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. 98/Hyd/2020		
Assessment Year: 2009-10		
Smt. Saritha Shivayyagari Hyderabad. PAN:BKQPS0479M	Vs.	Income Tax Officer Ward 11(3) Hyderabad
(Appellant)		(Respondent)
Assessee by:	Shri P. Murali Mohan, CA	
Revenue by:	Shri Kumar Aditya, DR	
Date of hearing:	03/10/2022	
Date of pronouncement:	17/10/2022	

O R D E R

Per Laliet Kumar, J.M

This appeal filed by the assessee is directed against the order dated 18.10.2019 passed by the learned Commissioner of Income Tax (Appeals) – 1, Hyderabad relating to A.Y.2009-10.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the learned CIT (A) in sustaining the disallowance of Rs.63,75,185/- made by the Assessing Officer u/s 143(3) r.w.s. 147 of the I.T. Act, 1961.

3. Facts of the case, in brief, are that during the course of survey proceedings in the case of M/s KSR Constructions, a Sworn statement of Sri M. Ranjith Kumar, husband of assessee was recorded u/s 131 of the Act on 29.10.2010. In his sworn statement, he stated that he along with assessee Smt. M Saritha have purchased agricultural land admeasuring 17.5 Acres at Kandi Village, Medak for RS 2.10 Crores (Acres 8.5 in her husband's name and Acres 9 in the name of assessee). He further stated that the entire sale consideration was paid by both of them.

4. However on verification of sale deed, it was found that the land to the extent of Acres 9.16 Gts was registered in assessee's name in the month of April, 2008 vide document no. 6052/2008; dt.19.04.2008 and the consideration therein was mentioned at Rs.12,50,000/ which has been paid. However, in the absence of information and the exact dates of payments over and above the consideration given at the time of registration, it has to be presumed that the entire payment of Rs. 2.10 Crores was paid by the assessee's husband and the assessee during financial year 2008-09 relevant to A.Y 2009-10. The Assessing Officer observed that the assessee has not filed return of income for the A.Y 2009-10 reflecting the sources for investment.

5. As the assessee has not filed return of income for the A.Y. 2009-10 reflecting the sources for investment, notice u/s 148 of the I.T. Act dt. 29.03.2016 was issued and served on 30.03.2016 requiring the assessee to file return of income in response to notice u/s 148. However, there was no compliance from the assessee. Again, notice u/s 142(1) was issued by this office from time to time. In response, the assessee has filed the return of income on 20/12/2016 admitting an income of Rs.2,46,820/-. Subsequently, notice u/s.143(2) was issued on 20/12/2016 and duly served.

6. Further, the Assessing Officer issued show-cause notice dt. 21.12.2016 giving final opportunity proposing to make assessment ex-parte as per material available with the office. In response to this, the assessee vide her letter dt:27/12/2016 has stated that "I have purchased a piece of agricultural land admeasuring Ac. 9. 16 Gts. at Kandi village on 9/04/2008 vide document No. 6052/2008 for Rs. 12,50,000. My father late S.Sridhara Rao has gifted the amount towards purchase of agricultural land out of loan taken by him from ICICI Bank during that year". Further, she has stated that "I have not paid to the seller of the agricultural land any amount in excess of Rs.12,50,000/, my husband how he admitted don't have any knowledge".

7. In the sworn statement recorded on 29.102010, Sri M. Ranjith has stated that he along with his wife Smt. M Saritha purchased agricultural land admeasuring 17.5 Acres at Kandi Village, Medak for Rs. 2.10 Crores (Acres 8.5 in his name and Acres 9 in the name of his wife in March/April 2008. He has also stated in that Sworn statement that there were different agreement holders of the land and agreements were oral. The amounts were transferred through bank by the way of DDs and balance by the way of cash. He stated that 1nds were registered but nowhere in the statement has mentioned the exact dates of payments. However on verification of sale deed, it is found that the land to the extent of Acres 9-l6 Gts. was registered in the name of the assessee in the month of May 2008 v.de document nos. 6052/2008, dt. 19/04/2008 and the consideration therein was mentioned.

8. In appeal, the learned CIT (A) also confirmed the order passed by the Assessing Officer.

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

10. The learned AR made the following two submissions :

i) That the reopening made by the Assessing Officer on the basis of the statement of the husband is not sustainable in the

eyes of law and for the above said proposition, the learned AR relied upon the following decisions:

a) ITAT Pune Bench in the case of M/s. Kundan Builders vs. ACIT in ITA No.157/PUN/2015.

b) ITAT Surat in the case of DCIT vs. M/s. Shhlok Enterprise in ITA No.2018/AHD/2016.

c) ITAT Cochin in the case of Income Tax Officer vs. Toms Enterprises (2019) 103 taxxman.com 289.

d) Shardeben K. Modi reported in (2013) 35 taxman 264, Hon'ble High Court of Gujarat.

e) A. Thangavel Nadar Stores Vs. ITO in W.P.No.21919 to 21921 of 2018 of High Court of Madras.

f) Smt. Sunita Gadde Vs. ITO, Ward – 10(1), New Delhi, (ITA No.6855/Del/2018 dt.13.05.2021).

ii) The other aspect raised by the learned AR for the assessee was that notice u/s 143(2) was issued in the name of the assessee on the date of issuance of notice u/s 142(1) of the Act and he relied upon the decisions of the Hon'ble Delhi High Court in the case of Director of Income Tax Vs. Society for Worldwide Interbank Financial, Telecommunications in ITA 441/2010 dt. 13.04.2010 and Delhi Tribunal in the case of Shri

Hemant Mitta Vs. ITO (ITA 5161/Del/2019), decided on 27.05.2020 wherein it was held that if the return of income is available with the Assessing Officer at the time of issuance of notice, then it is not open for the Assessing Officer to issue notice u/s 143(2).

11. On the other hand, the learned DR heavily relied upon the orders passed by the lower authorities and it was the contention of the learned DR that the Assessing Officer/CIT(A) were within the rights to uphold the additions made on the basis of the statement given by the husband of the assessee. The ld.DR for the Revenue had filed the following written submissions in support of the case of the assessee.

> *"Most respectfully submitted that the appellant has raised additional grounds of appeal for the first time before the Hon'ble ITAT. The grounds raised are -*
>
> *a. that the reasons recorded for reopening of assessment are different from the additions made in the assessment order.*
>
> *b. the reopening is done without there being any failure on part of the assessee to disclose all material facts necessary for making assessment.*
>
> *c. For AY 2009-10 another ground has been raised -*
>
> *i. that 143(2) has been issued on the same day of filing of return*
>
> *ii. reopening of assessment cannot be made on the basis of sworn statement as there is no corroborative evidence.*
>
> *2. The facts of the case in brief are that during the course of survey proceedings in the case of KSR Constructions a sworn statement of M. Ranjith Kumar was recorded u/s 131 on 29.10.2010. In the sworn statement the assessee stated that he along with his wife Smt. M. Saritha has purchased agricultural land ad. 17.5 ac at Kandi village for Rs.2.10 cr (8.5 ac in his name and 9 ac in his wife's name). The*

sale deed was registered in assessee's name vide No.6049/2008 dated 01.05.2008 for a consideration of Rs.10 lacs. The assessee had not filed his return of income for both the assessment years i.e. AY 2008-09 and 2009-10. Since the deed was executed in FY 2008-09, the entire sum over and above the registered value was deemed to be paid in AY 2009-10. Hence the case was reopened u/s 148.

3. The details of notices u/s 148 issued and returns filed are as under -

A.Y.	Name of the assessee	Date of issuance of notice u/s 148	ROI filed in response to notice u/s 148
2008-09	M. Ranjith	26.03.2015	Did not file
2009-10	M. Ranjith	29.03.2016	21.12.2016
2009-10	M. Saritha	29.03.2016	20.12.2016

It may be noted that no original returns were filed by either of the appellants viz. M. Ranjith and Smt. M. Saritha. Subsequent to the filing of returns the AO issued 143(2). During the course of assessment the assessee simply stated that no amount was paid over and above the registered value. No other challenge was made to the findings of the AO which were issued vide the show cause notices. The assessment was completed by bringing to tax the over and above payment made in respective hands. In the hands of M. Ranjith a sum of Rs.97.68 lacs for AY 2009-10 and in the hands of Smt. M. Saritha a sum of Rs.1.12 cr for AY 2009-10. The AO allowed a sum of Rs.14 lacs as explained source in the hands of M. Ranjitha and Rs.44.85 lacs in the hands of Smt. M. Saritha. The balance amounts were brought to tax.

4. Before the CIT(A) only written submissions were made denying the payments as well as ownership of the document. The CIT(A) after considering the material facts on record upheld the addition made by the AO.

5. The copy of the impounded document and the statements of M. Ranjith recorded u/s 131 dated 29/10/2010 and 15/11/2010 are already filed before the Hon'ble ITAT. As per the answer to Q.No.3, the assessee stated that he and his wife old 17.5 ac of land (8.5 ac in his name and 9 ac in his wife's name) in Kandi Village. In the next reply M. Ranjith states that the consideration paid was Rs.11 lakhs per acre and that the amount is Rs.2.10 cr. The entire consideration was stated to be paid. The facts are corroborated with the impounded document, placed in the paper book. The sources were explained as Rs.44 lacs from his father-in-law to his wife, Rs.1.50 cr from K. Kondal Rao his brother-in-law and Rs.25 from his wife Smt. M. Saritha. On the loan obtained from Kondal Rao, the assessee stated that he is paying 1.5% interest per month.

In reply to Q.No.21, M. Ranjith categorically stated on the impounded material that 35 ac were purchased for Rs.4.21 cr out of which half is in the name of K. Kondal Rao and the other half in the name of himself and his wife and that their

portion of consideration is Rs.2.10 cr. The same was reiterated in reply to, Q.No.23. In reply to Q.No.24, M. Ranjith admitted that the impounded document is in his handwriting and it was given to his brother-in-law for his knowledge*.*

Another statement was recorded u/s 131 on 15.11.2010. In reply to Q.No.16, M. Ranjith reiterated that the impounded document at A/KSR/2 is his noting with regard to purchase of land ad 35.05 ac at Kandi Village for an amount of Rs.4.21 cr.

6.1. In view of the above factual matrix, it is evident from two statements recorded u/s 131 of the I.T. Act that the assessee and his wife possess 17.5 ac of land at Kandi Village which is acquired for a sum of Rs.2.10 cr. The information has been recorded from M. Ranjith the assessee himself and is not from any third party. The reasons recorded are perfectly in tune with the findings during the course of survey, the impounded material and the statement recorded u/s 131. When the assessee himself has confessed under oath the payment of Rs.2.10 cr in statements recorded u/s 131 on oath on two different dates, no presumption can be drawn that these were given under duress. The assessee has failed to prove that coercion or pressure was put upon him. In fact the assessee during the course of hearing in the year 2016 raised the issue of statement under duress for the first time after a lapse of 6 years. It has been held by various courts that retraction has to be made within a reasonable period say 3 month.

6.2 When the document is clear in wording and content and remained uncontested till December 2016, it was not incumbent upon the AO to find more corroborative evidence than what was available. In fact it ought to have been the case of assessee to ask the AO for cross examination of the sellers if the document and the statement is disputed and retracted. Raising the issue for the first time at the fag end of the year just days prior to the time barring date, the action of the assessee is malafide in preventing the AO to carry out any meaningful further enquiries. A statement u/s 131 of the I.T. Act, is piece of evidences in terms of Indian Evidence Act. It is not retraction from the commitment but it is deviation and avoidance. of evidence gathered by the department. Reliance is placed on the decision of the Punjab and Haryana High Court in the case of Rakesh Mahajan vs. CIT cited at 214 CTR 218 wherein it has been held that -

"It is well settled that admissions constitute best price of evidence because admission are self-harming statements made by the maker believing it to be based on truth. It is well known that no one will tell a lie especially harming one's own interest unless such a statement is true."

Section 110 of the Evidence Act is material in this respect which stipulates that when the question is whether any person is owner of anything of which he is shown to be in possession, the onus of proving that he is not the owner, is on the person who affirms that he is not the owner. In other words, it follows from the well-settled principle of law that normally, unless contrary is established, title

always follows possession. It is evident from above discussion that the assessee has to discharge onus for retraction of statement which he failed to do so. Retraction without having reasonable cause and without any supporting evidences is not acceptable.

When an assessee had made a statement of facts, he can have no grievance if he is taxed in accordance with that statement. It was a statement pertaining to certain facts which were in the exclusive knowledge of the assessee. Those facts were disclosed to the Department. There upon those were accepted by the Revenue Department. Those facts were of such nature that there was no scope of existence of any other evidence. Affirmation of facts at best can only be done by the assessee in his own volition. If the assessee wanted to correct the said statement, then it was open for him to show the evidences to retract those facts. But no such evidence was furnished though another chance was granted.

6.3 If any coercion or force are not alleged and proved, and assessee has not made retraction within three month of the statement recorded, onus lies with the assessee to prove that the declaration is made out of misconception as held by ITAT Ahmedabad Bench in the case of Bhogilal Moolchand 96 ITD 344. The decision held in the case of Carpenters Classics (Exim) (P) Ltd. Vs DCIT (ITAT, Bang) 108 ITD 142 squarely applicable in the case. It is held that:-

"When statement was made voluntary and was not alleged to have been obtained under threat or coercion, onus was on assessee to prove that said declaration was made under any misconception of facts - Since assessee had not taken any steps to rectify its declaration before authorities before whom such declaration was made, there was no valid reason for retraction of same after a gap of about two and a half month."

6.4 The assessee did not file any return of income for AY 2008-09 and 2009-10 originally. It was only after the issue of notice u/s 148 that the return was filed. Thus the recording of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment is not required to be invoked.

6.5 For the years under consideration, the time barring dates were the December of that year. The assessee as submitted in para 3 filed their ROIs for the first time on 20th and 21st December. The outer time limit prescribed for issue of notice is within 6 months from the end of the assessment year. The Act does not prescribe the inner limit. The AO was thus perfectly justified in issuing notice u/s 143(2) on the date of filing of return as the time barring date was 31st December of the relevant year. M. Ranjith alongwith P. Rajesh CA attended before the AO for the first time on 21.12.2016. POA was filed on 27.12.2016 and filed the reply. Being the time barring date the order was completed on 28.12.2016."

12. In view of the above submission, it is respectfully prayed that the order of AO and CIT(A) may be upheld. The ld.DR also relied upon the following decisions in support of the Revenue's claim that the statement recorded during the course of survey can be relied upon for the purposes of making the additions.

1) Kermex Micro Systems (I) Ltd Vs. DCIT (2014) 47 taxmann.com 375 (Andhra Pradesh High Court).

2) Navdeep Dhinga Vs. CIT, Karnal (2015) 56 taxmann.com 75 (Punjab & Haryana High Court.)

3) Sanjeev Agrawal Vs. Income Tax Settlement Commissioner (2015) 56 taxmann.com 214 (Allahabad High Court).

13. 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. It is the consistent case of the Revenue before us, that the case was reopened on the basis of the statement of the husband recorded by the officials of the Revenue. In the reasons to reopen the assessment, the Assessing Officer in the case of the husband of the assessee, had mentioned as under :

"During the course of survey proceedings in the case of M/s KSR Construction, a sworn statement of assessee Sri M. Ranjith Kumar was recorded u/s 131 of the I.T. Act on 29.10.2010. In his sworn statement, assessee has stated that he along with his wife Smt. M Saritha purchased agricultural land admeasuring 17.5 Acres at Kandi Village, Medak for Rs.2.10 Crores (Acres 8.5 in his name and Acres 9 in the name of his wife).He further stated that the entire sale consideration was paid by them. However on verification of sale deed, it is found that the land to the extent of Acres 8.07 Gts was registered in the name of Sri M Ranjith Kumar in the month of May 2008 vide document nos. 6049/2008 dt. 01.05.2008 and the consideration therein was mentioned at Rs. 10,00,000/ -. However, in the absence of the information of the exact dates of payments over and above the consideration given at the time of registration, It has to be presumed that the entire payment of Rs. 2.10 Crores was paid by Mr. Ranjith and his wife Smt. M. Saritha during the F.Y. 2008-09 relevant to A.Y. 200-10.

However, the assessee has not filed return of income for the A.Y. 2009-10 reflecting the sources for investment.

Hence, I have reason to believe that Income chargeable to tax has escaped assessment for the A.Y. 2009-10 as per provisions of section 147 of the I.T. Act, 1961."

14. From the perusal of the reasons recorded, it is clear that the reasons for reopening is primarily the statement of the husband of the assessee mentioning therein that he along with his wife had purchased the agricultural land admeasuring nine acres vide the registered document No.6052/2008 dt.19.04.2008. There is no other statement either of the seller or of any other person saying that any 'on money' was paid by the assessee. Admittedly, the assessee had purchased the agricultural land admeasuring nine acres through a registered sale deed for a total

sum of Rs.12,50,000/-. The source of investment in purchasing the said land has duly been explained by the assessee and accepted by the Revenue. The only contention before us is that the assessee along with her husband had paid the 'on money' for the said land. For the above said purposes, the Revenue relied upon the statement of the husband of the assessee. In our considered opinion, the statement of a third party recorded during survey u/s 133A of the Act cannot be solely made as a basis for making addition in the hands of other person unless the said statement is duly corroborated with some incriminating / convincing evidence. For the above said conclusion, we may draw support from the judgements cited by the ld.AR for the assessee. In view of the above, no additions can be made in the hands of the assessee. We may like to point out that the decisions relied upon by the ld.DR for the Revenue are clearly distinguishable. The first decision relied upon the Revenue was the case of Kermex Micro (supra) wherein the jurisdictional High Court in the case of the assessee had held that where the assessee accepted the liability during the course of survey, by doing so, the assessee prevents the Revenue from collecting the other material. However, in the present case, there is no such facts as no statement of the assessee was recorded by the revenue either during the course of survey or u/s 131 of the Act. Similarly, in the case of Navdeep Dingra (supra), the Hon'ble Punjab and Haryana High Court, in paragraph 11 had mentioned that "the admission are an integral part of the assessment and as they are the best evidence of a fact, within the personal knowledge of an assessee may if the admission is voluntary and not extracted by coercion or force, be

read against the assessee." However, the same is not the fact in the present case as there is no admission on the part of assessee admitting the paying of 'on money' over and above the registered value to the seller. Similarly, in the last decision in the case of Sanjeev Agrawal (supra), in paragraph 9, the Hon'ble Allahabad High Court had held that "a statement made voluntarily by the petitioner u/s 133A of the Act can form the basis for assessment". No such statement is available in the present case which shows that the assessee has admitted making of the 'on money'. In view of the above, in our considered opinion, the reopening made by the Revenue and addition made are required to be quashed.

15. There is another reason to delete the addition made by the Revenue as in the present case, the Assessing Officer had issued the notice u/s 143(2) of the Act on 20.12.2016, i.e., the date of filing of the return of income by the assessee. The Assessing Officer is duty bound to analyze the return of income and thereafter, cull out the issues on which he needs information / documents from the assessee. In the present case, it is improbable to accept that the Assessing Officer on the date of receipt of the return, had handed over by the same entry in the order sheet issued u/s 143(2) of the Act. The above said act of the Assessing Officer had been the subject matter of adjudication by the Hon'ble Delhi High Court in the case of Director of Income Tax Vs. Society for Worldwide Interbank Financial, Telecommunications in ITA 441/2010 dt. 13.04.2010, wherein the Hon'ble Delhi High Court has quashed the assessment proceedings. Similar view has been taken by the Tribunal in the

case of Shri Hemant Mitta Vs. ITO (ITA 5161/Del/2019) (supra). We may also draw support from the decision in the case of Simranpal Singh Suri Vs. ITO in ITA 2821/Del/2019 dt.12.05.2021) (Paper Book Page-16), wherein the SMC Bench (The Hon'ble Account Member also decided the issue in favour of the assessee by holding in paragraph 14 as under :

> "14. *This shows that the notice u/s 143(2) was issued to the assessee on the very same day on which the assessee appeared and furnished copy of ITR in response to notice u/s 148 of the IT Act. It has been held in various decisions that when the notice u/s 143(2) is issued to the assesseee on the very same day on which the assessee filed the return in response to notice u/s 148 stating that the return already filed may be treated as return in response to notice u/s 148, such notice issued u/s 143(2) on the very same day has to be treated as invalid and assessment is vitiated due to non-application of mind by the AO. Therefore, on all counts the reassessment proceedings initiated by the AO and upheld by the CIT(A) in my opinion is not in accordance with the law. I, therefore, quash the reassessment proceedings and the grounds raised by the assessee are allowed. Since the assessee succeeds on the legal grounds, the grounds challenging the addition on merit are not being adjudicated being academic in nature.*

16. Respectfully following the decision of the Hon'ble Delhi High Court in the case of Society for Worldwide Interbank Financial, Telecommunications (supra), we are of the opinion that the order passed by the Assessing Officer and confirmed by the ld.CIT(A) are vitiated on account of non-application of mind.

17. Examining the matter from both the angles, we found that the appeal of the assessee is required to be allowed and accordingly, the appeal of the assessee is allowed.

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

Order pronounced in the Open Court on 17th October, 2022.

Sd/-	**Sd/-**
(R.K. PANDA) **ACCOUNTANT MEMBER**	**(LALIET KUMAR)** **JUDICIAL MEMBER**

Hyderabad, dated 17th October, 2022.
Vinodan/sps

Copy to:

S.No	Addresses
1	Smt. Saritha Shivayyagiri, Plot No.21 & 22 PVR Heights, Saibaba Nagar Colony, Kukatapally, Hyderabad 500072
2	Income Tax Officer Ward 11(3) Hyderabad
3	CIT (A)-1,Hyderabad
4	Pr. CIT-5, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order