

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

BEFORE SHRI A. MOHAN ALANKAMONY,
ACCOUNTANT MEMBER

ITA No.576/H/2019		
Assessment Year: 2009-10		
Smt. Kurmayagari Ashwini, Hyderabad. PAN: ALFPK 7946 P (Appellant)	Vs.	Income Tax Officer, Ward-11(5), Hyderabad. (Respondent)
Assessee by:	Sri B. Sai Prasad	
Revenue by:	Sri Sunil Kumar Pandey, DR	
Date of hearing:	17/02/2020	
Date of pronouncement:	08/07/2020	

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.10351/2018-19/B2/CIT(A)-6, dated 01/03/2019 passed U/s. 144 r.w.s 147 and U/s. 250(6) of the Act for the AY 2009-10.

2. The assessee has raised four grounds in her appeal however, the crux of the issue is that the Ld. CIT (A) has erred in confirming the addition made by the Ld. AO for Rs. 12,50,000/- invoking the provisions of section 69 of the Act as unexplained investment.

3. The brief facts of the case are that the assessee is an individual engaged in real estate and construction business and also earning agricultural income. A survey action U/s. 133A of the Act was carried out in the business premises of M/s. KSR Constructions on 29/10/2010 wherein the assessee's spouse Sri K. Kondal Rao is a partner. During the course of survey proceedings it was noticed from the materials seized and marked as A/KSR/1 page No.53 to 62 that Smt. K. Ashwini, the assessee, has invested an amount of Rs. 12,50,000/- in the purchase of 9.20 acres of agricultural land situated at Kandhi Village, Sangareddy, Medak District on 19/04/2008. To verify the source of the investment the case of the assessee was reopened and notice u/s. 147 was issued. However, the assessee failed to co-operate before the Ld. AO by providing evidence to explain the sources of investment made by her for Rs. 12,50,000/-. Therefore, the Ld. AO added the amount of Rs. 12,50,000/- as unexplained investments in the hands of the assessee invoking the provisions of section 69 of the Act.

4. When the matter cropped up before the Ld. CIT (A), the assessee furnished additional evidence in form of confirmation letter issued by the spouse of the assessee Sri K. Kondal Rao stating that the investment of Rs. 12,50,000/- was made from the funds gifted by him. Sri K. Kondal Rao has also furnished bank statements to establish that the

amount of Rs. 12,50,000/- was gifted by him to the assessee to purchase the agricultural land of 9.2 Acres. The relevant paragraph of the confirmation letter is extracted herein below for reference:-

"Confirmation of Gift

 I, K. Kondala Rao, S/o. Late K. Chandraiah, hereby confirm that I have gifted, in the month of April, 2008, an amount of Rs. 12,50,000/- to my wife Smt. K. Ashwini for her personal use at the time of purchase of a property by her. As the said amount was required to be given through banking channels, I have obtained the same in form of 2 bank drafts as detailed below:

- a. D.D. bearing No.028345, dated 19/04/2008 obtained from Axis Bank Ltd, Kukatpally, Hyderabad; and
- b. D.D. bearing No. 163033, dated 19/04/2008 obtained from The Dhanalakshmi Bank Ltd, Hyderabad.

As regards sources are concerned, the D.D for Rs. 10,00,000/- was obtained out of Rs. 30,00,000/- cash withdrawn by me from my Axis Bank account on 19/04/2008. As regards the balance amount of Rs. 2,50,000/- the same was obtained out of withdrawal by Sri Ranjit from Dhanalakshmi Bank account which was credited to my account; and was gifted by me to my wife."

5. The Id. CIT (A) thereafter called for a remand report from the Ld. AO and after examining the facts of the case, the remand report of the Ld.AO and the particulars filed by the assessee he came to the conclusion that the source of funds utilised by the assessee for the purchase of property for Rs. 12,50,000/- (10,00,000 + 2,50,000) was from the funds received from the partnership firm viz., M/s. KSR Constructions wherein the assessee spouse is one of the partners. The Ld. CIT (A) also observed that the partnership firm had not maintained regular books of accounts and the aforesaid transaction was not reflected in the income tax return filed by the firm. He further observed

that the assessee's spouse had also not disclosed the transaction in her return of income. Therefore, the Ld. CIT (A) opined that since the assessee has received Rs. 12,50,000/- from the assessee's partnership firm M/s. KSR Constructions wherein the assessee's spouse is a partner it cannot be construed that the assessee had received the amount from assessee's spouse Mr. K. Kondala Rao. Hence, the ld.CIT (A) was of the view that provisions of section 56(2)(vi) of the Act will apply to the case of the assessee and the first proviso to the above stated section of the Act will not come to the rescue of the assessee because the assessee has received the amount from the partnership firm M/s. KSR Constructions and not from the spouse of the assessee. For the above stated reasons the Ld. CIT (A) confirmed the addition made by the Ld.AO amounting to Rs. 12,50,000/- in the hands of the assessee as unexplained investment U/s. 69 of the Act.

6. Before me the ld. AR submitted that the assessee's spouse had gifted the money to the assessee and therefore the same cannot be added in the hands of the assessee as unexplained investment. It was further submitted that the assessee did not have any proximity with the firm in which the assessee's spouse is a partner and the assessee's spouse had withdrawn the money from the firm and gifted it to the assessee for purchase of the land. It was therefore pleaded that the addition made by the Ld. AO which was further confirmed by the Ld.

CIT (A) is erroneous and hence it may be deleted. The Ld. DR on the other hand vehemently argued in support of the orders of the Ld. Revenue Authorities.

7. I have heard the rival submission and carefully perused the materials on record. From the facts of the case it is not in dispute that the source of the fund invested by the assessee has flowed from the partnership firm M/s. KSR Constructions wherein the assessee's spouse is a partner. Further, it is not in dispute that the assessee does not have any proximity with M/s. KSR Constructions other than the fact that her spouse is one of the partners in the firm. Further there are also no other reasons for the firm M/s. KSR Constructions to advance money to the assessee other than by the direction of the assessee's spouse who is one of the partners of the firm. It is obvious that M/s.KSR Constructions would not have advanced the amount of Rs.12,50,000/- to the assessee but for the advice of the spouse of the assessee. Therefore, the amount advanced by M/s. KSR Constructions to the assessee shall be obviously treated as the amount withdrawn by the assessee's spouse from the firm which has to be debited to the assessee's spouse's capital account in the firm's books of account. Just because the books of accounts of the assessee's firm and the assessee's spouse has not been properly maintained or incomplete the nature of the transaction does not change. Therefore, I am of the considered view

that the amount advanced by M/s. KSR Constructions to the assessee has to be construed as the amount given by M/s. KSR Constructions on behalf of the assessee's spouse. Hence, the first proviso of section 56(2)(vi) shall come into operation in the case of the assessee and accordingly the amount of Rs. 12,50,000 received by the assessee shall be treated as a gift received by the assessee from her spouse. Therefore, I hereby direct the Ld. AO to delete the addition made in the hands of the assessee for Rs. 12,50,000/- invoking the provisions of section 69 of the Act which is further confirmed by the Ld. CIT (A).

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, I 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, I 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 08th July, 2020.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated:08th July, 2020.

OKK

Copy to:-

- 1) Smt. Kurmayagari Ashwini, 5-3-92, Flat No.507, 5th Floor, Kukatpally, Hyderabad-500 034.
- 2) Income Tax officer, Ward-11(5), 10th Floor, Signature Towers, Kothaguda, Hyderabad – 50 064.
- 3) The CIT (A)-6, Hyderabad.
- 4) The Pr. CIT-5, Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File