

आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

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

**श्री एन के चौधरी, न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष
BEFORE SHRI N.K.CHOUDHRY, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.41/Viz/2021
(निर्धारण वर्ष/Assessment Year:2017-18)**

Dy.Commissioner of Income Tax
Circle-3(1)
Visakhapatnam

Vs. Smt.Devi Tatiparti
D.No.10-27-7/19
Sri Satya Sai Enclave
Waltair Uplands
Visakhapatnam
[PAN : ACIPT9989K]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

**Cross Objection No.37/Viz/2021
(Arising out of I.T.A. No.41/Viz/2021)**

Smt.Devi Tatiparti
D.No.10-27-7/19
Sri Satya Sai Enclave
Waltair Uplands, Visakhapatnam
[PAN : ACIPT9989K]

Vs. Dy.Commissioner of Income Tax
Circle-3(1)
Visakhapatnam

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Shri V.Srinivasa Rao, AR
: Shri G.V.N.Hari, DR

सुनवाई की तारीख / Date of Hearing : 09.09.2021
घोषणा की तारीख/Date of Pronouncement : 24.09.2021

आदेश /ORDER

Per Bench:

This appeal is filed by the revenue against the order of the
Commissioner of Income Tax (Appeals) [CIT(A)]-1, Visakhapatnam in ITA

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No.10284/2019-20/CIT(A)-1/Vsp/2020-21 dated 14.09.2020 for the Assessment Year (A.Y.) 2017-18 and the cross objections are filed by the assessee.

2. Ground No.1, 6 and 7 are general in nature which does not require specific adjudication.

3. Ground No.2 is related to the addition of Rs.42,00,000/- made u/s 69A of the Income Tax Act, 1961 (in short 'Act') in respect of cash deposits made during the demonetization period in specified bank notes. During the assessment proceedings, the Assessing Officer (AO) found that the assessee has made cash deposits of Rs.42,00,000/- in South Indian Bank. The assessee was asked to explain the source, but the assessee has not offered any explanation regarding the source of such money. Therefore, the AO made addition u/s 69A of the Act.

4. Against which, the assessee went on appeal before the CIT(A) and The assessee explained that bank account of South Indian Bank was disclosed in the books of accounts and the cash deposits were also duly accounted. The Ld.CIT(A) perused the documents filed along with paper book and found that the assessee had deposited Rs.30,00,000/- on 10.11.2016, Rs.9,00,000/- on 16.11.2016 and Rs.3,00,000/- on 30.12.2016

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in her bank account No.0063083000000573 with South Indian Bank Ltd. Further the Ld.CIT(A) also found that the assessee was having cash balance of Rs.44,82,684.26 at the beginning of Rs.10.11.2016 and the assessee had deposited the said sums from the cash balance available as on 10.11.2016. Thus, the Ld.CIT(A) held that the cash deposits are duly explained from the entries in books of accounts, therefore, following the decision of Hon'ble ITAT Mumbai in the case of Karthik Constructions in I.T.A. No.2292/Mum/2016 dated 23.03.2018 and deleted the addition.

5. Against which the department is in appeal before this Tribunal. During the appeal hearing, the Ld.DR supported the order of the AO and argued that during the assessment proceedings, the AO has called for the information, but the assessee failed to furnish the information. The Ld.CIT(A) did not call for the remand report though assessee had furnished the information before the CIT(A). Therefore, argued that deleting the addition is bad in law, hence requested to set aside the order of the Ld.CIT(A) and allow the appeal of the revenue.

6. On the other hand, the Ld.AR vehemently supported the order of the Ld.CIT(A).

7. We have heard both the parties and perused the material placed on record. The assessee has furnished the paper book on 21.06.2021. In paper book, the assessee has furnished the copy of cash book as well as statement of South Indian Bank Ltd. along with the paper book. The department did not place any material to show that the entries made in the cash book furnished along with paper book were incorrect or defective. Though the assessee has filed the paper book, the department did not take any steps to verify the correctness of the information in the paper book. The assessee furnished the entire details before the CIT(A) and the Ld.CIT(A) verified the material placed before him and allowed the appeal of the assessee. As per section 250(4) of the Act, The Ld.CIT(A) is empowered to make further enquiry or may direct the AO to make further enquiry in disposing the appeal. In the instant case, the Ld.CIT(A) has perused the material placed before him and allowed the appeal of the assessee holding that the deposits made in the bank account are recorded in the books of account. No other material was placed by the department to show that the finding of the Ld.CIT(A) was incorrect. Therefore, we find no reason to interfere with the order of the Ld.CIT(A) and the same is upheld. Appeal of the revenue on this ground is dismissed.

8. Ground No.3 is related to the addition made by the AO u/s 69A in respect of long term capital gains amounting to Rs.77,74,373/- which was deleted by the Ld.CIT(A). During the assessment proceedings, the AO found that the assessee has claimed the amount of Rs.77,74,373/- under the head 'others, including exempt income of minor child'. On perusal of computation of income, the AO found that the assessee has sold the shares for consideration of Rs.83,74,373/- and after deducting the cost of acquisition for an amount of Rs.6,00,000/- arrived at the long term capital gains on sale of shares at Rs.77,74,373/- and claimed as exempt income u/s 10(38) of the act. The AO has called for the details but the assessee failed to furnish the details, therefore, the AO made addition u/s 69A for an amount of Rs.77,74,343/-.

9. The assessee went on appeal before the CIT(A) and the Ld.CIT(A) deleted the addition holding that the AO has erroneously invoked section 69A for making the addition, therefore, held that the addition made by the AO is unsustainable, accordingly deleted the addition.

10. Against the order of the Ld.CIT(A), the department is in appeal before this Tribunal. During the appeal hearing, the Ld.DR supported the order of the AO and argued that the assessee did not furnish any details during the

appeal hearing, therefore argued that the Ld.CIT(A) ought to have given opportunity to the AO under Rule 46A. Therefore, requested to remit the matter back to the file of the AO.

11. On the other hand, the Ld.AR argued that the AO made the addition u/s 69A. There is no dispute that the receipt was under long term capital gains for sale of shares. The details have been furnished in the paper book. The Ld.AR further argued that the Ld.CIT(A) is empowered to cause enquiries for disposing the appeal and in the instant case the assessee has furnished the paper book containing the complete details and the Ld.CIT(A) disposed off the appeal after due verification and therefore, argued that there is no case for remitting the matter back to the file of the AO, hence, requested to uphold the order of the Ld.CIT(A).

12. We have heard both the parties and perused the material placed on record. In this case, there is no dispute that the assessee furnished the details before the Ld.CIT(A) and copy of the paper book was placed before us. As per the information placed in the paper book it is evident that the assessee has sold the shares of Legacy Mercantile Limited and received an amount of Rs.83,74,373/- on sale of shares and claimed the same as exempt u/s 10(38) of the Act. The assessee sold the shares through DEMAT

account. The Ld.CIT(A) verified the entire issue and decided the appeal. As per section 69A, where the assessee is found to be owner of any money, bullion, jewellery which is not recorded in the books of accounts, the same required to be brought to tax. For the sake of clarity, we extract section 69A of the Act which reads as under :

Unexplained money, etc.

69A. *Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.*

From the plain reading of section 69A, it is clear that if the assessee found to be the owner of money, bullion, jewellery which is not recorded in the books of account, required to be brought to tax u/s 69A of the Act. In the instant case, the assessee had sold the shares and received the sale proceeds, thus, the source stands explained. What was claimed by the assessee was exemption u/s 10(38) which ought to have been disallowed by the AO. In the instant case, the assessee has recorded the transactions in the books of accounts as evident from the cash book and financial statements furnished by the assessee along with paper book. Therefore,

there is no case for making addition u/s 69A and we do not find any reason to interfere with the order of the Ld.CIT(A) and the appeal of the revenue on this ground is dismissed.

13. Ground No.4 is related to the addition of Rs.1,67,983/-, profit from sale of car. During the assessment proceedings, the AO found that the assessee has shown the sum of Rs.1,67,983/- as profit on sale of car. The assessee reduced the said amount from P&L account, but not offered the same under the head Capital Gains. The AO issued show cause notice and the assessee failed to furnish the details. Therefore, the AO made the addition of Rs.1,67,982/- u/s 69A of the Act.

14. Against which the assessee went on appeal before the CIT(A) and the Ld.CIT(A) found from the computation of income that the assessee has reduced the profit on sale of car and made necessary adjustment in the depreciation statement. The contention of the assessee was that the sale proceeds of the car was reduced from the written down value, while computing the depreciation statement, hence, no separate addition is warranted. The Ld.CIT(A) extracted the depreciation on machinery @15% which is as under :

Machinery @15%

Rs.

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W.D.V. as on 01.04.2016	2,12,108.90
Add : Addition before 30.09.2016	
Purchase of new car	10,80,090.70

	12,92,199.60
Less : Sale of old car	3,80,090.70

	9,12,108.90

Since the assessee has reduced the sale proceeds of the old car from the written down value and claimed the correct depreciation from the written down value, the Ld.CIT(A) held that there is no case for making addition for shorter capital gains, hence directed AO to delete the addition.

15. Against which the department has filed appeal before this Tribunal. During the appeal hearing, the Ld.DR relied on the order of the AO.

16. Per contra, the Ld.AR relied on the order of the Ld.CIT(A).

17. We have heard both the parties and perused the material placed on record. In the instant case, the assessee credited the profit on sale of car in Profit & Loss account, but the car is part of the block of assets and the sale consideration of the car required to be reduced from the block of assets. As per the computation given by the Ld.CIT(A) in appeal order, we find that the assessee has rightly reduced the sale of old car from the block of assets

and claimed the depreciation on the written down value hence, there is no case for making the addition on sale of car. Therefore, we hold that the Ld.CIT(A) rightly deleted the addition and the same is upheld. Appeal of the revenue on this ground is dismissed.

18. Ground No.5 is related to the department's contention that the assessee has filed additional information in respect of long term capital gains and sale of old car, therefore, contended that the Ld.CIT(A) ought to have remitted the matter back to the file of the AO. During the appeal hearing, the Ld.DR vehemently supported the contention raised by the department.

19. Per contra, the Ld.AR submitted that the Ld.CIT(A) is vested with the power to direct the AO to make further enquiries or the Ld.CIT(A) himself can make enquiries before disposing the appeal as per section 250(4) of the Act. The Ld.CIT(A) duly verified the information placed before him before disposing the appeal, which is evident from the Ld.CIT(A)'s order, hence, argued that there is no need to remit the matter back to the file of the AO and requested that the revenue's appeal may be dismissed.

20. We have heard both the parties and perused the material placed on record. As per the provisions of section 250(4) of the Act, the Ld.CIT(A) is

permitted to make further enquiries before disposing the appeal. The assessee has filed paper book and furnished the information that was placed before the CIT(A) or lower authorities. Copy of cash book from page No.15 to 23, copy of South Indian Bank statement from page No.24 to 29, Computation income statement, copy of financial statements and proof for purchase and sale of shares. The information with regard to addition u/s 69A, sale of shares and depreciation on car are very simple issues and the department did not bring any defect or error in the information filed in the paper book. Since, the Ld.CIT(A) duly verified the information placed before him and for which he is permitted to cause enquiries, we find that ground raised by the department under Rule 46 is only for the sake of continuation of litigation and no fruitful purpose would be served. In the facts and circumstances, we do not see any valid reason to remit the matter back to the file of the AO. Therefore this ground of appeal of the department is dismissed.

21. The assessee filed cross objections supporting the order of the Ld.CIT(A). Since the appeal of the revenue is dismissed, the cross objections filed by the assessee becomes infructuous, hence dismissed.

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22. 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 24th September, 2021.

Sd/- (एन के चौधरी) (N.K.CHOUDHRY)	Sd/- (डि.एस.सुन्दर सिंह) (D.S.SUNDER SINGH)
न्यायिक सदस्य/ JUDICIAL MEMBER	लेखा सदस्य/ACCOUNTANT MEMBER
Dated : 24.09.2021	
L.Rama, SPS	

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

1. राजस्व/The Revenue – Dy.Commissioner of Income Tax, Circle-3(1), Visakhapatnam
2. निर्धारिती/ The Assessee - Smt.Devi Tatiparti, D.No.10-27-7/19, Sri Satya Sai Enclave, Waltair Uplands, Visakhapatnam
3. The Pr.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.गार्डफ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam