble Gujarat High Court in the case of CIT vs Mohmed Juned Dadani reported in 355 ITR 172 (Guj.).
- iv. Dr Devendra Gupta vs. ITO reported in 282 ITR (A.T.) 18 (ITAT)(Jodh.).
- v. Hon'ble AP High Court in the case of Perla Krishna Rao vs. ITO and another reported in 159 ITR 299 (AP).

9. Ld.DR, on the other hand, supported the order of the AO and submitted that the AO had received information that the assessee has made transactions worth Rs.43,96,84,412/- and there was sufficient material before him to believe that there is escapement of income since the assessee had not filed her return of income. He submitted that since turnover of the assessee was more than Rs.40 lakhs, the tax audit report was mandatory and since there was no such report

also, the AO had reason to believe that there is escapement of income and hence AO had reopened the assessment to verify the sources of investment and the income from the share transactions and hence there is no infirmity in the reopening of the assessment. He submitted that the loss declared by the assessee in her return of income has been brought to tax as unexplained investment only and therefore, the addition has to be sustained.

10. Having regard to rival contentions and material placed on record, I find that the assessee had turnover of more than Rs.40 lakhs, but she had not filed the return of income along with the tax audit report. Therefore, the AO was reasonable in believing that there was escapement of income and in issuing the notice u/s 148 of the Act. The decisions relied upon by Ld.Counsel for the assessee are not applicable to the case on hand as they are distinguishable on facts. The contention of the assessee that the CIT(A) had deleted addition for which assessment has been reopened and, therefore, the assessment fails is also not acceptable. The decisions relied upon by Ld.Counsel for the assessee are to the effect that where AO has reopened the assessment on a particular ground but does not make any addition on the ground on which assessment is reopened, then he cannot bring any other income to tax. But, in the case before us, the AO has made an addition on the very ground on which assessment is reopened, but the said addition has been deleted by the CIT(A). Thus, the decisions cited by the Ld.Counsel for the assessee are not applicable to the case before us. The IT(A)'s acceptance of assessee's contention does not fail the validity of the reassessment proceedings itself. Therefore, the additional grounds of appeal raised by assessee are rejected.

10.1. As regards the merit of the addition is concerned, assessee's source of investment of Rs.13,00,000/- has not been accepted by the CIT(A). The assessee has filed the Certificate of the bank wherein it is certified that she had received the funds through banking channels from her brother. The only reason for not believing the said transaction, is that the assessee has not filed confirmation

from her brother. The Ld.Counsel submitted that these funds were actually funds of assessee's father and that her father transferred funds through his son but immediately thereafter, he had passed away and the assessee could not get confirmation from father and since there are no cordial relations between the assessee and her brother she could not get any confirmation from him. He submitted that since the transaction was done through banking channels, the source of investment should be accepted.

10.2. Ld.DR on the other hand supported the orders of the authorities below on the merits of the case.

11. I find that the assessee has received funds through banking channels from her brother. Therefore, the identity and genuineness of the transaction is proved. Since the identity and genuineness is proved and the relationship between the donor and donee is also proved, I am convinced that the assessee has been able to explain the sources of investment. The assessee has shown Rs.1 lakh as her own earnings which is not accepted by the department without any basis I find that the assessee being the wife of a Defense Personnel, could not be said to not to have the savings of Rs.1 Lakh. Therefore, the entire addition of Rs.13 lakhs is deleted. The grounds of appeal of assessee on this issue are allowed.

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

Order pronounced in Open Court on 11th June, 2020.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Dated: the 11th June, 2020.

GMV

Copy forwarded to:

1. Smt. Palaparthi Srilakshmi, 33-15/F 503, Habitat Vemuri Apartments, Officers Colony, R.K.Puram, Secunderabad 500 056.
2. The Income Tax Officer, Ward-15(1), Hyderabad.
3. CIT(A)-7, Hyderabad.
4. Pr.CIT-7, Hyderabad.
5. D.R. ITAT Hyderabad.
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