

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'A', HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 806/H/2019 Assessment Year: 2015-16		
Asst. Commissioner of Income-tax, Circle- 4(1), Hyderabad.	Vs.	Ajay Kumar Anthati, Hyderabad. PAN - ADIPA 6106G
(Appellant)		(Respondent)
Revenue by:		Shri Sunil Kumar Pandey
Assessee by:		Shri K.V. Chalamaiah
Date of hearing:		06/04/2021
Date of pronouncement:		19/05/2021

ORDER

PER L.P. Sahu, AM:

This appeal filed by the Revenue for AY 2015-16 is directed against the CIT(A) - 1, Hyderabad's order, dated 21/02/2019 involving proceedings u/s 143(3) of the Income Tax Act, 1961 ; in short "the Act" on the following grounds of appeal:

2. We notice at the outset that revenue's instant appeal suffers from 5 days delay in filing. To this effect, the AO filed petition for condonation of the said delay stated therein that due to the case record pertaining to this appeal mixed up with other records of this office could not be traced immediately, which caused the

impugned delay in filing of the instant appeal. Case law Collector Land Acquisition vs Mst. Katiji & Ors, 1987 AIR 1353 (SC) and University of Delhi Vs. Union of India, Civil Appeal No. 9488 & 9489/2019 dated 17 December, 2019, hold that such a delay; supported by cogent reasons, deserves to be condoned so as to make way for the cause of substantial justice. We accordingly hold that assessee's impugned delay of 5 days is neither intentional nor deliberate but due to the circumstances beyond its control. The same stands condoned. Case is now taken up for adjudication on merits.

3. Briefly the facts of the case are that the assessee has filed his return of income for the AY 2015-16 on 29/10/2015, declaring a total income of Rs.56,34,920/-. The case was selected for scrutiny under CASS and the notices were issued. Based on the information available, the Assessing Officer completed the assessment u/s.143(3) on 30-12-,2017 determining the assessed income at Rs.3,28,54,181/- by making addition of Rs.2,72,19,261/- towards unexplained credit u/s.68 of Income Tax Act by observing as under:

" The assessee in his submission dated 15-06-2017 has indicated that the assessee raised an amount of Rs.2,84,64,000/-_ order to meet the amount payable to Secunderabad Cantonment Board towards 1/3rd of the contract amount. Further, the assessee has also submitted a list names wherein indicating the same as the sources for his capital receipt. Further, in the letter dated 21-11-2017 the assessee has indicated that about 60 persons had. helped him

financially. The assessee in his letter dt.21-11-2017 also indicates that the addition to the capital was either credited to his current account maintained with Bank of Baroda, Banjara Hills Branch or were paid directly to Secunderabad Cantonment Board by way of DDs. The assessee claims that this indicates that the amount does not belong to him and belong to the various persons who have helped him financially. The assessee also could not produce any of the purported lenders despite multiple opportunities having been provided to him.

The above ground contentions of the assessee do not hold ground .. It is pertinent to mention here that the assessee has booked the entire amount as his own capital in the ITR furnished by him. Further, the assessee has also submitted a balance sheet of the assessee wherein it is also indicated that an amount of Rs.2, 84, 64, 000/- was (capital brought in'. Thus, it 'is clear that the assessee on multiple occasions has clearly intended to treat the sum received as his own capital. Further, a perusal of point No.12 of the lease agreement with Secunderabad Contonment Board indicates that the assessee has deposited a sum of Rs.2, 50, 00, 000/- with the Cantonment Board as under:

<i>D.D.No.</i>	<i>Date</i>	<i>Bank</i>	<i>Amount</i>
<i>254447</i>	<i>17-06-2014</i>	<i>Bank of Baroda</i>	<i>20,00,000</i>
<i>254446</i>	<i>17-06-2014</i>	<i>Bank of Baroda</i>	<i>30,00,000</i>
<i>Bank Transfer</i>		<i>Bank of Baroda</i>	<i>2,00,00,000</i>

Hence, the claim of the assessee that part of the payment to Secunderabad Cantonment Board was

done directly by the purported financial supporters to the assessee does not stand ground. As per the list submitted by the assessee a total of 34 people have purportedly given DDs to the cantonment board. The details as per the lease agreement clearly contradict the same and hence assessee's claim at Point 6 of letter submitted on 21-11-2017 that the money belongs to various persons on the account that multiple persons directly paid the amount by way of DD is clearly not tenable. Further, from the bank statement of the assessee it is seen that an amount of Rs.2,00,00,000/- was indeed transferred to Secunderabad Cantonment Board on 07-07-2014. It is also seen that on the same date, a total cash deposit of Rs.1.43 crores has been made into the bank account of the assessee. The pay-in-slips for the cash deposits were obtained from Bank of Baroda in response to letter u/s.133(6) of the I.T. Act, 1961. The pay-in-slips indicate that the entire cash has been deposited by a single person. Thus, in the light of the facts discussed, the assessee's claim that multiple persons have provided him money to pay towards the charges of Secunderabad Cantonment Board is not sustained.

Further, apart from the clear deviations from the submissions of the assessee noted above, it is clear that the amount has been booked by the assessee as his own capital and not as his loan or any other form of advance. The money is to be treated as capital received by the assessee in every regard and to be brought to tax in assessee's hands only. Thus, an amount of Rs.2,72,19,261/- representing an increase in capital compared to capital shown as per AY 2014-15 is to be treated as assessee's income as unexplained credit and is to be brought to tax u/s.68 of the Income Tax Act, 1961."

4. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A) and filed additional evidence.

4.1 During the appeal proceedings, the assessee made submissions which were extracted by the CIT(A) in his order at pages 4 & 5 and the remand report were called for from AO against the additional evidence submitted before him. After considering the submissions of the assessee as well as remand report from the AO and reply to the remand report by the AR of the Assessee, which was extracted by the CIT(A) in his order at pages 7 to 10, the CIT(A) allowed the appeal of the assessee by observing as under:

8. I have carefully considered the facts of the case, assessment order, remand report submitted by the Assessing Officer and the submissions of the appellant. Even though one opportunity given to the AO to verify the bank account and submissions of the appellant, the AO concluded that these are already available at the time of assessment.

8.1 As per the Assessment Order, the AO mainly made the addition of Rs.2,72,19,261/- u/s.68 as unexplained credit. On verification of bank accounts, there is capital Rs.1,42,74,000/- as on 05-7-2014 came through RTGS. Another Rs.10 lakhs through RTGS on 07-07-2014. Therefore, the appellant received this total capital of Rs. 1,52,74,000/- not in cash. Hence, the addition made to this extent is not sustained and hence deleted.

8.2 As per the appellant's explanation, the profit from liquor and tollgate business of Rs.47,65,576/- also to be given credit. After verification of the

same, since the appellant disclosed this profit hence capital to this extent to be treated as explained. Hence, addition to this extent deleted.

With regard to Rs.50 lakhs in DDs received by the appellant, the Assessing Officer, in his Assessment Order itself mentioned that this is received from Mr.Kameswara Rao and as per submissions of appellant and bank account also, these DDs along with another amount of Rs.95 lakhs invested in FDs received from Mr.Kameswara Rao. The bank account along' with details and identity of Mr.Kameswara Rao was. already filed by the appellant. Therefore, this identity was proved and hence the Assessing officer made the addition of unexplained credit u/s.68 is not correct. Hence, this amount of Rs.50 lakhs deleted.

With regard to the balance amount of Rs.11,79,685/-, there is again another amount of Rs.10 lakhs and Rs.3lakhs through RTGS on 07-07-2014. Therefore, all the submissions of the appellant accepted and no addition is sustained.”

5. Aggrieved by the order of the CIT(A), the revenue is in appeal before the ITAT.

6. Before us, the Id. DR besides relying on the order of the AO, submitted that the assessee has not proved the conditions laid down in the provisions of section 68 of the Act. He submitted that merely credit in the bank account through RTGS/Cheques/DDs or any other electronic mode is not sufficient. He submitted that he has also not furnished the details viz., name, address or any other documents to prove the Identity of his creditors, Capacity of creditors to advance money; and

Genuineness of transaction, which are laid down u/s 68 of the Act. He submitted that the assessee has submitted only name & PAN in some cases which does not discharge the liability cast upon him. The Id. DR has filed paper book containing pages 1 to 26 which are almost submitted by the assessee and bank statements and bank deposits slips were obtained by the AO by calling information u/s 133(6). He submitted that the CIT(A) had called for remand report on the basis of additional evidence filed by the Id. AR of the assessee, which were not filed before the AO. The amounts received from friends and relatives has been credited to the capital account and capital has been increased. He submitted that it was primary duty cast upon the assessee to prove the conditions laid down u/s 68 as under:

“Identity of his creditors, Capacity of creditors to advance money; and Genuineness of transaction.”

7. The Id. AR on the other hand relied on the order of the CIT(A) and reiterated the submissions as made before the lower authorities. He submitted that all the details were produced to the satisfaction of the AO at the time of assessment proceedings. He submitted that the amounts were directly credited into the bank account of the assessee. He submitted that the CIT(A) has decided the issue in favour of the assessee after considering all the facts and documents filed by the

assessee. He, therefore, prayed that the order of the CIT(A) may be upheld.

8. After considering the rival submissions and perusing the material on record as well as going through the orders of revenue authorities, we observe from the orders of authorities below that initially the assessee has shown an amount of Rs. 2,84,64,000/- in order to meet the amount payable to secunderabad cantonment board towards 1/3rd of the contract amount, which has been disallowed by the AO u/s 68 of the Act for not discharging the onus cast upon the assessee under the said section. Further, on perusal of the paper book submitted by the Id. DR, which was submitted by the assessee before the AO during the course of assessment proceedings, from the page 3 at paragraph 4 of the paper book, the assessee has submitted as under:

“ In all, about 60 (sixty) persons have helped me financially and I was able to meet the requirements for the bid and it was successfully allotted to me. My friends and relatives gave me amounts ranging from Rs. 1,00,000 to 44,64,000/- per head, and the total amount received by me amounted to Rs. 2,84,64,000/- and accordingly I could mobilize funds for paying the 1st instalment of the lease amount. For the balance lease amount of Rs. 4,99,99,999/- (which was required to be paid in 9 equal monthly instalments to the Secunderabad Cantonment Board from out of working capital generated out of the business) I had to submit a bank guarantee.”

8.1 From the submissions itself, it is clear that the assessee has received an amount of Rs. 2,84,64,000/- from friends and relatives and these facts have been ignored by the CIT(A). There is no doubt that the amount has come into assessee's bank account through banking channel, but, the other conditions like identity of the creditors/depositors and creditworthiness of the creditors has not been verified by the CIT(A) and no documents have been filed by the assessee before the CIT(A) as well as before the AO to prove the conditions laid down in section 68. The CIT(A) has ignored all these issues. We have also gone through the bank statements filed by the assessee, on multiple occasions huge amounts were deposited and bank closing balance as on 31/03/2015 is not tallied with the financial statements which have been shown by the assessee of Rs. 5,12,625/- & there is no evidence regarding maintaining of other bank account. The AR of the assessee submitted before us that from other business cash has been deposited into the bank account. On perusal of the balance sheet of Shri Sai Wines, there is no investment shown by the assessee as investment in toll of cantonment board of secunderabad and on the liabilities side of the balance sheet filed by the assessee, there is no liability in the name of other business. The balance sheet filed at page no. 25 of the paper book, the assessee has shown under the head 'capital account', the opening

balance is "0" and the capital brought in is Rs. 2,84,64,000/-. It shows that the fixed capital has been introduced in the business during the year is Rs. 2,84,64,000/-, the figure of which is tallied with the submissions made by the assessee at paragraph No. 4 as quoted supra. The ld. AR of the assessee before us, alternatively, submitted that it is a loan, but not a capital and the same is to be returned to the depositors/creditors. Even if this alternative argument of the assessee is considered by following the judgment of *Kedarnath Jute Manufacturing Co Ltd v. CIT (1971) 82 ITR 363 (SC)*, the entry in the books of account is not relevant, then, still the assessee has to satisfy the AO as per section 68 of the Act. Therefore, we are of the considered opinion that the issue in dispute shall be remitted back to the AO for de-novo assessment. Accordingly, we restore the matter back to the file of the AO for de-novo adjudication, after giving reasonable opportunity of hearing to the assessee in the matter. The assessee is directed to substantiate its claim by way documentary evidence before the AO. Accordingly, the grounds raised by the revenue are allowed for statistical purposes.

9. In the result, appeal of the revenue is treated as allowed for statistical purposes in above terms.

Pronounced in the open court on 19th May, 2021.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Hyderabad, dated 19th May, 2021
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Copy to

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3	<i>CIT(A) - 1, Hyderabad.</i>
4	<i>Pr. CIT - 1, Hyderabad.</i>
5	<i>ITAT, DR, Hyderabad.</i>
6	<i>Guard File.</i>