

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ A ‘ Bench, Hyderabad
(Through Video Conferencing)

Before
Shri A. Mohan Alankamony, Accountant Member
AND
Shri S.S. Godara, Judicial Member

ITA No.577/Hyd/2020		
Assessment Year: 2016-17		
D. Vishnu Vardhan Rao, Hyderabad C/o.M.V. Prasad, Chartered Accountant, D.No.60-7-13, Ground Floor, Siddhartha Nagar, 4 th Lane, Vijayawada. PAN : AIJPD6549E.	Vs.	The Deputy Commissioner of Income Tax, Central Circle – 2(3), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri M.V. Prasad.	
Revenue by:	Shri Rajendra Kumar	
Date of hearing:	22/11/2021	
Date of pronouncement:	29/11/2021	

ORDER

Per S. S. Godara, J.M.

This assessee’s appeal for A.Y 2016-17 arises from the Commissioner of Income Tax (Appeals)-12, Hyderabad’s order dated 24.09.2020, in case No.10206/2019-20 involving proceedings under section 143(3) r.w.s. 153A of Income Tax Act, 1961 (in short, “the Act”).

Heard both the parties. Case file perused.

2. Coming to the assessee's sole substantive grievance that both the learned lower authorities have erred in law and on facts in making section 69 un-explained investment addition on immovable properties of Rs.70,69,000/-, we note that the corresponding lower appellate discussion to this effect reads as under :

"5.1 It is seen that while finalizing the assessment proceedings, the AO has made the disallowance on the following grounds :

"4. Unexplained Investment in Immovable Property: An agreement of sale dated 11.03.2016 between Shri. Vardhini Venkateswara Rao and assessee's wife, Smt. Daru Surekha was found and seized during the search operation vide page nos. 308 to 311 of seized annexure A/DVR(MD)/01. As per the agreement of sale, the consideration was Rs.1,38,24,000/-. It is worth mentioning that there is a signed E1 cash receipt of Rs. 85,24,000/- pertaining to the transaction which was seized during the search operation vide page no.307 of seized annexure A/DVR(MD)/01. It is observed that the property was later registered in the name of Smt D. Surkha & Shri D. Vishnu Vardhan Rao at a consideration of Rs.48,00,000/- vide registered sale deed no. 3338/2016 of SRO, Kukatpally on 30.03.2016. The copy of sale deed was also seized during the search and seizure operation vide page nos. 273 to 283 of seized annexure A/DVR(MD)/01. The bank transfer portion of the consideration mentioned in the above sale agreement is matching with that of registered sale deed. In view of the above, the assessee was given a show-cause letter asking him to show-cause why the difference between the sale consideration in the agreement and in the sale deed amounting to Rs.90,24,000/-- (i.e., Rs.1,38,24,000/- - Rs. 48,00,000/-) shall not be added to the income of the assessee as unexplained investment u/s.69 of the Income Tax Act.

In response to the show-cause letter, the assessee has filed his reply on 20.12.2019 stating as below:

The assessee has submitted the summary of the cash withdrawals from the bank accounts of assessee himself and his wife Smt. Daru Surekha, in support of the source of the investment in the above immovable property. The assessee's claim of cash withdrawals during the period more than one year before the transaction being the source of investment in immovable property cannot be accepted since it is highly improbable to keep cash withdrawn for years together with the assessee until A the assessee got the immovable property registered in March'2016.

In view of the same, it is reasonable to consider the net cash withdrawals from the bank accounts during the FY 2015-16' as explainable source in respect of the investment in the above said immovable property.

Accordingly, the net withdrawals from the accounts of assessee amounting Rs.12,19,000/- and net withdrawals from bank account of assessee's wife Smt. Darru Surekha amounting Rs.6,6~,000j- are accepted as part of source of investment in the above said immovable property.

After giving credit to the net withdrawals from bank accounts amounting Rs.19,55,000/- (Rs.12,19,000 + Rs.6,65,000) as detailed above; the balance portion of consideration paid in cash and supported by the copy of signed cash receipt seized amounting Rs.70,36,000/- is being added to income of the assessee as unexplained investment u/s.69 of the income tax act".

5.2 The appellant has contested the said addition; and in support of his claim, the following submissions have been made by the appellant's AR:

"The Income Tax authorities conducted search and seizure operations u/s.132 of the I.T.Act in the case of Kapil Consultancy Services Pvt.Ltd., (formerly known as Kapil Chit funds Pvt. Ltd.,) on 07.04.2017 covering the business and residential premises of the Directors of the group. Consequently, the authorities have initiated proceedings u/s 153A of the I.T.Act on 12.03.2018 on the appellant; in response thereto the appellant filed the return of income declaring the same income of Rs.28,35,460/- as was admitted in the original return of income filed. The Assessing Officer completed the assessment u/s 143(3) rws 153A of the I.T.Act on 24.12.2019 determining the total income at Rs.99,04,460/-. While doing so, the Assessing Officer made an addition of Rs.70,69,000/- by applying the provisions of Sec.69 of the I.T.Act on the ground that the appellant acquired immovable property for a consideration of Rs.1,38,24,000/- and that he recorded the consideration of Rs.48,00,000/- as per the registered sale deed. Out of the difference of Rs. 90,24,000/- the Assessing Officer mentioned that an amount of Rs.19,55,000/- was explained and the balance of Rs. 70,69,000/- is added. The appellant, in fact, had substantial amounts withdrawn from various bank accounts during the preceding assessment year and during the year under consideration. The appellant's wife Smt. D.Surekha also had withdrawals. It is submitted that the Total amount paid of Rs. 1,38,24,000 was from explained sources. In fact, the cash payments of Rs. 90,24,000/- was made from the following withdrawals:

table

Withdrawal from Syndicate Bank during 2014-15	58,45,000
Less : utilized for payment of cash in purchase of 622 sq. yds. Of land during 2014	10,00,000
Balance available	48,45,000
Withdrawal from Syndicate Bank during 2015-16	15,90,000
Withdrawal from Bank of Baroda by Smt. D. Surekha	24,65,000

during 2014-15	
Withdrawal from Bank of Baroda during 2015-16	14,75,000
	Rs.1,03,75,000

The said amount of Rs. 1,03,75,000/- was available for payment of the cash to the land owners. It is submitted that the Income Tax authorities conducted search and seizure operations. They did not find that the amounts withdrawn were utilized for other purposes other than payments to the land owners for purchase of the property during the year under consideration.

In view of the above, it is submitted that the Assessing Officer is not justified in making any addition. The appellant is submitting the bank accounts and the withdrawals from the bank account separately to show that the appellant had substantial cash balances.

The appellant, therefore, requests the Hon'ble CIT (Appeals) to kindly allow the appeal as prayed for".

5.3 I have carefully considered the submissions made by the appellant as well as the observations of the AO in the impugned order. Briefly the facts are a sale deed dated 11-03-2016 between Shri Vardhini Venkateswara Rao and assessee's wife Smt. D. Sureka was found and seized during search which indicated consideration of Rs.48,00,000/- paid for the property. There was an agreement of sale which was found during search which has shown that the total consideration was Rs.1,38,24,000/- and here is a signed cash receipt for Rs.85,24,000/- pertaining to the said sale transaction. The Assessing Officer has made addition of Rs.70,69,000/- after giving credit to the net cash withdrawals from the bank account amounting to Rs.19,55,000/- during the FY 2015-16. The appellant is now in appeal.

5.3.1. During appellate proceedings the appellant in his written submissions submitted that the cash payments of Rs.85,24,000/- was made from the withdrawals from the Syndicate bank account of the appellant and Bank of Baroda account of the appellant's wife, Smt.D.Sureka during the FYs 2014-15 and 2015-16. The appellant has made a total stating that the total withdrawals during these two years amounting to Rs.1,03,75,000/- was available for payment of cash to the land owner and therefore the cash payment may be treated as explained .

5.3.2 I have considered the contentions of the appellant and the Assessing Officer. The D in his assessment order has already given credit to the net withdrawals from bank account of both the appellant and the appellant's wife during FY 2015-16 to the extent of Rs.19,55,000/-. On perusal of the bank accounts for FY 2014-15, it is seen that there were several cash deposits also in the appellant's bank accounts. Therefore the appellant cannot claim benefit only the cash withdrawals to the exclusion of the cash deposits. Further,

several small withdrawals from ATM of Rs.10,000 & Rs.5,000/- cannot be counted as withdrawals for payment towards real estate transactions. Also, there is no evidence furnished that the cash withdrawals during FY 2014-15 were also pending for more than an year with the appellant to be paid for an immovable property transaction in the next year. This reasoning appears improbable. The Assessing Officer has correctly given credit to the net cash withdrawals from the bank account during FY 2015-16. Therefore, the addition made u/s.69 of Rs.70,36,000/- is confirmed. All the grounds pertaining to this issue are DISMISSED.”

3. We have given our thoughtful consideration to rival contentions against and in support of correctness of the impugned addition. The assessee's detailed paper book running into 52 pages containing all the relevant details; stands perused. Pages 5 to 7 thereof contain the corresponding excel-sheet indicating the assessee's and his wife's cash flow statement which are not in dispute per se since learned CIT(A) himself has taken note of the cash withdrawals in F.Y. 2014-15 as source of cash receipts of Rs.85.24 lacs.

4. The Revenue's case on the other hand is that it is highly improbable for any person to keep the cash withdrawals intact for a period of more than a year. The fact however remains that neither there is any material available with the assessee to sufficiently explain source of the entire addition amount to the tune of Rs.70.36 lacs as withdrawals made in the earlier year nor the Revenue's stand deserves to be accepted in entirety since the learned lower authorities have not been able to indicate utilization of the cash withdrawals of made in F.Y. 2014-15.

5. Faced with this situation, we deem it appropriate to restrict the impugned addition of Rs.70.36 lacs to the lumpsum amount of Rs.10 lacs only with a rider that the same shall not be treated as a precedent in any other case. The assessee gets relief of

60.36 lacs in other words. Necessary computation shall follow as per law.

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

Order pronounced in the Open Court on 29th November, 2021.

Sd/- (A. MOHAN ALANKAMONY) ACCOUNTANT MEMBER	Sd/- (S.S. GODARA) JUDICIAL MEMBER
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Hyderabad, dated 29th November, 2021.

TYNM/sps

Copy to:

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2	The Deputy Commissioner of Income Tax, Central Circle – 2(3), Hyderabad.
3	CIT (A) – 12, Hyderabad.
4	Pr. CIT(Central), Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order