

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad 'A' Bench (Camp at Tirupati), Hyderabad**

**Before Shri Raj Pal Yadav, Vice President**

*AND*

**Shri Rama Kanta Panda, Accountant Member**

|   |     |   |
|---|-----|---|
| ITA No.944/Hyd/2019   |     |   |
| Assessment Year: 2014-15  |     |   |
| Chakrapani Puli<br>No.2-1593/10,<br>B.V.Reddy Colony<br>Pileru, Chittoor District<br>Andhra Pradesh-517 214<br><br>PAN : AGMPP8700A | Vs. | ITO, Ward-1(1)<br>Near SBI Tilak Road<br>Branch, K.T.Road<br>Tirupati-517 507 |
| (Appellant)   |     | (Respondent)  |
| Assessee by:  |     | Shri Pawan Kumar<br>Chakrapani, CA  |
| Revenue by:   |     | Shri K.P.R.R.Murthy, Sr.AR  |
| Date of hearing:  |     | 25.11.2022  |
| Date of pronouncement:  |     | 20.12.2022  |

**ORDER**

**Per Shri Rama Kanta Panda, A.M.**

This appeal filed by the assessee is directed against the order dated 25.04.2019 of the Learned Commissioner of Income Tax (Appeals), Tirupati relating to AY 2014-15.

2. This appeal was earlier dismissed by the Tribunal for non appearance. Subsequently the Tribunal vide M.A.No.95/Hyd/2021 order dated 6.05.2022 recalled its earlier order. Hence, this is a recalled matter.

3. Facts of the case, in brief, are that the assessee is an individual and derives income from real estate business. He filed his return of income for the impugned assessment year on 13.07.2014 declaring total income of Rs.5 lakhs after claiming deduction of Rs.1 lakh under Chapter VIA of the I.T.Act. the

assessee has declared income @8% u/s. 44AD on a turnover of Rs.75 lakhs. The AO completed the assessment u/s. 143(3) on 30.12.2016 determining the total income of the assessee at Rs.77,21,635/- wherein he made addition of Rs.39,50,000/- on account of business, Rs.30,49,670/- on account of increase in capital and Rs.2,21,965/- being income from other sources.

4. In appeal, the ld.CIT(A) gave part relief to the assessee, wherein he deleted the addition made by the AO of Rs.39,50,000/- by disregarding the provisions of section 44AD. So far as the addition of Rs.30,49,670/- on account of increase in capital is concerned, the ld.CIT(A) sustained addition of Rs.17,79,500/- which consist of Rs.14,80,000/- being gift from the brother and Rs.2,99,500/- being advance received from a friend. He however deleted the other additions.

5. Aggrieved with such part relief granted by the ld.CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds.

*1. The order of the learned Authorities below in so far as it is against the Appellant is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.*

*2. The Appellant denies itself liable to the assessed over and above the total income of Rs. 5,00,000/-, as declared in the return of income, under the facts and circumstances of the case.*

*3. Whether the learned Authorities below are justified in not appreciating the fact and making an addition of Rs. 14,80,000/- under the facts and circumstances of the case.*

*4. whether the learned Authorities below are justified in not appreciating the fact that amount of Rs. 14,80,000/- is received as gift from Shri Madhusudhan Reddy brother of the Appellant, under the facts and circumstances of the case.*

*5. Whether the learned Authorities below are justified in making an addition of Rs. 2,99,500/-, as income, under the facts and circumstances of the case.*

*6. Whether the learned Authorities below are justified in making an addition of Rs. 2,99,500/-, as income, without appreciating the fact, that the amount is received as advanced from friend, under the facts and circumstances of the case.*

*7. The Appellant craves leave to add, alter modify, delete or substitute any of the grounds urged above.*

*8. In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.*

6. Grounds of appeal No.1,2,7 and 8 being general in nature are dismissed. Grounds of appeal No. 5 and 6 were not pressed by the ld.counsel for the assessee, for which the ld. DR has no objection. Accordingly, the above two grounds are dismissed as not pressed. In grounds of appeal No.3 and 4, the assessee has challenged the order of the ld.CIT(A) in confirming the addition of Rs. 14,80,000/- made by the AO by disallowing the gift received by the assessee from his brother Shri P. Madhusudhan Reddy.

7. The ld.counsel for the assessee strongly challenged the order of the ld.CIT(A) in confirming the addition of Rs.14,80,000/- received from the brother of the assessee. The ld.counsel for the assessee submitted that assessee has received an amount of Rs.15 lakhs as gift from his brother. The assessee furnished the bank statement and confirmation by way of affidavits. Further, the amount was given out of cash withdrawn from the bank account of the brother of the assessee. He submitted that the ld.CIT(A) confirmed the addition of Rs.14,80,000/- out of Rs.15 lacks made by the AO on the ground that assessee has withdrawn an amount of Rs.20,000/- on 09.07.2013 and there are no other cash withdrawals. He submitted that in the instant case, the brother of the assessee had obtained loan from the bank and the bank had directly disbursed the amounts to various persons from whom, the assessee has purchased sheeps/goats. He submitted

that those sheeps/goats were subsequently sold in cash and out of such cash receipts the brother of the assessee has gifted the amount to the assessee. Under these circumstances when the identity of the donor is not doubted and the donor had confirmed to have given the gift to the assessee and the sources is explained, therefore, the addition made by the AO and sustained by the Id.CIT(A) is not justified.

8. The Id. DR on the other hand strongly relied on the orders of the AO and Id.CIT(A).

9. We have considered the rival arguments made by both the sides, perused the orders of the AO and Id.CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case made addition of Rs. 15 lakhs in the hands of the assessee on the ground that assessee could not substantiate with evidence to his satisfaction that the brother of the assessee Shri P.Madhusudhan Reddy has the capacity to gift an amount of Rs. 15 lakhs. According to the AO, the loan obtained from the bank by the brother of the assessee was utilized for sheep breeding, the loan was disbursed to him in installments on production of proof for stage-wise utilization of funds, most of the loan amounts were disbursed directly to the sellers of sheep/providers of services for the establishment of sheep breeding unit and there is no money left with Sri P.Madhusudhan Reddy to gift the amount of Rs. 15 lakhs. We find in appeal the Id.CIT(A) deleted an amount of Rs. 20,000/- on the ground that Sri P.Madhusudhan Reddy has withdrawn an amount of Rs.20,000/- on 09.07.2013 and there is no corresponding withdrawal of cash on other dates mentioned by the donor in the confirmation letter. It is the submission of the Id.counsel for the assessee that although, the amounts were directly disubursed by the bank to the persons who had supplied

sheeps to the assessee, however the brother of the assessee sold such sheeps in cash to various persons and out of that cash receipts has given the cash gift to the assessee. We find in the instant case, the brother of the assessee Sri P.Madhusudhan Reddy has confirmed to have given the gift of Rs. 15 lakhs to the assessee Sri P.Chakrapani. It is also an admitted fact that the brother of the assessee has obtained loan of Rs.18,75,000/- from Bank of Baroda, Pileru Branch. The loan was disbursed in instalments to the assessee as well as to various other persons from whom the assessee purchased the sheeps, such sheeps were sold in cash and there is no deposit of cash in bank account and therefore, such money was available with Shri P.Madhusudhan Reddy, the brother of the assessee. Under these circumstances, we find some force in the argument of the ld.counsel for the assessee that cash was available with the brother of the assessee to advance the gift of Rs.15 lakhs and therefore, we are of the considered opinion that the ld.CIT(A) was not justified in sustaining the addition, especially when there is no other evidence with the department that the brother of the assessee has utilized the money otherwise. Accordingly, the grounds raised by the assessee are allowed.

10. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the Open Court on 20<sup>th</sup> December, 2022.

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| <b>Sd/-</b><br><b>(RAJ PAL YADAV)</b><br><b>VICE PRESIDENT</b> | <b>Sd/-</b><br><b>(RAMA KANTA PANDA)</b><br><b>ACCOUNTANT MEMBER</b> |
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Hyderabad, dated 20<sup>th</sup> December, 2022.

*Thirumalesh/sps*

Copy to:

| S.No | Addresses  |
|------|--|
| 1    | Chakrapani Puli<br>No.2-1593/10,<br>B.V.Reddy Colony<br>Pileru, Chittoor District<br>Andhra Pradesh- 517 214 |
| 2    | ITO,Ward-1(1)<br>Near SBI Tilak Road<br>Branch, K.T.Road<br>Tirupati-517 507                                 |
| 3    | CIT(A), Tirupati   |
| 4    | PCIT, Tirupati   |
| 5    | DR, ITAT Hyderabad Benches   |
| 6    | Guard File   |

*By Order*