

आयकर अपीलिय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 419/Hyd/2020
(निर्धारण वर्ष / Assessment Year: 2012-13)

Kalvakuntla Sudhir Rao
Karta of Kalvakuntla
Venkata Rajeswara Rao
(HUF)
Hyderabad
[PAN No. AADHK2976A]
Income Tax Officer, Ward-4(2),
Vs. Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारित द्वारा/Assessee by: Shri R. Mohan Kumar and
Shri B. Shanthi Kumar, ARs

राजस्व द्वारा/Revenue by: Shri K.P.R.R.Murty, DR

सुनवाई की तारीख/Date of hearing: 26/07/2022

घोषणा की तारीख/Pronouncement on: 03/08/2022

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 24/02/2020 passed by the learned
Commissioner of Income Tax (Appeals)-2, Guntur ("Ld. CIT(A)"), in the case

of Kalvakuntla Venkata Rajeswara Rao (HUF) (“the assessee”) for the assessment year 2012-13, assessee preferred this appeal.

2. Brief facts of the case are that the assessee is a Hindu Un-divided Family (HUF) and engaged in the retail business of purchase and sale of cotton in village and filed his (HUF) return of income for the assessment year 2012-13 on 23/06/2013 declaring total income of Rs. 8,71,22,060/- from business. Assessment under section 143(3) of the Income Tax Act, 1961 (for short “the Act”) was complete by order dt. 10/03/2015 at Rs. 9,16,07,398/- by making the addition of Rs. 6,48,565/- on account of the amount received by the assessee on the alleged sale of agricultural land, Rs. 9.75 Lakhs on account of the money received by the assessee on the alleged sale of agricultural produce, Rs. 11.55 Lakhs on account of alleged loans taken by the assessee, Rs. 1,36,34,294/- on account of the capital gains arising out of the alleged sale of agricultural lands and taxing the capital gains on account of shares at 20% instead of 10%.

3. Aggrieved by such an action of learned Assessing Officer, assessee preferred an appeal before the Ld. CIT(A) and the Ld. CIT(A) by way of the impugned order, upheld the addition and dismissed the appeal of assessee. Hence, the assessee is in appeal before the Tribunal, challenging all the additions with a delay of 74 days. In this case, the impugned order was passed on 24/02/2020 and as per the appeal memo, the order was communicated to the assessee on 18/03/2020. The limitation to file appeal expires during the pandemic, whereas the appeal was actually filed on 30/07/2020. Defect of delay of 74 days is noted by the Registry. Though not the learned DR concede the condonation of delay, the fact remains that the Hon'ble Supreme Court in the Suo Motu proceedings in

the case of Miscellaneous Application No. 665/2021 in SMW(C) No.3 of 2020 has held that in computing the period of limitation for any suit, appeal, application or proceeding, the period from 15 March, 2020 till 02 October, 2021 shall be excluded. We, therefore, proceed to hear and decide the appeal on merits.

4. Ground No.1 is general. Insofar as the Ground No.2 relating to the addition of Rs. 6,48,565/-, during the course of assessment proceedings, learned Assessing Officer noticed that the assessee claimed to have received the same towards sale consideration of agricultural land situated at Mogilipet Village, but pleaded that the transaction was only an oral transaction. Assessee also did not produce the particulars of the purchaser, his address etc., and no document what-so-ever is there to prove the transaction. During the first appellate proceedings also assessee produced one confirmation letter from one Shri Mukkera Mallaiah to show that the said amount was paid through cheque. Such confirmation letter was forwarded to the learned Assessing Officer. Learned Assessing Officer called for the current address and contact details of the said Mukkera Mallaiah but there was no response from the assessee. Ld. CIT(A) recorded that any sale of immoveable property of value more than Rs. 100/- requires a registered document, without which no title would be passed.

5. Learned AR submitted that Mukkera Mallaiah confirmed the sale in his favour and there is no reason for the learned Assessing Officer not to believe the same; where as learned DR submitted that in the absence of any clinching evidence, no finding as to the transfer of property can be returned.

6. In this case, except the self-serving testimony of the assessee and the un-verified confirmation letter produced by the assessee, there is nothing on record to show that such property no longer belongs to assessee and it was in fact alienated. Law requires the transfer of immovable property only through a written instrument properly stamped and registered, and then only the transfer takes place. There is no transfer in the eye of law to support the receipt of Rs. 6,48,565/- and, therefore, there is no reason for us to interfere with the findings of the authorities below. Ground No.2 is accordingly dismissed.

7. Coming to Ground No.3 relating to the addition of Rs. 9.75 Lakhs, learned Assessing Officer noticed that the assessee claimed to have earned agricultural income of Rs. 9.75 Lakhs from the sale of cotton to M/s. PNR & Co. and produced three receipts. When the learned Assessing Officer issued letter under section 133(6) of the Act to the above concerned, there was no reply at all from them. Learned Assessing Officer, therefore, made such an addition.

8. Ld. CIT(A) sent the same receipts to the learned Assessing Officer calling upon report. According to the learned Assessing Officer, when he issued commission u/s. 131(1)(d) of the Act to the ITO, Ward-1, Adilabad on 12/03/2018 for making enquiry, statement of one Puskar Narsing Rao, Managing Partner of M/s. PNR & Co. was recorded. According to the said Puskar Narsing Rao, the firm was in existence for only one year during the financial year 2010-11 and subsequently, no transactions were there. When confronted with the receipts, Narsing Rao stated that such receipts resemble the invoice format designed for their firm but such were never

issued that too without the signature of the accountant and “amount paid stamp”. He confirmed that such receipts were fake.

9. Learned AR submitted that as a matter of fact, M/s. PNR & Co., was conducting business even in subsequent years also, but unfortunately, no evidence is available to prove the continuance of business by them during the relevant year also. Learned DR submitted that this oral submission has no legs to stand on the face of the sworn statement made by Shri Puskar Narsing Rao, Managing Partner of M/s. PNR & Co. No finding could be returned on surmises and conjectures.

10. We find that even before us also, except the submissions made on behalf of the assessee that such firm was in existence even beyond the financial year 2010-11, there is no material to base such a statement. No less than the Managing Partner of the firm stated on oath that the firm did not contract the purchase and sale subsequent to financial year 2010-11, which the Ld. CIT(A) relied upon. In the absence of any material to the contrary, we find it difficult to interfere with the findings of the authorities below. Ground No.3 is also accordingly dismissed.

11. Coming to Ground No.4 relating to the addition of Rs. 38.5 Lakhs towards the alleged loans taken by the assessee, on a perusal of the statement of affairs/balance sheet and funds flow statement, learned Assessing Officer called for the details of the unsecured loan creditors shown in the balance sheet. Assessee replied that un-secured loan creditors were pertaining to the earlier assessment years and they were good creditors. On this premise, assessee stated that the verification of

such un-secured creditors is not in the purview and scope of scrutiny for the assessment year 2012-13.

12. Learned Assessing Officer verified the record for the earlier assessment years and found out that the assessee did not furnish any balance sheet nor did they fill up the relevant columns of liabilities and loans in the ITR-IV. Apart from this no details of un-secured creditors nor the balance sheet was furnished for the assessment year 2011-12. In the absence of basic information like the date of receipt of loan, mode of obtaining the loan, PAN details of the loan creditor etc., the learned Assessing Officer thought it fit to doubt the genuineness of the transaction and the creditworthiness of the creditors. He, therefore, added a sum of Rs. 38.5 Lakhs on that score.

13. Before the Ld. CIT(A), assessee filed confirmation letters and copy of acknowledgment of ITR of Sri Kalvakuntla Sudheer, Sri Devarakonda Rajendra Rao, Devarakonda Rajendra Rao (HUF), Sri Devarakonda Anil Kumar, Sri Devarakonda Venugopala Rao, Marneni Ramakrishna Rao (HUF) and A.Venkat Rao (HUF). Ld. CIT(A) found all such letters to be stereo typed once and the name of the assessee was not to be found as a debtor in the balance sheets. Ld. CIT(A) further observed that the assessee also did not file the balance sheet for the assessment year 2011-12 showing the creditors as opening balance. For the assessment year 2012-13 also the assessee did not show the above persons as creditors in the balance sheet and according to the Ld. CIT(A), if all these transactions are routed through banking channel, there was no difficulty for the assessee to file the information, and there is no reason for the assessee to avoid filing of such information. Ld. CIT(A) did not believe the version of the assessee that

these creditors are coming up from the financial year 1997-98 and concluded that the genuineness of the transaction is under a serious cloud. Inasmuch as the assessee failed to discharge the preliminary burden, Ld. CIT(A) held that there was nothing wrong in the learned Assessing Officer making addition of Rs. 38.5 Lakhs under section 68 of the Act. He accordingly dismissed the relevant ground.

14. Learned AR reiterated that these loan creditors are coming from the earlier years and, therefore, without questioning the same in the earlier years, learned Assessing Officer cannot question it in this year. Learned DR submitted that absolutely there is no evidence on record to show that these loan creditors were shown as the opening balance in the balance sheet for the assessment year 2012-13 or closing balance for the assessment year 2011-12 and in the absence of any material, merely basing on the statement of the assessee, it cannot be concluded that they are the loan creditors coming from earlier years.

15. Ld. CIT(A) recorded that for the assessment year 2011-12, these creditors were not shown as opening balance and for the assessment year 2012-13 these people are not shown as creditors in the balance sheet. Same is the situation before us also. None of the lacunae pointed out by the Ld. CIT(A) is plugged in by the assessee. There was no attempt to establish the genuineness of transaction before us. The balance sheet as on 31st March, 2012 filed at Pg.No.22 of the paper book also is not at all helpful to the case of the assessee. For these reasons, we uphold the order of the Ld. CIT(A) on this score and dismiss ground No.4 of the assessee's appeal.

16. Ground No.5 relates to the addition of Rs. 1,36,34,294/- on the alleged sale of agricultural land. During the year, assessee sold Ac.5.63 acres of land in Survey No. 284/1 to M/s. Pioneer Distilleries Ltd., for Rs. 1,52,21,250/- and claimed profit of Rs. 1,50,19,090/- and claimed exemption from capital gains stating such land is an agricultural land. On a perusal of the agreement of sale enclosed with map and topography of the lands, learned Assessing Officer recorded that such a document clearly mentions that Survey No. 284/1 comprises of 32 acres, it was converted into non-agricultural use long back and out of such an extent of 32 acres, Ac. 5.63 was sold to M/s. Pioneer Distilleries Ltd. Learned Assessing Officer, therefore, held that the assessee did not offer any relevant explanation nor did he produce any evidence to show that the extent of land that was sold was in fact agricultural land. On this basis, learned Assessing Officer brought a sum of Rs. 1,36,34,294/- to tax.

17. Before the Ld. CIT(A) assessee produced the certificate obtained from Talathi, Balapur in support of his claim that the impugned land was agricultural in nature. When the remand report was sought from the learned Assessing Officer, learned Assessing Officer issued commission under section 131 of the Act to the ACIT, Nanded. ACIT, Nanded recorded the sworn statement of Talathi, who stated land under consideration was not under plough in the financial years 2007-08, 2008-09, 2009-10 and 2010-11. When the attention of the assessee was invited to this statement of the Talathi, the assessee did not respond. Ld. CIT(A) on a perusal of the record including the sworn statement of Shri Amberay, L. Baba Rao, VRO, found that the ownership of Shri K.V.Rajeswara Rao was confirmed but the land was not under cultivation in the financial years 2007-08, 2008-09,

2009-10 and 2011-12. Ld. CIT(A) further recorded that the fact of usage of land is evidenced by the 7/12 extract to say that there was no cultivation. On this, Ld. CIT(A) held that the profits on sale of non-agricultural land should be treated as capital gains.

18. Learned AR submitted that Rs. 9.75 Lakhs above was derived from the sale of cotton produced in this land only and, therefore, it cannot be said that the land is not under cultivation. Firstly, we did not believe the sale of cotton worth Rs. 9.75 Lakhs in the preceding paragraphs. Secondly, there is no material to contradict the certificate issued by the Talathi. Contents of the 7/12 extract of revenue record go un-impeached.

19. Learned DR placed reliance on the decision reported in PCIT Vs. A. Lalichan (2019) 104 taxmann.com 30 (Madras), Jayram G. Kimmane Vs. DCIT (2020) 119 taxmann.com 99 (Bang. Trib) and Smt. Sarifabibi Mohmed Ibrahim Vs. CIT (1993) 70 Taxman 301 (SC) in support of his contention that when there is no material to show that agricultural activities are carried out in the land, mere entries in the chitta and adangal for relevant year will not change the user of the land and the authorities are justified in taxing the profits derived on sale of such land.

20. Since there is no material to contradict the statement of the Talathi well corroborated by the revenue record under 7/12 extract, we find it difficult to hold that the land that was sold was part of agricultural land. Ld. CIT(A) directed the learned Assessing Officer to verify the working capital gain and bring the correct amount to tax. We, therefore, do not find anything illegality or irregularity in the findings of the Ld. CIT(A). Ground No.5 is accordingly dismissed.

21. Coming to the last ground in respect of the rate of tax on the capital gains arising out of sale of shares of M/s. Pioneer Distilleries Ltd., the assessee adopted tax rate at 10% on sale of Rs. 7,59,340/- shares of M/s. Pioneer Distilleries Ltd., without taking indexation as per section 48 of the Act on Rs. 6,58,59,940/-. Learned Assessing Officer observed that the assessee sold the shares of closely held company and, therefore, under the provisions of section 112(1)(a) of the Act, the assessee is liable for long term capital gain at 20% on the transfer of shares after availing the cost of indexation.

22. Impugned order shows that during the remand proceedings, the assessee was asked to furnish the complete details such as STT payment details, date of listing on BSE/NSE etc., but it is stated that the assessee did not respond to such a request and reminders. Ld. CIT(A) observed that during the remand proceedings, though requested to furnish the details of STT payments, date of listing on BSE/NSE the assessee did not respond and, therefore, Ld. CIT(A) declined to interfere with the order of the learned Assessing Officer.

23. Learned AR submitted that the authorities below committed error in holding that M/s. Pioneer Distilleries Ltd., is a closely held company and, therefore, the tax rate attracted is 20% but, as a matter of fact, this company is a listed company and, therefore, the assessee is entitled to 10% tax under section 112(1)(a) of the Act. On this aspect, learned DR submitted that the assessee failed to furnish the details sought by the authorities and, therefore, the authorities are justified in rejecting the claim of the assessee.

24. It could be seen from the paper book produced before us that the assessee furnished the annual report of M/s. Pioneer Distilleries Ltd., and whether or not this company is listed in the BSE/NSE is a verifiable fact. There is no dispute that the assessee is a HUF and a resident, the long term asset sold was the shares of a company which is claimed to be listed in BSE/NSE and the assessee did not take the benefit of indexation. In these circumstances, we restore the issue to the file of learned Assessing Officer to verify whether or not the company is listed and to allow the benefit under section 112(1)(a) of the Act, in case M/s. Pioneer Distilleries Ltd., is listed. Ground is accordingly treated as allowed for statistical purposes.

25. In the result appeal of the assessee is treated as partly allowed for statistical purposes.

Order pronounced in the open court on this the 3rd day of August, 2022

Sd/-
(RAMA KANTA PANDA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 03/08/2022

TNMM

Copy forwarded to:

1. Kalvakuntla Sudhir Rao Karta of Kalvakuntla Venkata Rajeswara Rao (HUF), H.No.2-2-1105/7/2, Tilak Nagar, Hyderabad.
2. Income Tax Officer, Ward-4(2), Hyderabad.
3. The CIT(Appeals)-2, Guntur.
4. The Pr.CIT-1, Hyderabad.
5. DR, ITAT, Hyderabad.
6. GUARD FILE

TRUE COPY

ASSISTANT REGISTRAR
ITAT, HYDERABAD