

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

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER AND
SHRI L. P. SAHU, ACCOUNTANT MEMBER
(Through Virtual Hearing)**

**ITA No.647/Hyd/2016
(Assessment Year : 2009-10)**

Smt. N. Padmaja,
Hyderabad.
PAN ABCPN 2453P

.....Appellant.

Vs.

Dy. Commissioner of Income Tax,
Circle 3(2), Hyderabad.

.....Respondent.

Appellant By : Shri P. Murali Mohana Rao. C.A.
Respondent By : Shri Rohit Majumdar. (D.R.)

Date of Hearing : 8.6.2021.
Date of Pronouncement : 12.07.2021.

O R D E R

Per Shri S.S. Godara, J.M. :

This assessee's appeal for Asst. Year 2009-10 arises from the Commissioner of Income Tax (Appeals)-3, Hyderabad's order dt.21.03.2016 passed in case

No.1014/DC-3(2)/CIT(A)-3/14-15 in proceedings under Section 143(3) r.w.s. 148 of Income Tax Act, 1961 ('the Act').

Heard both the parties. Case file perused.

2. It emerges during the course of hearing that the assessee's sole substantive grievance challenges the correctness of both the lower authorities' action making addition of Rs.74,85,100 comprising of alleged unexplained investment in purchase of jewellery to the tune of Rs.61,17,000; trading advances received of Rs.11 lakhs from M/s. SPR Infrastructure Limited as not explained as well as forming 2(22)(e) deemed dividends and the remaining sum of Rs.2,67,000 as unexplained cash, respectively.

3. We next notice that the instant three additions do not need us to delve much deeper in the relevant facts. The Revenue's case is that it has precisely gone by the incriminating material found/seized in the survey action dt.20.7.2011 at the business premises of M/s. SPR Infrastructure Publication Pvt. Ltd. Learned departmental

representative has vehemently submitted that section 292C of the Act carry presumption of correctness of the seized material and applies in case of a survey action as well.

4. We have given our thoughtful consideration to rival pleadings against and in support of the impugned addition(s). We find no reason to sustain atleast former twin additions of Rs.61,17,100 as well as Rs.11 lakhs. The first one herein does not deserve to be concurred with for the precise reason that the same is based on the impounded material but the amount shown is mentioned therein has been stated as "existing outstanding balance" as on 26.04.2009. We make it clear that we are in Assessment Year 2009-10 involving F.Y. 2008-09 and going by the alleged incriminating document itself, the impugned amount is shown as outstanding goes not only upto 31.03.2009 but very well beyond that. All this leads us to the conclusion that section 292C presumption regarding correctness of the seized document supports the assessee's case rather than that of department. We delete the first addition of Rs.61,17,100 in these facts and circumstances.

5. Next comes the 2nd addition of Rs.11 lakhs.

Learned CIT(A)'s detailed discussion in his lower appellate order accepts the assessee's explanation that the source thereof is withdrawal from the company M/s.SPR Infrastructure Pvt Ltd., but, at the same time, he has treated the very sum as deemed dividends u/s. 2(22)(e) of the Act. We notice herein as well from a perusal of the assessee's ledger account in the books of M/s. SPR Infrastructure Ltd. from 18.12.2008 to 31.12.2008 that the impugned sum of Rs.11 lakhs represents an advance amount paid towards purchase of property than a loan and therefore not covered u/s.2(22)(e) of the Act. We conclude that the CIT(A) has erred in law and on facts in issuing the necessary directions to this effect to the Assessing Officer. The impugned addition of Rs.11 lakhs is deleted.

7. Mr. Murali Mohana Rao has not pressed the third limb of addition of Rs.2,67,000 keeping in mind the smallness thereof. Ordered accordingly.

8. This assessee's appeal is partly allowed in above terms.

Order pronounced in the open court on 12th July,2021.

Sd/-

(L.P. SAHU)

Accountant Member

Hyderabad, Dt. 12.07.2021.

Sd/-

(S.S. GODARA)

Judicial Member

* Reddy gp

Copy to :

1.	Smt. N. Padmaja, Director, M/s. SPR Publications Pvt. Ltd., 317/A/A, MLA Colony, Road No.12, Banjara Hills, Hyderabad.
2.	DCIT, Circle 3(2), Hyderabad.
3.	Pr. C I T-3, Hyderabad.
4.	CIT(Appeals)-3, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.