

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM
(through web-based video conferencing platform)**

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.491/Viz/2019
(निर्धारण वर्ष/Assessment Year:2012-2013)**

Income Tax Officer
Ward – 3(2)
Visakhapatnam

Vs. Sri Potluri Phanendra Babu
1st Floor, Infinity Towers,
Sankara Matham Road
Visakhapatnam
[PAN : AGSPP7638K]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

**Cross Objection No.132/Viz/2019
(Arising out of I.T.A. No.491/Viz/2019)
(निर्धारण वर्ष/Assessment Year:2012-2013)**

Sri Potluri Phanendra Babu
1st Floor, Infinity Towers,
Sankara Matham Road
Visakhapatnam
[PAN : AGSPP7638K]

Vs. Income Tax Officer
Ward – 3(2)
Visakhapatnam

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

राजस्वकी ओरसे / Revenue by
निर्धारितकी ओरसे / Assessee by

: Smt. U.Mini Chandran, DR
: Shri G.V.N.Hari, AR

सुनवाईकी तारीख / Date of Hearing
घोषणाकी तारीख/Date of
Pronouncement

: 24.09.2020
: 23.11.2020

आदेश / ORDER

Per Shri D.S.Sunder Singh, Accountant Member :

This appeal is filed by the revenue against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-1, Visakhapatnam in ITA No.75/2015-16/ITO-W-3(2), VSP/2019-20 dated 23.04.2019 for the Assessment Year (A.Y.) 2012-13 and cross objections are filed by the assessee.

2. All the grounds of appeal are related to the addition deleted by the CIT(A) amounting to Rs.2,00,28,550/- out of the total addition of Rs.2,27,70,750/-. Brief facts of the case are that the assessee is a partner of the firm MANASA, filed the return of income disclosing total income of Rs.11,42,000/- on 30.03.2013. During the course of assessment proceedings, the Assessing Officer (AO) found that the assessee made cash deposits of Rs.1,76,28,550/- and made the investments for purchase of car, introduction of capital in firms, expenditure incurred on foreign tours and some amount was given to his son, Shri P.Pavan Kumar and the total sums representing cash deposits, the investments and the expenditure incurred aggregated to Rs.2,27,70,550/-, which was brought to tax as income from undisclosed sources.

2.1. Cash deposit of Rs.1,76,00,000/- made by the assessee, bank wise are as under :

Sl.No.	Nature of credit/deposit	Date of deposit	Amount deposited Rs.	Gross total
SB A/c No.50100000975 with HDFC				
1.	Cash deposit	09.07.2011	24,000	
2.	Cash deposit	17.01.2012	40,000	
3.	Cash deposit	28.03.2012	5,00,000	
	TOTAL		5,64,000	5,64,000
SB A/c No.10846459231 with SBI				
1.	Cash deposit	02.06.2011	9,80,000	
	TOTAL		9,80,000	9,80,000
HDFC A/c No.00501000179862				
1	Cash deposit	19.05.2011	24,96,000	
2	Cash deposit	26.05.2011	20,04,000	
3	Cash deposit	27.05.2011	5,00,000	
4	Cash deposit	14.06.2011	3,09,750	
5	Cash deposit	04.07.2011	25,00,000	
6	Cash deposit	05.08.2011	10,00,000	
7	Cash deposit	07.09.2011	20,00,000	
8	Cash deposit	08.09.2011	6,00,000	
9	Cash deposit	21.09.2011	5,00,000	
10	Cash deposit	22.10.2011	3,22,000	
11	Cash deposit	24.10.2011	6,98,000	
12	Cash deposit	28.10.2011	80,000	
	TOTAL		1,30,09,750	1,30,09,750
Axis Bank A/c 911010059059097				
1.	Cash deposit	16.11.2011	5,000	
2	Cash deposit	04.01.2012	10,800	
3	Cash deposit	10.01.2012	2,000	
4	Cash deposit	09.02.2012	2,000	
5	Cash deposit	21.02.2012	30,00,000	
	TOTAL		30,19,800	30,19,800
HDFC A/c No.00501930008445				
1	Cash deposit	02.03.2012	25,000	25,000
HDFC A/c No.00501930003653				
1	Cash deposit	24.02.2011	30,000	30,000
ING Vysya A/c 333010111867				
1.	Cash Deposit	NIL	0	0
GRAND TOTAL				1,76,28,550

3. Against the order of the AO, the assessee went on appeal before the CIT(A) and submitted that the assessee is a wealth tax assessee having opening cash balance of Rs.59,76,000/-and made withdrawals from the bank account on various dates and having sufficient source to meet the cash deposits. The assessee also explained before the AO as well as the CIT(A) that the source of deposit was receipt of cash from Late Sri TMV Prasada Rao, Vijayawada out of sale consideration agreed at Rs.2.50 crores for purchase of property i.e. 6000 sft. of built up area in a commercial complex by name Victory Complex, Peda Waltair, Visakhapatnam, jointly owned by Sri Phanendra Babu and his wife Smt.P.Lakshmi, which was received by the assessee during the financial years 2006-07, 2007-08 and 2008-09 and the funds were transferred by Sri Prasad Rao's daughter Ms Indira. The assessee further submitted that the funds of Late Shri TMV Prasad Rao were lying with the assessee due to death of Sri Prasada Rao, which was used for making deposits in the bank account. To support the contention of the receipt of money from Late TMV Prasada Rao, the assessee furnished confirmation from his daughter Smt.Indira and also copy of bank account maintained by late TMV Prasada Rao jointly with his wife Smt.Tummala Vidyadhari. In the confirmation letter, the daughter of Late Shri TMV Prasada Rao has confirmed the payment of Rs.1.60 crores to

the assessee. However, the AO did not believe the contention of the assessee and held that it is an afterthought. Accordingly rejected the assessee's explanation and made the addition.

4. Against which the assessee went on appeal before the CIT(A) and argued that the source of cash deposit was the amount received from late Sri TMV Prasada Rao as well as opening balance which is evidenced by the confirmation letter and wealth tax returns, hence, requested to delete the addition made by the AO. The Ld.CIT(A) considered the submissions and observed that as per the confirmation letter given by Smt.Y.Indira, daughter of Late Shri TMV Prasada Rao, she confirmed having given the amounts to the assessee towards the advance for sale of property. It is further observed that there was opening cash balance of Rs.8,59,76,000/- which is available to the assessee. The Ld.CIT(A) also found that while taking the cash deposits as undisclosed income, the AO did not consider the cash withdrawals made from the bank which is amounting to Rs.1,39,23,009/-. The total cash available to the assessee worked out to Rs.2 crores against the cash deposits of Rs.1,76,28,550/- leaving the balance of Rs.27,42,000/- which remained unspent. Therefore, the

Ld.CIT(A) allowed relief of Rs.2,00,28,550/- consisting bank withdrawals and the opening balance and sustained the remaining addition.

5. Against which the department is in appeal before this Tribunal. During the appeal hearing, the Ld.DR argued that the receipt of money from Sri TMV Prasada Rao is an afterthought and there is no evidence available to support the contention of the assessee. Therefore, argued that the contention of the assessee that he has received on money from late TMV Prasada Reddy required to be rejected. Similarly, the Ld.DR argued that the cash deposits were made in the bank accounts prior to the date of withdrawals made, therefore, the Ld.CIT(A) erred in allowing relief to the assessee. Thus argued that the Ld.CIT(A) erroneously allowed relief, therefore, requested to set aside the order of the Ld.CIT(A) and restore the assessment order.

6. On the other hand, the Ld.AR argued that the assessee's only source of income was house property, i.e. rents collected by the assessee, there was no other source of income. The AO while making addition has not taken any support of Income Tax provisions i.e. either section 68 / 69 to make the additions. By not invoking the provisions itself, the additions made by the AO needs to be deleted. Since the Ld.CIT(A) has examined the

source of funds and application of funds in detail, the Ld.AR argued that no interference is called for in the order of the Ld.CIT(A) and requested to uphold the order of the Ld.CIT(A).

7. We have heard both the parties and perused the material placed on record. In this case, the Ld.CIT(A) has examined the issue in great detail with regard to availability of source and application of fund and given relief of Rs.2,00,28,550/- and confirmed the addition of Rs.27,42,000/-. For the sake of clarity and convenience, we extract para No.6.2.1 to 6.2.6 which reads as under.

*“6.2.1. Ground No.2 : **Unexplained cash deposits / investment / expenditure : Rs.2,27,70,550**The assessing officer did not appreciate the issue properly. He proceeded on the basis that the appellant sought to explain these amounts from out of advance received from Sri TMV Prasada Rao against sale of property. However, as per the confirmation tenet submitted by the appellant and Sint. Y.Indira, it is very much evident that the amount towards advance against sale of property were received only from 2006 to 2009. It is not the case of the appellant that he has received any advance for the impugned assessment year in respect of the said transaction. However, the assessing officer narrated the facts relating to claim of the appellant in respect of advance received from TMV Prasada Rao and proceeded to examine the said claim on similar lines as that of A,Y,2007-08. As such, the very approach of the assessing officer is found to be erroneous.*

6.2.2. Having said that, I have examined the bank statements and the submissions of the appellant. I have also perused the assessment order u/s 16(3) r.w.s. 17 of the Act dt.31.03.2016 for AY.201 1-12. The total wealth was assessed at Rs.4,92,36,670 including cash in hand of Rs.59,76,000 (net amount after deduction of Rs.50,000 exempt under Wealth Tax Act, 1957). Thus, I found the contention of the appellant that there was an opening balance of Rs.59,76,000 as correct.

6.2.3. The next contention of the appellant is that there were withdrawals in the bank account and the same were ignored by the assessing officer while arriving at

the amount of unexplained cash deposits. The appellant was subjected to survey u/s 133A of the Act and all the investments made by the appellant have been duly considered for the purpose of reassessment. Therefore, the contention of the appellant that the cash withdrawn from the bank accounts is available for redeposit merits acceptance. Further, the assessing officer himself adopted this approach for the A.Y.2013-14. The details of the amount withdrawn from the bank are as under :

S.No.	Name of the Bank	Account Number	Date of withdrawal	Amount Rs.
1.	Axis Bank	911010059059097	25.11.2011	100000
2.	Axis Bank	911010059059097	25.11.2011	25000
3.	Axis Bank	911010059059097	25.11.2011	50000
4.	Axis Bank	911010059059097	03.12.2011	10000
5.	Axis Bank	911010059059097	03.12.2011	1000000
6.	Axis Bank	911010059059097	13.12.2011	500000
7.	HDFC Bank	00501000179862	11.04.2011	278000
8.	HDFC Bank	00501000179862	09.05.2011	735000
9.	HDFC Bank	00501000179862	09.05.2011	100000
10.	HDFC Bank	00501000179862	18.07.2011	300000
11.	HDFC Bank	00501000179862	18.07.2011	150000
12.	HDFC Bank	00501000179862	19.07.2011	450000
13.	HDFC Bank	00501000179862	30.07.2011	537500
14.	HDFC Bank	00501000179862	26.08.2011	25000
15.	HDFC Bank	00501000179862	26.08.2011	500000
16.	HDFC Bank	00501000179862	20.09.2011	175000
17.	HDFC Bank	00501000179862	23.09.2011	200000
18.	HDFC Bank	00501000179862	26.09.2011	50000
19.	HDFC Bank	00501000179862	15.10.2011	26000
20.	HDFC Bank	00501000179862	15.12.2011	2000000
21.	HDFC Bank	00501000179862	15.12.2011	2000000
22.	ING Vysya Bank	333010111867	13.12.2011	2000000
23.	ING Vysya Bank	333010111867	14.12.2011	2000000
24.	ING Vysya Bank	333010111867	06.01.2012	711509
		Total		13923009

6.2.4. Including the opening cash balance of Rs.60,26,000 the total cash available is near about Rs. 2 crores and thus the entire cash deposits in the bank account stand explained.

6.2.5. As regards the other additions aggregating to Rs.51,42,000 (22770550 - 17628550), it is the contention of the appellant that the same have been met out of the cash available on the respective dates. In the absence of a detailed cash flow statement, I am unable to accept the contention of the appellant in toto. However, from the overall cash balance of Rs.2 crores worked out as above, there is a balance of Rs.2 crores a sum of Rs.24,00,000 is available after deducting the cash deposits in the bank aggregating to Rs. 1,76,28,550. Therefore, the appellant is entitled for relief to this extent. The balance addition of Rs.27,42,000 is sustained.

6.2.6. Thus, out of the total addition of Rs.2.27.70,750 the appellant gets relief of Rs.2,00,28,550 and the balance addition of Rs.27,42,000 is sustained."

7.1. From the order of the lower authorities, we find that the AO has taxed the sources and application of funds without giving any credit to the availability of sources. Thus the AO did not appreciate the information available before him properly. Though the assessee has furnished the evidence with regard to receipt of the money from late TMV Prasada Rao and got confirmed by the daughter of late TMV Prasada Rao, the AO did not disprove the statement given by Y.Indira with proper evidence. In this case, the confirmation letter was given by Y.Indira. The assessee submitted that he has entered into agreement for sale of property consisting of 6000 sq.ft in Victory Complex, Peda Waltair, Visakhapatnam. Neither the sale agreement was disproved nor the existence of ownership of 6000 sq.ft at Victory Complex was disputed by the AO. Therefore, we do not find any reason to reject the contention of the assessee that he had received on money from late TMV Prasada Rao.

7.1.1. The assessee is regularly assessed to wealth tax and as per the wealth tax returns, there was opening cash balance of Rs.59,76,000/- which was not disputed by the AO. The wealth tax returns are available with the AO, therefore, the availability of opening balance also was not disputed, hence the credit required to be given to the assessee, with regard to availability of opening balance. Further while taxing the deposits of 1,76,28,550/-, the AO cannot ignore the withdrawals and opening cash balance available to the assessee and credit needs to be given to the source available from the application of funds. Though there was mismatch in dates with regard to deposits and withdrawals, the entire withdrawals cannot be brushed aside. The AO ought to have made cash flow statement with opening cash balance, deposit and withdrawal and given due credit for the available sources. Instead, the AO chosen to tax the entire investments without giving credit for the available sources. Therefore, we do not have any hesitation to agree with the view of the Ld.CIT(A) that the AO did not appreciate the issues properly. From the above discussion and the order of the Ld.CIT(A), it is clear that the assessee is having Rs. 2 crores of cash available to him and deposit made was Rs.1,76,28,550/- and still there was some more cash balance which is available to the assessee to meet the investments or expenses. Therefore, we hold that the Ld.CIT(A) has rightly allowed the

relief of Rs.2,00,28,550/- comprising of opening balance and withdrawals from the bank account and confirmed the balance addition. Therefore, we do not find any reason to interfere with the order of the Ld.CIT(A) and the same is upheld. The appeal of the revenue is dismissed.

8. The assessee filed cross objection in support of the order of the Ld.CIT(A). Since the appeal filed by the department is dismissed, the cross objections of the assessee become infructuous, hence dismissed.

9. In the result, appeal of the revenue as well as the cross objections of the assessee are dismissed.

Order pronounced in the open court on 23rd November 2020.

Sd/- (वी.दुर्गा राव) (V. DURGA RAO)	Sd/- (डि.एस. सुन्दर सिंह) (D.S. SUNDER SINGH)
न्यायिक सदस्य/JUDICIAL MEMBER	लेखा सदस्य/ACCOUNTANT MEMBER
विशाखापटणम /Visakhapatnam	
दिनांक /Dated : 23.11.2020	
L.Rama, SPS	

*I.T.A. No.491/Viz/2019 and CO No.132/Viz/2019, A.Y.2012-13
Sri Potluri Phanendra Babu, Visakhapatnam*

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. राजस्व/The Revenue – Income Tax Officer, Ward – 3(2), Visakhapatnam
2. निर्धारिती/ The Assessee– Sri Potluri Phanendra Babu, 1st Floor, Infinity Towers, Sankara Matham Road, Visakhapatnam
3. The Commissioner of Income Tax -1, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-1, Visakhapatnam
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam