

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

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

ITA No.455/Hyd/2022		
Assessment Year: 2013-14		
Smt. Padmavathi Lekkala Hyderabad PAN:ABEPL4642E (Appellant)	Vs.	A.C.I.T Central Circle 3(2) Hyderabad (Respondent)
Assessee by:	Advocate H Srinivasulu	
Revenue by:	Shri Rajendra Kumar, CIT(DR)	
Date of hearing:	26/12/2022	
Date of pronouncement:	27/12/2022	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 19.07.2022 of the learned CIT (A)-11, Hyderabad relating to A.Y.2013-14.

2. Facts of the case, in brief, are that the assessee is an individual and had filed her original return of income on 5.2.2014 declaring total income of Rs.48,00,000/-. A search & seizure operation was conducted in the case of M/s. Raghava Constructions along with its group companies and connected concerns/individuals on 18.09.2018. Shri L. Purushottam Naidu is the Managing Director of M/s. Leckon Infrastructures (P) Ltd which is having financial transactions with Raghava Group. The

assessee is the wife Mr. L. Purushottam Reddy. Being a connected person, search & seizure operations u/s 132 of the I.T. Act, 1981 was conducted on 18.9.2018 at the residential premises of the assessee. In response to notice u/s 153A, the assessee filed her return of income on 28.2.2019 declaring total income of Rs.48.00 lakhs. The Assessing Officer thereafter issued statutory notices u/s 143(2) and 142(1) of the I.T. Act along with questionnaire to the assessee through ITBA. However, the assessee did not file any details in response to the said notice. The Assessing Officer, therefore, proceeded to complete the assessment as per the details available on record. He noted that the assessee is an individual deriving income from salary and income from other sources. He further noted that as per AIR information available, the assessee has made cash deposit of Rs.45,82,000/- in her savings bank a/c. Since the assessee did not file the requisite details as called for, the Assessing Officer made addition of the cash deposits in SB A/c amounting to Rs.45,82,000/- as unexplained cash credit.

3. Before the learned CIT (A), the assessee challenged the addition on merit as well as the validity of the assessment in absence of any incriminating material found during the course of search. However, the learned CIT (A) was not satisfied with the arguments advanced by the assessee and upheld the assessment completed u/s 153A by making addition in absence of any incriminating material found during the course of search. So far as the addition of Rs.45,82,000/- u/s 68 is concerned, the learned CIT (A) after calling for a remand report from the Assessing Officer deleted the addition of Rs.31,01,000/- and sustained the balance amount of Rs.14,81,000/- by observing as under:

“6 The Decision:

In the instant case, the assessment was completed by making addition of Rs.45,82,000/- being unexplained cash credits u/s 68 in bank accounts as per the AIR data.

During the course of appeal proceedings, the appellant filed certain written submissions along with additional evidences and the same were forwarded to the Assessing Officer and a remand report was called for.

In the remand report, the Assessing Officer stated that the appellant has submitted copy of registered agreements and cash books in support of and based on the same, the contention of the appellant is acceptable to the extent of sources for Rs.31,01,000/-. The relevant part of the remand report is reproduced as under:

"In view of the above, the Ld.CIT(A) may consider source of cash aggregating to Rs. 31,01,000/- as genuine source on the basis of registered documents produced with respect to Shri K Sudhakar on 05.09.2014 and to Smt K Saroja on 05.09.2014 for an amount of Rs. 15,81,000/- and Rs. 1520000/-. Thus, the difference of Rs. 14,81,000/- between the addition e made i.e., Rs.45,82,000/- and genuine source explained i.e., Rs.31,01,000/-, is still unexplained by the assessee. In view of the acceptance of the appellant's submissions by the Assessing Officer in the remand report, the appellant gets relief to the Rs.31,01,000/-.

With regard to the balance amount of Rs. 14,81,000/-, the Assessing Officer Stated that the appellant could not furnish the copy of registered agreement entered into with S. Janga Reddy in support of the appellant's contention and hence the source for the amount of Rs.14,81,000/ is not acceptable. The remand report was forwarded to the appellant and the appellant, in the rejoinder submitted, has merely reiterated its earlier contentions and no documentary evidence was furnished.

In this regard, it is to be noted that the appellant was given sufficient time and opportunity to furnish the registered agreement entered into with S.Janga Reddy, but the appellant could neither produce the registered agreement nor the vendee S.Janga Reddy to establish the identity of the vendee and genuineness of the transaction.

Various judicial pronouncements have held that the onus lies on the assessee to prove the sources of money credited in its account. Reliance is placed on the decision of the Hon'ble supreme Court in the case of Kale Khan Mohammad Hanif v. CIT 50 ITR 1 (SC) and, Roshan Di Hatti v. CIT 107 TR 938 (SC) wherein it was laid down that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee and also in the case of Commissioner Of Income Tax vs P. Mohanakala in Appeal (civil) 2540 of 2007 wherein it was held that in cases where the explanation offered by the assessee about the nature and source of sums found credited in the books is not satisfactory there is. prima facie, evidence

against the assessee, viz; the receipt of money, the burden is on the assessee to rebut the same, and if he fails to rebut it can be held against the assessee that it was a receipt of an income nature.

In view of lack of any substantiation with evidence, the addition account of cash deposits is upheld to the extent of Rs. 14,81,000/-. To sum up, the appellant gets relief to the extent of Rs.31,01,000/- and the addition is upheld to the extent of Rs. 14,81,000/- and the ground no.4 is partly allowed accordingly.”

4. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal by raising the following grounds:

“1. Ld Ought CIT(A)-11, not Hyderabad order dated 19.07.2022 is bad in law and Ld CA have confirmed the addition of Rs.14,81,000 reflected in accounted Savings Bank Account.

2. Ld A.O failed in completion of assessment u/s 143(3) r.w.s 153A without giving adequate opportunity of being heard.

3. Ld CIT(A) failed to appreciate that assessment relating to A.Y 2013-14 was unabated assessment and no incriminating material was found during the search U/s 132.

4. Ld CITA) erred in giving a finding that incriminating material is not required for completion of unabated assessment.

5. Ld CIT(A) failed to appreciate that information was available with the Revenue in respect of Savings Bank account and Cash deposits made therein were verified before the search and the source of cash deposits reflected in AIR data accepted. Such verified information does not constitute incriminating material while making the unabated assessment U/s 153A.

6. Ld CIT(A) failed to appreciate that A.O could not have reopened the assessment U/s 147 as the information in AIR data was fully verified and accepted the source of cash deposit in Savings Bank account of the assessee. 7. Ld CIT(A) erred in sustaining the addition of Rs.14,81,000 in respect of Cash deposits in Savings Bank accounted in the books and source was fully explained to A.O in remand proceedings.

8. Ld CIT(A) erred in ignoring the agreement of sale entered into by the assessee with Sri. S. Janga Reddy for sale of house situated in Chittoor district for a total consideration of Rs.1.90cr and a part of consideration was received prior to search U/s 132.

9. Ld CIT(A) failed to appreciate that a sum of Rs.86,00,000 was paid by Sri. S. Janga Reddy in April, 2012 and also gave a confirmatory

letter having paid the said amount to the assessee which was submitted during remand proceedings.

10.Ld CIT(A) failed to appreciate that always original agreement of sale is retained by the purchaser of property and it was not traceable. Sri. Janga Reddy accepted the factum of purchase of house and payment of advance to the assessee.

11.Ld CIT(A) failed to appreciate that sale deed was not executed on account or legal disputes on the property.

12.Ld CIT(A) failed to appreciate that Sri. S. Janga Reddy was willing to appear before the A.O and a confirmation letter was filed which Ld A.O did not verify or conduct any enquiry. The transaction is genuine.

The assessee may amend or delete or substitute or alter any of the above facts and / or Grounds or add any or further facts or Grounds of Appeal during the course of hearing.”

5. So far as the grounds relating to the validity of assessment in absence of any incriminating material is concerned, though the learned Counsel for the assessee relied on various decisions, however, on being confronted by the Bench regarding the decision of the Hon'ble A.P High Court in the case of Gopal Lal Badruka vs. DCIT reported in 346 ITR 106, he did not make further arguments. Accordingly, the grounds challenging the validity of the assessment in absence of incriminating material found during the course of search is dismissed.

5.1 So far as the addition of Rs.14,81,000/- is concerned, the learned Counsel for the assessee referring to page 23 and 24 of the Paper Book drew the attention of the Bench to the reply given to Income Tax Officer (I&C)-4 received by the Office of the DIT (I&CI) on 5.4.2016 according to which the assessee had informed the advance of Rs.1.90 crores for sale of the house property bearing No.1-2 in Survey No.16/1, admeasuring 825.30 sq.yards situated at Thummala Gunta Village, Chandragiri

Mandal, Chittoor Distt, A.P in terms of agreement of sale executed on 1.12.2011 in favour of Shri S. Janga Reddy. He submitted that on the basis of the reply given by the assessee to the Income Tax Officer (I&CI) the Department has dropped the proceedings and no further query was raised. He submitted that once the reply of the assessee was accepted by the Investigation Wing, the Assessing Officer or the learned CIT (A) should not have doubted the agreement of sale against which the assessee had received cash of Rs.1.90 crores.

5.2 The learned Counsel for the assessee referring to the order of the learned CIT (A) submitted that he sustained the addition of Rs.14,81,000/- on the ground that the assessee neither could furnish the copy of the registered agreement entered into with Shri S. Janga Reddy nor could produce the vendee Shri S. Janga Reddy to prove the genuineness of the transaction. He submitted that the assessee had filed the confirmation letter obtained from Shri S. Janga Reddy who has given advance on two occasions and the assessee had also issued the receipts. So far as non-production of the vendee is concerned, he submitted that since the price of the land has gone up, the assessee backed out from the sale of the property for which there is no good relationship between the assessee and the vendee Shri S. Janga Reddy. However, given an opportunity, the assessee shall try his best to produce the said party before the Assessing Officer for necessary examination. He accordingly submitted that the assessee should be given an opportunity to substantiate her case.

6. The learned DR, on the other hand, while supporting the order of the Assessing Officer and the learned CIT (A) submitted that the issue involved in the instant case is regarding

the source of cash deposit in the Bank A/c and the assessee is trying to explain the source of the same by referring to an unregistered agreement for sale. Despite a number of years have passed the assessee has not yet sold the property. Further, the assessee during the remand proceedings failed to produce the said vendee to prove his identity and capacity to advance such huge amount in cash. Therefore, the order of the learned CIT (A) should be upheld and the grounds raised by the assessee should be dismissed.

7. 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 has added Rs.45,82,000/- being unexplained cash deposited in the savings bank a/c by invoking the provisions of section 68 of the I.T. Act. We find the learned CIT (A) after considering the remand report of the Assessing Officer and the rejoinder of the assessee to such remand report deleted Rs.31,01,000/-and sustained the balance amount of Rs.14,81,000/-, the reasons of which have already been reproduced in the preceding para. It is the submission of the learned Counsel for the assessee that the amount of Rs.14,81,000/- was deposited out of the advance received for sale of the property bearing No. 1-2 in Survey No.16/1, admeasuring 825.30 sq.yards situated at Thummala Gunta Village, Chandragiri Mandal, Chittoor Distt, A.P in terms of agreement of sale executed on 1.12.2011 in favour of Shri S. Janga Reddy. We find the learned CIT (A) while sustaining the addition has given a finding that despite sufficient opportunities granted by him to furnish the registered agreement entered into between the

assessee and Shri S. Janga Reddy and to produce Shri S. Janga Reddy to establish the identity of the vendee and the genuineness of the transaction, the assessee failed to produce the same. It is the submission of the learned Counsel for the assessee that there is no registered agreement as such but given an opportunity, the assessee is in a position to produce Shri S. Janga Reddy before the Assessing Officer to establish his identity, creditworthiness and genuineness of the transaction. 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 grant one more opportunity to the assessee to produce Shri S. Janga Reddy for proving his identity and capacity and the genuineness of the transaction. Needless to say, the Assessing Officer shall give an opportunity of being heard to the assessee and decide the issue as per fact and law. We hold and direct accordingly. The grounds raised by the assessee on this issue are accordingly allowed for statistical purposes.

8. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 27th December, 2022

Sd/-

Sd/-

(LALIET KUMAR) JUDICIAL MEMBER	(R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 27th December, 2022.

Vinodan/sps

Copy to:

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3	CIT (A)-11 ,Hyderabad
4	Pr. CIT-Central, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order