

IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "B", HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

ITA No.1406/Hyd/2016		
Assessment Year: 2011-12		
Kota Jayapaul, Hyderabad – 18. PAN: AMJPK 7023 L	Vs.	The Income Tax Officer, Ward-6(2), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Sri K.C. Devdas	
Revenue by:	Sri Sunil Kumar Pandey, DR	
Date of hearing:	28/01/2020	
Date of pronouncement:	18/06/2020	

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the assessee against the order of the Ld. CIT(A)-6, Hyderabad in appeal No. 1317/2014-15/CIT(A)/16-17, dated 15/07/2016 passed U/s. 143(3) r.w.s 250(6) of the Act for the A.Y. 2011-12.

2. The assessee has raised several grounds in his appeal however the crux of the issue is that the assessee is aggrieved by the orders of the Ld. Revenue Authorities for having made additions of Rs. 87,89,900/- and Rs. 6,38,550/- towards unexplained cash deposits in his IDBI and SBI Account, respectively.

3. The brief facts of the case are that the assessee is an individual engaged in the profession as Electrical Contractor filed his return of income for the AY 2011-12 on 2/10/2011 admitting income of Rs. 5,79,520/-. Subsequently, the case was taken up for scrutiny and the assessment was completed on 21/03/2014 wherein the Ld. AO made an addition of Rs. 87,89,900/- and Rs. 6,38,550/- being the unexplained cash deposited in his IDBI and SBI account, respectively. On appeal, the Ld. CIT (A) confirmed the order of the Ld. AO because even before him, the assessee had not fully explained the source for the cash deposit in the bank accounts. Aggrieved by the order of the Ld. CIT (A) the assessee is now in appeal before us.

4. During the course of assessment proceedings, it was observed by the Ld. AO, based on the information received from the Revenue Department, that the assessee had deposited cash in his IDBI Bank Account for Rs. 87,89,900/- during the relevant previous year. On query, it was explained that the assessee had opened the bank account on the request of his friend Sri G. Srinivas C/o. Choudhary Medicals, 3<sup>rd</sup> Lance, Pandaripuram, Guntur and thereafter the assessee was not aware of the transactions made in those bank accounts. The assessee further requested 15 days' time to furnish the details of the bank transactions and to produce his friend G. Srinivas. However, even after several reminders, the assessee failed to comply. It was also observed by the Ld. AO that the assessee had deposited cash amounting to Rs.

6,38,550/- in his SBI bank account, Balkampet Branch and he failed to explain the source for such deposit. Therefore, the Ld. AO added both the amount of Rs. 87,89,900/- & Rs. 6,38,550/- as unexplained cash deposits in the hands of the assessee.

5. Before the Ld. CIT (A), the assessee had submitted that he had obtained loan for his friend Sri Thoram Venkateswara Rao, Managing Director, Hari Priya Marine Exports Pvt Ltd., Bhimavaram, amounting to Rs. 75 lakhs from IDBI, Balkampet Branch, Hyderabad vide sanction letter dated 11/12/2009, on receipt of which he instantly transferred the same to Sri Thoram Venkateswara Rao. Thereafter, on the insistence of the bank for repayment, his friend Sri Thoram Venkateswara Rao deposited the cash in his IDBI bank account. The assessee had further submitted that these facts had been intimated to the Ld. AO during the course of assessment proceedings and an affidavit from Sri Thoram Venkateswara Rao stating the above said facts and with regard to cash deposit of Rs. 87,55,900 was also submitted before him. It was further submitted that the assessee had neither offered any income towards interest nor claimed any expenditure towards the same. It was further explained that the aforesaid transactions were not disclosed in his books of account and there were no other bank transactions in the relevant previous year. It was further submitted that in the similar manner another loan of Rs. 60 lakhs were obtained from IDBI bank and the same was also instantly transferred to his friend Sri

Thoram Venkateswara Rao. With respect to the addition made for Rs. 6,38,550 it was submitted before the Ld. CIT (A) that the amount was part of total contractual receipt from GHMC of Rs. 35,17,806 which was deposited in the bank account. The assessee had also submitted an affidavit from Sri Thoram Venkateswara Rao as additional evidence. The Ld. CIT (A) had sought a remand report from the Ld. AO in order to examine the veracity of the affidavit and the cash deposited in the SBI account. In the remand report dated 23/06/2016 the Ld. AO had replied stating that the assessee had not co-operated in the proceedings even after providing sufficient opportunities. Thereafter, on examining the facts of the case, the Ld. CIT (A) dismissed the appeal of the assessee and confirmed the order of the Ld. AO by invoking the provisions of section 69 of the Act by stating as follows: -

- (i) The assessee had failed to establish the identity, creditworthiness of the creditor and the genuineness of the transaction.
- (ii) Furnishing of an affidavit alone does not substantiate the transaction to be genuine.
- (iii) The assessee has not cooperated before the Ld. AO during the remand proceedings.
- (iv) The transactions were not reflected in the books of accounts of the assessee.

- (v) The details and the evidence for the loan transaction with the bank was not produced.
- (vi) Correspondence with the bank with respect to the loan transactions was also not produced.

6. Before us, the Ld AR reiterated the submissions made before the Ld. Revenue Authorities as stated hereinabove and further relied on the following decisions:-

- (i) Hon'ble Delhi High Court judgment in the case of CIT vs. Dwarkadhish Investments P. Ltd (Delhi) 330 ITR 298
- (ii) Hon'ble Supreme Court judgment in the case of CIT vs. T.I & M Sales Ltd (SC) 166 ITR 093
- (iii) Hon'ble Supreme Court judgment in the case of Metha Parikh and Co. vs. CIT (30 ITR 181)
- (iv) Hon'ble Supreme Court Judgment in the case of CIT vs. Victor Electrodes (Delhi) 329 ITR 271

7. The Ld.AR further argued stating that the loan amount obtained by the assessee was extended to his friend and the same was subsequently returned by his friend by depositing the same in his bank account and these transactions are genuine. The Ld. AR further submitted that, on realizing that the assessee's friend had cheated the assessee he had filed a case before the Third Additional Chief Metropolitan Magistrate, Hyderabad against his friend, however the complaint was not registered. Therefore, the assessee filed a Writ Petition before the AP High Court in W.P. No. 40814/16 and the Learned

Singly Judge had directed the SHO, SR Nagar, Hyderabad to register a case against Sri Toram Venkateswara Rao for cheating the assessee. It was therefore argued that the bank loan transactions of the assessee and the loan transactions with his friend are genuine which goes to explain the source towards the bank deposits made during the relevant assessment year. It was therefore pleaded that the addition made by the Ld. AO which was further sustained by the Ld. CIT (A) may be deleted.

8. The Ld. DR on the other hand vehemently argued in support of the orders of the Ld. Revenue Authorities and pleaded for sustaining the same.

9. We have heard the rival submissions and carefully perused the materials on record. From the facts of the case it is apparent that the assessee has not properly cooperated before the Ld. Revenue Authorities in their proceedings. Further, though the assessee had submitted certain bank statements before us, the entire transaction remains to be properly explained. The Ld. Revenue Authorities have also not made any finding with respect to the bank statements produced before them. The affidavit furnished by the assessee also remains unverified. It is also apparent that the Ld. CIT (A) has made a detailed finding in his order with respect to the non-cooperation of the assessee during the appellate proceedings and non-furnishing of any cogent evidence to establish the transactions to be genuine. From the facts of

the case it is further apparent that the assessee was not able to explain the source for the cash deposit before the Ld. Revenue Authorities by drawing proper accounts. Moreover, we find that the assessee was taking different stand before the Ld.AO and the Ld.CIT(A) during the course of the proceedings before them. In this situation we do not find much merit in the submission of the Ld. AR. However, considering the financial position of the assessee and the nature of his business, in the interest of justice, we find it appropriate to remit the entire matter back to the file of the ld. AO for fresh consideration in order to provide one more opportunity to the assessee to effectively pursue his case. Accordingly, we hereby remit the matter back to the file of the Ld. AO with direction to examine the issue afresh admitting any evidence filed by the assessee even if it is for the first time and thereafter decide the matter in accordance with merit and law. At the same breath, we hereby direct the assessee to promptly co-operate before the Ld. Revenue Authorities in their proceedings failing which the Ld. Revenue Authorities shall be at liberty to pass appropriate order based on the materials before them. It is also pertinent to mention that the cases cited by the Ld.AR is not relevant considering the facts and circumstances of the issues involved in the appeal before us.

10. Before parting, it is worthwhile to mention that this order is pronounced after 90 days of hearing the appeal, which is though against the usual norms, we find it appropriate, taking into consideration of the

extra-ordinary situation in the light of the lock-down due to Covid-19 pandemic. While doing so, we have relied in the decision of Mumbai Bench of the Tribunal in the case of DCIT vs. JSW Ltd. In ITA No.6264/M/2018 and 6103/M/2018 for AY 2013-14 order dated 14th May 2020.

11. In the result, appeal of the assessee is allowed for statistical purposes as indicated herein above.

Pronounced in the open Court on 18<sup>th</sup> June, 2020.

Sd/-  
(P. MADHAVI DEVI)  
JUDICIAL MEMBER

Sd/-  
(A. MOHAN ALANKAMONY)  
ACCOUNTANT MEMBER

Hyderabad, Dated: 18<sup>th</sup> June, 2020

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Copy to:-

- 1) Kota Jayapaul C/o. B. Narsing Rao & Co., Chartered Accountants, Plot No.554, Road No.92, Jubilee Hills, Hyderabad-96.
- 2) The Income Tax Officer, Ward-6(2), Hyderabad.
- 3) The CIT(A)-6, Hyderabad.
- 4) The Pr. CIT-6, Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File