

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

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

ITA No.525/Hyd/2016		
Assessment Year: 2008-09		
Sri Arun Gupta, H.No.A-108, Road No.12, Journalist Colony, Jubilee Hills, Hyderabad. PAN: ACWPG 9807 B	Vs.	The Assistant Commissioner of Income Tax, Circle-6(1), IT Towers, 6 th Floor, Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Sri P. Mural Mohan Rao	
Revenue by:	Smt. Swapna, DR	
Date of hearing:	28/06/2021	
Date of pronouncement:	16/08/2021	

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the assessee against the order of the Ld. CIT(A)-9, Hyderabad in appeal No. 0318/ACIT, Circle-6(1)/2015-16, dated 12th January, 2016 for the AY 2008-09.

2. The assessee has raised several elaborate grounds and elaborate additional grounds in his appeal however, the crux of the issue is that:-

“The Ld. CIT (A) has erroneously upheld the order of the Ld. AO who had levied penalty in the case of the assessee U/s. 271AAA of the Act which is not good in law.”

3. The brief facts of the case are that the assessee is an individual engaged in the business of real estate and earning income from other sources. Subsequent to search and seizure operations conducted in the premises of the assessee, assessment was completed U/s. 143(3) r.w.s 153A of the Act wherein additions were made in the hands of the assessee for Rs.42,43,368/- under the head unexplained investment towards purchase of property and Rs. 58,37,053/- under the head unexplained expenditure towards performing marriage of his daughter.

4. In the penalty proceedings, the ld. AO observed that the unexplained investment during the relevant Assessment year in the case of the assessee is Rs. 53 lakhs and unexplained expenditure incurred for performing the marriage expenses of the assessee's daughter is Rs. 8,27,053/- as sustained in the Order of the Revenue.

5. In the appellate proceedings, the ld. CIT (A) made the following observation: -

The assessee had purchased residential property in Jubilee Hills, Hyderabad disclosing an amount of Rs. 2 Crs., in the registered sale deed while as during the enquiries conducted with Union Bank of India

it came to light that the assessee and his wife had furnished an agreement of sale for the purchase of property for a sale consideration of Rs. 3,79,00,000/- to the bank. When this fact was brought to the notice of the assessee, the assessee and his wife filed their return of income for the relevant AY offering Rs. 53 lakh and Rs. 42,50,000/- respectively as their income from other sources. Further the Ld. AO observed that, during the course of search, certain pay-in-slips were found and seized in the premises of the assessee towards cash deposits made in various accounts held with Karnataka Bank Ltd, Nampally Branch by the vendor of the property amounting to Rs. 1,31,00,000/-. Based on the above, penalty was levied on the assessee invoking the provisions of section 271AAA of the Act for Rs. 53 lakhs. The finding of the Ld. Revenue Authorities was that the assessee and his wife had invested an amount of Rs. 1,79,00,000/- outside the books of accounts for the purchase of the property. However, the assessee and his wife had admitted an aggregate amount of Rs. 95,50,000/- [Rs. 53,00,000 + Rs. 43,50,000] in their return of income which is accepted by the Revenue for which there is no basis as against the original finding of the Ld. Revenue Authorities that the aggregate undisclosed income of the assessee and his wife is Rs. 1,79,00,000/-. From the above facts it appears that assessee has admitted the amount of Rs. 53 lakhs as his undisclosed income in order to avoid further litigation. Moreover, how the cash deposited in the vendor's bank account is assessed in the

hands of the vendor of the property is also not brought to our notice. Further much reliance cannot be placed with respect to the copy of the sale agreement obtained from the bank because such documents furnished to the bank are for different purpose. From the pay-in-slips found in the premises of the assessee it is not apparent that the amount was deposited for the purpose of the purchase of the property, and it is also not clear that by whom the amount was remitted in the bank account of the vendor of the property. It is also evident that the purchase consideration recorded in the sale deed was only Rs. 2 Crs. Needless to mention that statement obtained during the course of the search proceedings does not have much evidentiary value. From the above, it is obvious that there is no conclusive proof that the undisclosed income from other sources of the assessee is Rs. 53 lakhs and therefore, though the evidence may be good enough for making addition in the hands of the assessee, levy of penalty U/s. 271AAA of the Act will not be appropriate.

7. Similarly, the finding of the Revenue is that the assessee has incurred unexplained expenditure of Rs. 8,27,053/- towards the marriage of his daughter. This expenditure is quite nominal and generally in Indian marriages various expenditures are incurred by the close relatives also as per their norms and customs. Therefore, it cannot be conclusively arrived at that the assessee had incurred the entire

expenditure of Rs. 8,27,053 out of his undisclosed income. Hence, though the evidence found by the Revenue may be good enough for making the addition in the hands of the assessee, levy of penalty U/s. 271AAA of the Act will not be appropriate without a categoric finding.

8. For the above reasons, we hereby direct the Ld. AO to delete the penalty levied and sustained in the hands of the assessee for Rs. 6,12,705/-.

9. In the result, appeal of the assessee is allowed.

Pronounced in the open Court on the 16th August, 2021.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 16th August, 2021

OKK

Copy to:-

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- 2) The Assistant Commissioner of Income Tax, Circle6(1), IT Towers, 6th Floor, AC Guards, Hyderabad.
- 3) The CIT (A)-9, Hyderabad.
- 4) The Pr. CIT-6, Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File