

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

BEFORE SHRI A. MOHAN ALANKAMONY,  
ACCOUNTANT MEMBER  
(Through Virtual Hearing)

ITA No.2233/Hyd/2017		
Assessment Year:2009-10		
Jagadishwar Balla, Secunderabad – 500 056. PAN: ABXPB 9889 N (Appellant)	Vs.	Income Tax Officer, Ward-12(3), Hyderabad. (Respondent)
Assessee by:	Smt. S. Sandhya	
Revenue by:	Shri Sunil Kumar Pandey, DR	
Date of hearing:	08/09/2020	
Date of pronouncement:	08/09/2020	

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the assessee against the order of the Ld. CIT (A)-1, Hyderabad in appeal No. 0704/CIT(A)-1/2011-12/2016-17, dated 09/09/2016 passed U/s. 143(3) r.w.s 250(6) of the Act for the AY 2009-10.

2. The assessee has raised the five grounds in his appeal which are extracted herein below for reference:-

*(1) The order of the Ld. CIT (A) is erroneous to the extent it is prejudicial to the appellant.*

- (2) *The Ld CIT (A) erred in confirming the addition made by the AO of Rs. 18,19,500/- as representing the unexplained cash deposits in the bank account.*
- (3) *The Ld CIT (A) ought to have considered the fact that there is a specific source and therefore, ought to have directed the Assessing Officer to delete the addition of Rs. 18,19,500/-.*
- (4) *The Ld. CIT (A) ought to have considered the fact that the capital gain arising on sale of the property for a consideration of Rs. 19 lakhs is admitted in the return of income filed by the appellant and that therefore, ought to have considered the fact that the same receipt was subjected to tax both under the head “capital gains” and under the head “other sources” which amounts to double taxation.*
- (5) *Any other ground or grounds that may be urged at the time of hearing.”*

3. At the outset, Ld. AR submitted before me that there is a delay of 367 days in filing the appeal before the Tribunal. In this regard, Ld. AR brought my attention towards the affidavit filed by the assessee seeking condonation of delay wherein the reason for not filing the appeal within the prescribed time limit was explained. For reference, the relevant portions from the affidavit is extracted herein below:-

*“.....The said order was served on 25/10/2016. The period of 60 days ended on 24/12/2016. In this regard, it is humbly submitted that during the relevant period i.e, on 16/12/2016, the petitioner developer acute back pain in the left limbs and was not able to move. Therefore, the family physician was called to the residence of the petitioner for providing medical treatment. The movement in the left limbs was almost paralysed.....The disease was diagnosed to be “left Hemiparesis” due to compression of nerve roots at L3-14 level.....Even after the said period, the petitioner was suffering from PIVD L3-14, HYN, CAD & COPD. At this stage, he was advised further bed rest with regular physiotherapy sessions. The Medical Certificate in*

*original is annexed to this petition.....accordingly, the appeal was got prepared on 24/12/2017 and the same is being filed before the Hon'ble ITAT on 26/12/2017.....There is a delay of 367 days in filing the appeal. The petitioner humbly submits that the delay is for the reasons submitted above which are beyond the control of the petitioner and is not intentional. The petitioner therefore prays that the Hon'ble ITAT to kindly condone the delay and pass appropriate orders granting relief as prayed for.”*

4. After hearing the submissions of the Ld. AR and on perusal of the affidavit filed by the assessee explaining the reasons for the delay in filing the appeal before the Tribunal which is supported by the Medical Certificate enclosed along with the condonation petition, I find that the assessee had reasonable cause for not filing the appeal before the Tribunal within the stipulated time due to the ill health suffered by the assessee. Hence, in the interest of justice, I hereby condone the delay of 367 days in the filing the appeal before the Tribunal and proceed to dispose off the appeal on merits.

5. The brief facts of the case are that the assessee is an individual employed in M/s. Satyam Computer Services Limited earning salary income. The assessee filed his return of income on 31/7/2009 for the AY 2009-10 and the same was processed U/s. 143(1) of the Act. Subsequently, the case was taken up for scrutiny under CASS and the assessment was completed on 30/12/2011 wherein the Ld. AO made addition towards unexplained cash deposits in the bank account for Rs. 18,19,500/- which was further confirmed by the Ld. CIT (A).

6. During the course of scrutiny assessment proceedings it was observed by the Ld. AO that the assessee had deposited cash in his bank account for Rs. 19,17,500/-. On query the assessee had explained that he had received the amount of Rs. 18,19,500/- towards sale of immovable property in the month of June, 2008. Further, on verification of the sale deed it was revealed that the property sold belonged to the assessee's wife. It was further revealed that the sale consideration mentioned in the sale deed was only Rs. 13,20,000/- as against Rs. 18,19,500/- claimed by the assessee. Since the property was sold during the month of June 2008, which did not match with the date of deposit made in the bank account and since there was discrepancy in the amount of sale consideration and the amount deposited in the bank account, the ld. AO rejected the explanation offered by the assessee and treated the amount of Rs. 18,19,500/- as unexplained income in the hands of the assessee. On appeal, the ld. CIT (A) confirmed the order of the Ld. AO by agreeing with his view.

7. At the outset, the Ld. AR submitted before me that the assessee had declared the sale of the property in his return of income thought the property stood in the name of the assessee's spouse by virtue of the clubbing provisions U/s. 64 of the Act since the source for the purchase of the immovable property was from the assessee's income and the assessee's spouse is house-wife and does not have any source of income on her own. It was therefore submitted that the addition of the same

amount in the hands of the assessee once again would amount to double taxation and unjust. The Ld. AR therefore pleaded that the addition made by the ld. AO may be deleted. The Ld. DR on the other hand argued in support of the orders of the Ld. Revenue Authorities.

8. I have heard the rival submissions and carefully perused the materials on record, and I find merit in the submission of the Ld. AR. If the assessee's spouse does not have any source of income and is only a housewife then as per the provisions of section 64 of the Act, the income of the spouse has to be assessed in the hands of the assessee. In this situation, if the assessee has declared the sale proceeds in his return and paid the appropriate tax, then further addition of the same amount as the unexplained income in his hands will be erroneous and unjust. Further, the observation of the Ld. AO that the sale consideration declared in the sale deed is only Rs. 13,20,000/- as against the amount of Rs. 18,19,500/- declared does not hold any merit for making the addition. There is every possibility for the assessee to have received on money on the sale of the immovable property and when he has honestly disclosed the same and paid tax, there is no scope for penalising him. Considering the facts and circumstances of the case, in the interest of justice, I hereby remit the matter back to the file of the Ld. AO with directions to verify whether the assessee has declared the sale consideration received in his return of income for the amount of Rs. 18,19,500/- and paid tax and if found so, delete the addition of Rs.

18,19,500/- made in the hands of the assessee as his unexplained cash deposits in the bank account. If found otherwise, pass appropriate orders in accordance with law and merit after affording proper opportunity to the assessee of being heard.

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

Pronounced in the open Court on the 08<sup>th</sup> September, 2020.

Sd/-  
(A. MOHAN ALANKAMONY)  
ACCOUNTANT MEMBER

Hyderabad, Dated: 08<sup>th</sup> September, 2020.

*OKK*

Copy to:-

- 1) Sri Jagadishwar Balla, Plot No. 22, Deen Dayal Nagar, R.K. Puram Post, Malkajgiri, Secunderabad – 500056.
- 2) Income Tax Officer, Ward-12(3), Hyderabad.
- 3) The CIT (A)-1, Hyderabad.
- 4) The Pr. CIT-1, Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File