

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ' B ' Bench, Hyderabad**

**Before Shri R.K. Panda, Accountant Member**  
**AND**  
**Shri Laliet Kumar, Judicial Member**

ITA No. 2381/Hyd/2018		
Assessment Year: 2015-16		
Income Tax Officer Ward-2, Anantapur	Vs.	Sri Tadipatri Babu Anantapur PAN:ALZPT2742E
(Appellant)		(Respondent)
Revenue by:	Shri Kumar Aditya, DR	
Assessee by:	Shri A.V. Raghuram, Advocate	
Date of hearing:	21/09/2022	
Date of pronouncement:	26/09/2022	

**ORDER**

**Per R.K. Panda, A.M**

This appeal filed by the Revenue is directed against the order dated 30-10-2018 of the learned CIT (A)-Kurnool, relating to A.Y. 2015-16.

2. The grounds raised by the Revenue are as under:

*"1. The order of the Ld. CIT(A) is bad both in law and on facts.*

*2. The Ld. CIT(A) erred in accepting the sundry creditors as business associates in contrary to the assessee's submissions, where the assessee himself accepted them as sundry creditors in para No. 05 of Page 04 of CIT(A) order and directing to delete the addition made by AO.*

*3. The Ld. CIT(A) erred in considering the dual stance taken by the assessee in submissions of the assessee wherein the assessee at one point of time claims the sundry creditors as business associates at para No. 05 of Page 04 of CIT(A) order and in the next para of the CIT(A) order( para No. 05 of page 04 ) claims them as sundry creditors and speaks of restrictions on AO to accept the creditworthiness of the*

*creditor as soon as the sundry creditor accepts money lent to the assessee.*

*4. The Id. CIT(A) erred in not taking cognizance of the interim report submitted in which the AO requested for time to verify the creditworthiness keeping in view the noncompliance of the assessee during the assessment proceedings.*

*5. The Id. CIT(A) erred in not taking the fact mentioned by AO in the comments Submitted in report dated 17-10-2018 that "Further, statements of all the sundry creditors were recorded and all of them are reiterating that all their investments were from agricultural income as per their earlier statements recorded on 08.12.2017". This clearly shows there is no fresh evidence submitted apart from the same earlier statements dated 08-12-2017 recorded during assessment proceedings to ascertain the creditworthiness of the sundry creditors.*

*6. The Id. CIT(A) erred in deleting an Addition of Rs. 4,21,54,560/- as income from unexplained sources and treating them as business associates in the absence of substantiation by the sundry Creditors and treating them as business associates basing on an unregistered document which was already considered by AO in his order.*

*7. The Id. CIT(A) erred in relying on material available on record which clearly evidences the fact that out of total sundry creditors of Rs. 4,21,54,560, the assessee has received Rs. 12,20,000/- through banking channels and the rest amount was received in cash. The sundry creditors are termed as business associates for the purpose of convenience of the assessee and that all have agricultural income without any evidences like ITR's, bills and vouchers or a certificate from Horticulture Officer/Agriculture Officer or any equivalent authority, hence have failed to prove their credit worthiness".*

3. Facts of the case, in brief, are that the assessee is an individual and derives income from hiring of Hitachi vehicle in addition to real estate business during the financial year relevant to the A.Y 2015-16. He filed his return of income on 31.3.2017 declaring taxable income of Rs.7,00,930/-. The case was selected for limited scrutiny through CASS to verify "Whether Sundry Creditors are genuine and whether the cash deposit has been made from disclosed sources". Statutory notices u/s 143(2) & 142(1) were issued to which the assessee filed the requisite details called for from time to time.

4. During the course of assessment proceedings, the Assessing Officer asked the assessee to furnish the list of addresses of sundry creditors. From the details so filed, the Assessing Officer noted that out of the list of sundry creditors, only three parties are sundry creditors and the following are business associates. The three sundry creditors are Shri G. Sreekanth, Rs.5,70,000/-, Shri U. Swathvik Rs.1,50,000 & Shri V. Babjan Rs.5,70,000/-. Following are the business associates as claimed by the assessee:

S.No	Name of the creditor	Amount paid (in Rs.)
1	C. Venkatesulu	91,38,640
2	M. Krishnamnaidu	91,38,640
3	P. Rajasekhar Naidu	91,38,640
4	P. Bhaskar	91,38,640
5	B. Manohar	20,00,000
6	A. Adisheshaiah	16,00,000
7	G. Anitha	20,00,000
	Total	4,21,54,560

5. The assessee submitted that the above 7 persons are business associates for purchase of property at Vizag. According to the Assessing Officer, the concept of assessee's business associates for purchase of property is a new concept. He therefore, asked the assessee to submit the registered documentary evidence in support of the claim. The assessee in response to the same filed a copy of the un-registered Memorandum of Understanding and affidavit entered among the business associates. According to the Assessing Officer, the concept of business associates was not supported by any registered documents and therefore, he rejected the same. However, to verify the genuineness and creditworthiness of the creditors, the Assessing Officer issued summons and recorded statement u/s 131 of the I.T. Act, 1961. During their sworn statements, he

noticed that all are non-filers and all the above seven persons are stated to be agriculturists. Some of them have stated that they have taken cash loans from others i.e., one of the sources for investment in purchase of properties. During the course of recording statement of the above sundry creditors, he noted that they have not produced any documentary evidences in support of their claim of lending such huge amounts of money to invest along with the assessee to purchase property which shows that they are not creditworthy. He, therefore, again asked the assessee to substantiate the creditworthiness of the above persons. In response to the above the assessee filed a letter along with Pattadar Pass Books and copies of Promissory notes related to loans taken by creditors from others to lend the money to the assessee for purchase of property. The Assessing Officer noted from the submissions that the property is registered in the name of assessee and one of the business associates. He noted that the persons investing huge amounts of money in purchase of property and not getting it registered on their names is quite contradictory to the prevalent practice. It may happen, owing to certain unavoidable circumstances that one odd member may not be present at the time of registration. He observed that the Pattadar pass books and promissory notes cannot be verified at this juncture as the matter is getting barred by time before 31.12.2017. Further, it is noticed from the Documents of Tallavalasa property, that although the property is registered in two names, however, the entire property is disclosed in the books of accounts of the assessee. This itself indicates that the assessee has invested the entire amount in the purchase of property. The Assessing Officer after going through all the submissions was convinced that they are not in a position to invest or lend huge amounts of money and all are agriculturists and not filing returns

of income. In absence of proper substantiation to prove the creditworthiness of the creditors, the Assessing Officer observed that assessee's claim of taking loans from the above mentioned creditors to the tune of Rs.4,21,54,560/- is not tenable. He also observed that all the transactions were only cash transactions and attract provisions of section 269 SS of the I.T. Act, 1961. The Assessing Officer accordingly held the above investment as unexplained investment in purchase of property u/s 69 of the I.T. Act, 1961 and added back the same to the total income of the assessee.

6. In appeal, the learned CIT (A) directed the Assessing Officer to delete the addition of Rs.4,21,54,560/- by observing as under:

*"7. The assessment order, statement of facts, grounds of appeal, written submissions the contents of the appellant, copies of sworn statements, evidence of landholdings by the Business Associates and Remand report submitted by the Assessing Officer have been perused. It is evident that all these contentions were made before the Assessing Officer by the appellant at the assessment stage itself. Even in the remand report, the Assessing Officer failed to establish with concrete evidences to prove that the Business Associates did not have financial capacity/creditworthiness to invest the huge amount in this Business Associate. The Assessing Officer has not proved any contrary contentions made by the appellant. I do not see any reason to disbelieve the contentions of the appellant. I therefore, direct the Assessing Officer to delete the total addition of Rs.4,21,54,560/-".*

7. Aggrieved with such order of the learned CIT (A) the Revenue is in appeal before the Tribunal.

8. The learned DR strongly challenged the order of the learned CIT (A) in deleting the addition. Referring to the statement recorded in the case of Sri V. Venkatesulu, copy of which has been placed at Page 11 & 12 of the Paper Book, he submitted that

in response to question No.6, the said party has explained his creditworthiness to the tune of Rs.26.00 lakhs only whereas as per page 4 of the assessment order he has given loan of Rs.91,38,640/-. Thus, the balance amount remained unexplained and his submission that the said amount is from agricultural activity remains unverified.

9. Referring to the statement of Sri P. Rajasekhar Naidu who has given loan of Rs.91,38,640/-, he submitted that Mr. Naidu in his reply to Question No.6 has explained his source to the tune of Rs.19.00 lakhs only and the remaining amount has not been properly explained.

10. Similarly in the case of Mr. M. Krishnamanaidu who has given loan of Rs.91,38,640/- his source is explained to be from agricultural income. Similarly, in the case of P. Rajasekhar who has given a loan of Rs.91,38,640/-, he has also not fully explained the source of income and is said to have borrowed Rs.20.00 lakhs from Shri Idali Ramaiah and Chit of Rs.15.00 lakhs as well as gold loan of Rs.30.00 lakhs. He submitted that the entire amount has been paid in cash and therefore, it raises doubt. Merely because the persons have appeared and stated before the Assessing Officer that they have given the money cannot be the basis to delete the addition when all the persons have given money in cash and have derived income from agricultural activity or sale of sheep etc., Referring to the decision of the Hon'ble Supreme Court in the case of CIT vs Durga Prasad More, reported in (1969) 82 ITR 540(SC) and Sumati Dayal vs. CIT reported in 214 ITR 801 he submitted that the order of the learned CIT (A) is not in conformity with the facts and circumstances of

the case and therefore, the same should be reversed and that of the Assessing Officer be restored.

11. The learned Counsel for the assessee, on the other hand, heavily relied on the order of the learned CIT (A). He submitted that the assessee has produced all the 7 persons before the Assessing Officer whose statements were recorded. All the persons have confirmed to have invested in the property at Vizag and they all are business associates. They have explained their source as income from agriculture or gold loan or other loans etc., He submitted that in fact one of the property has been registered in the name of the assessee as well as in the name of the business associate. Therefore, the learned CIT (A) was fully justified in deleting the addition made by the Assessing Officer. In his alternate contention, he submitted that the matter may be restored to the file of the Assessing Officer for fresh examination.

12. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs.4,21,54,560/- on the ground that the assessee could not substantiate with evidence to his satisfaction regarding the creditworthiness of the seven parties from whom the assessee has taken money as business associate members for purchase of the property at Vizag. We find the learned CIT (A) deleted the addition, the reasons of which have already been reproduced in the preceding paragraph. The order of the learned CIT (A), in our opinion, is a very cryptic one and does not give sound reasons for deleting the addition

especially when all payments have been made in cash and the creditworthiness of the persons remained doubtful in absence of production of documentary evidence for earning huge agricultural income . In our opinion, merely because the persons have appeared before the Assessing Officer during the remand proceedings and stated to have given the loan to the assessee cannot be the basis for deleting the addition in absence of proper substantiation of their sources. Merely because they are deriving income from agriculture cannot be accepted in absence of substantiation of the same with cogent evidence. Further, the entire amount has been paid in cash and it is unbelievable that some of the persons who have given the money to the tune of more than Rs.90 lakhs each do not have any bank account to give such money through banking channels. Further, the property has not been registered in the names of the business associates except in the case of one business associate. In our opinion, persons investing huge amounts of money in purchase of property in the name of the assessee only instead of getting registered in their name is unbelievable. Since in the instant case, the CIT (A) in a very cryptic order has deleted the addition and since the powers of the Assessing Officer during the remand proceedings are very limited, therefore, considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to give one final opportunity to the assessee to substantiate his case and decide the issue as per fact and law. We hold and direct accordingly. The grounds raised by the Revenue are accordingly allowed for statistical purposes.

13. In the result, appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the Open Court on 26<sup>th</sup> September, 2022.

<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(R.K. PANDA)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated 26<sup>th</sup> September, 2022.

*Vinodan/sps*

Copy to:

S.No	Addresses
1	Income Tax Officer Ward 2 Aayakar Bhavan, 3 <sup>rd</sup> Floor, Anantapur
2	Sri Tadipatri Babu, D.No.6-4-921 Maruthi Nagar, Anantapur 515005
3	CIT (A)-Kurnool
4	Pr. CIT- Kurnool
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*