

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A-SMC", HYDERABAD

BEFORE SHRI A. MOHAN ALANKAMONY,
ACCOUNTANT MEMBER

ITA No.705/Hyd/2017		
Assessment Year:2007-08		
K. Narayana Reddy, Hyderabad. PAN: ABCPK 8102 C	Vs.	Income Tax Officer, Ward-4(3), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Sri A.V. Raghuram	
Revenue by:	Sri Nilanjan Dey, DR	
Date of hearing:	04/02/2020	
Date of pronouncement:	30/06/2020	

ORDER

This appeal is filed by the assessee against the order of the Ld. CIT(A)-3, Hyderabad in appeal No. 0282/CIT(A)-3/16-17, dated 07/02/2017 passed U/s. 143(3) r.w.s. 147 & U/s. 250(6) of the Act for the AY 2007-08.

2. The assessee has raised several grounds in his appeal however, the cruxes of the issues are as follows: -

- (i) The Ld. CIT (A) has erred in upholding the validity of the proceedings-initiated u/s. 147 of the Act.
- (ii) The ld. CIT (A) has erred in upholding the order of the Ld. AO who had made addition of Rs. 10,43,352/- by treating

the cash deposited in the bank account as income from unexplained source.

3. The brief facts of the case are that the assessee is an individual engaged in the profession as Advocate filed his return of income on 24/09/2007 declaring total income of Rs. 1,04,850/-. The return was processed U/s. 143(3) of the Act on 22/5/2009 and the income was assessed at Rs. 1,24,850/-. Subsequently, the case of the assessee was reopened U/s. 147 of the Act and assessment was completed U/s. 143(3) r.w.s 147 of the Act on 30/01/2013 wherein the Ld. AO made addition of Rs. 10,43,352/- being the cash deposited in Savings Bank Account No.774 maintained with Corporation Bank against which source was not explained. On appeal, the Ld. CIT (A) confirmed the addition by observing as under: -

“4.2. As far as the cash deposits of Rs. 10,43,350/- is concerned the appellant submitted that these deposits belongs to HUF. To this effect the appellant also produced a copy of certificate issued by Corporation Bank stating that “this is certify that Sri K. Narayan Reddy S/o. K. Chandra Reddy resident of H.No.2-2-18/41/A/5, DD Colony, Baghamberpet, Hyderabad-13 is our SB account holder with bearing No. 774 which is of HUF type”.

However the bank Manager did not give any reasons as to how he concluded that the account is HUF type. Admittedly the appellant did not maintain any books of accounts. The basis of filing his return of income is also not clear. There is no correlation between amounts shown in the return of income and the huge transactions reflected in his bank accounts. The appellant claims that the cash belongs to HUF and HUF does not have any other income other than agricultural income, therefore no return was filed. However the SB A/o. 774 reflects huge transactions both in check as well as ini cash which can not be explained with agricultural income alone. If this account belongs to HUF it needs

to explain / own up all the transactions both in cheque and also in cash.

It was further explained that the appellant received amounts as under on sale of lands which were used as sources for explaining cash deposits of Rs. 10,43,350/-.

<u>Date</u>	<u>Amount</u>
15/11/2003	Rs. 14,95,000
15/07/2004	Rs. 16,44,500

However, the appellant did not produce any sale deeds, did not produce any bank accounts evidencing such deposits, did not produce any evidence as to how amounts received in 2003 & 2004 can explain the cash deposit in 2006-07.

However from verification of assessment record it is noticed that the appellant produced pattedar pass books that he owned 35 Acres of agricultural land, out of which 4 acres is irrigated land and the balance 31 Acres is dry land. The agricultural income shown in the return of income was Rs. 40,000/-. Even this income of Rs. 40,000/- was considered by Assessing Officer towards explaining deposit of Rs. 24,74,724/- in account No. 1579.

All the known sources of income of the appellant, professional income rental income, agricultural income were all considered by AO for explaining cash deposits of Rs. 24,74,724/-. There is nothing on assessment record or in appeal record to suggest that the HUF status exists. Therefore, I decline to interfere with the addition made by the AO of Rs. 10,43,352/-“.

4. Before me, the Ld. AR submitted that the assessee's family is a joint Hindu Undivided Family. He further submitted that the family owned 35 Acres of Agricultural Land and substantial agricultural derived from the same was routed through the assessee's bank account. The Ld. AR further submitted the amount that was deposited in the bank account was occasionally withdrawn and when not utilised the same was re-deposited in the bank account. The Ld. AR also furnished the bank statement of A/c No. 774 for the period 03/04/2006 to

30/3/2007 to justify his stand. The Ld. AR also pointed out that the assessee's family had negotiated the sale of some of their agricultural land and advance amount of Rs. 15,25,000/- was received and the same was disclosed to the Revenue in the return filed which partially explained the source for the cash deposit of Rs. 24,74,724/- in the other bank account maintained by the assessee. The Ld. AR further argued by stating that the assessee's HUF also derives substantial agricultural income from the agricultural land owned. It was therefore pleaded that the addition made by the Ld. AO which was further confirmed by the Ld. CIT (A) is not justified. The Ld. AR also vehemently argued by stating that the assessment in the case of the assessee was completed U/s. 143(3) of the Act on the previous occasion on 22/05/2009 and therefore reopening of the assessment once again is not justifiable. It was therefore prayed that the order of the Ld. AO may be quashed.

5. Ld. DR on the other hand relied on the orders of the Ld. Revenue Authorities and vehemently argued in support of the same. Accordingly, he requested for upholding the orders of the Ld. Revenue Authorities.

6. I have heard the rival submissions and carefully perused the materials on record. For the better understanding of the facts of the case I have extracted herein below the details of the cash deposits and withdrawals in the assessee's bank account No.774 maintained in

Corporation Bank (paper book page No. 18 to 25) which is the main issue in the appeal:-

A	B	C	D	E	F	G
Sl No.	Date		Cash deposit (Rs.)	Cash withdrawals from bank (Rs.)	cash in hand (Rs.)	Remarks
1	06/04/2006	Self		2,00,000		
2	17/04/2006	Self		10,000		
3	17/04/2006	Self		50,000		
4	19/04/2006	Self		40,000		
5	25/04/2006	Self		50,000		
6	27/04/2006	Self		50,000		
7	28/04/2006		2,00,000		2,00,000	($\sum 1E$ to $6E - 7D$)
8	10/05/2006	Self		10,000		
9	16/05/2006	Self		1,50,000	3,60,000	($\sum 8E$ & $9E + F7$)
10	18/05/2006		70,000			
11	20/05/2006		50,158		2,39,842	$F9 - (\sum 10D + 11D)$
12	27/05/2006	Self		1,00,000	3,39,842	($F11 + E12$)
13	30/05/2006		7,000		3,32,842	($F12 - D13$)
14	31/05/2006	Self		10,000		
15	08/06/2006	Self		40,000		
16	14/06/2006	Self		25,000		
17	20/06/2006	Self		50,000		
18	29/06/2006	Self		2,00,000		
19	06/07/2006	Self		1,00,000		
20	11/07/2006	Self		2,50,000		
21	12/07/2006	Self		40,000	10,47,842	($F13 + E14$ to $E21$)
22	13/07/2005		35,000			
23	14/07/2006		1,62,294			
24	17/07/2006		50,000		8,00,548	$F21 - (\sum D22$ to $D 24)$
25	18/07/2006	Self		1,20,000		
26	29/07/2006	Self		1,61,000	10,81,548	$F24 + E25$ to $E26$)
27	4/08/2006		25,000		10,56,548	($F26 - D27$)
28	7/08/2006			75,000		
29	7/08/2006	Self		25,000		
30	29/08/2006	Self		20,000		
31	31/08/2006	Self		60,000		
32	28/09/2006	Self		5,000		
33	29/09/2006	Self		15,000		
34	03/10/2006	Self		25,000		
35	12/10/2006	Self		30,000		
36	12/10/2006	Self		50,000		
37	17/10/2006	Self		20,000	13,81,548	$F27 + (\sum D28$ to $D37)$
38	19/10/2006		1,07,400		12,74,148	$F37 - D38$
39	24/10/2006	Self		50,000	13,24,148	$F38 + E39$
40	31/10/2006		44,000		12,80,148	$F39 - D40$

41	08/11/2006	Self		50,000	13,30,148	F40 + E41
42	15/11/2006		1,20,000			
43	02/01/2007		2,500			
44	07/02/2007		70,000			
45	22/02/2007		1,00,000		10,37,648	F41 –(∑D42 to D45)
46	Total		10,43,352	20,81,000		

7. From the above table it is apparent that the assessee's cash balance in hand (Column F) is always surplus which explains the source for the bank deposit. Further it cannot be presumed that whatever amount the assessee withdrew from the Bank is fully utilised during the course of his profession or with respect to his agricultural activities. Moreover, it is very clear from the table above that out of aggregate cash withdrawal of Rs. 20,81,000/- the assessee has re-deposited cash aggregating to only Rs. 10,43,352/-. Therefore, it is clear that out of the entire cash withdrawal from the bank the assessee had utilized almost fifty percent of the same and re-deposited the balance in the same bank account. It is also not disputed that assessee's family is in possession of vast extent of agricultural land earning agricultural income. Moreover, the substantial amount credited to the bank account of the assessee are other than the cash transactions i.e., mainly through clearing and bank transfers. These transactions appear to be duly accounted because the revenue has not raised any queries regarding the same. The Ld. CIT (A)'s contention that the Ld. AO has taken into consideration of agricultural income earned by the assessee with respect to the amount deposited in the assessee's another bank account

No. 1579 amounting to Rs. 24,74,724/- is not appreciable because it was well explained by the assessee that the assessee's HUF had received advance as a result of sale negotiation of some of their agricultural land which itself works out to Rs. 15,25,000/. The assessee has also submitted the return of income wherein such facts were furnished to the Revenue (paper Book page No. 10 to 12). It also appears that the assessee has submitted the particulars from whom the advance was received but, the Ld. AO has simply brushed it aside by stating that the advance received by the assessee was during the earlier years and the same could not have been retained by the assessee for so long without effecting the sale of the land. When the particulars of the buyers who had advanced cash to the assessee for purchase of their HUF property was furnished, it would have proper on the part of the Ld. AO to examine them and thereafter arrived at the conclusion. It also appears that the Ld. CIT (A) has simply endorsed the order of the Ld. AO. The Revenue has also failed to examine the agricultural income earned by the assessee from the thirty five acres of agricultural owned by the assessee's HUF before arriving at their decisions that the bank deposit made by the assessee are from undisclosed income. Further, it is also apparent that the assessee is also engaged in the profession as an Advocate earning income from his profession which is disclosed in his return of income year after year. Considering all the above facts and circumstances of the case of the assessee, I am of the considered view

that the addition made for Rs. 10,43,352/- in the hands of the assessee which is further sustained by the Ld. CIT (A) is not warranted. Therefore, I hereby direct the Ld. AO to delete the addition made for Rs. 10,43,352/- in the case of the assessee towards unexplained source of bank deposit during the relevant assessment year. Since I have decided the appeal on merits, I have restrained from addressing the ground on reopening of the assessment as it is infructuous.

8. 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.

9. In the result appeal of the assessee is allowed.

Pronounced in the open Court on 30th June, 2020.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 30th June, 2020.

OKK

Copy to:-

- 1) Sri K. Narayana Reddy C/o. K. Vasant Kumar, A.V. Raghuram, P. Vinod & M. Neelima Devi, Advocates, 610, Babukhan Estate, Basheerbagh, Hyderabad.-1.
- 2) Income Tax Officer, Ward-4(3), IT Towers, Hyderabad.
- 3) The CIT(A)-3, Hyderabad
- 4) The Pr. CIT-3, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File