

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्रीदुव्वुस्वारएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./ I.T.A. No.217/Viz/2022

(निर्धारणवर्ष/ Assessment Year :2017-18)

Sabbarapu Narayana Rao,
Bikkavolu Mandal,
East Godavari Dist,
Andhra Pradesh.
PAN: BGFPS 6775 L
(अपीलार्थी/ Appellant)

Vs. Income Tax Officer,
Ward-1,
Kakinada.

(प्रत्यर्थी/ Respondent)

अपीलार्थीकीओरसे/ Appellant by

: Sri G.V.N. Hari, Advocate

प्रत्यर्थीकीओरसे/ Respondent by

: Sri ON Hari Prasada Rao,
Sr. AR

सुनवाईकीतारीख/ Date of Hearing

: 01/03/2023

घोषणाकीतारीख/Date of

: 17/03/2023

Pronouncement

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee against the order of the Ld.
Commissioner of Income Tax (Appeals), National Faceless Appeal

Centre, Delhi [CIT(A)-NFAC] vide DIN & Order No. ITBA/NFAC/S/250/2022-23/1045812115(1), dated 22/9/2022 arising out of the order passed U/s. 143(3) of the Act, dated 16/12/2019 for the AY 2017-18.

2. Briefly stated the facts of the case are that the assessee is an individual deriving income from purchase and sale of fertilizers and pesticides in the name and style of "Dhanalakshmi Agencies" filed its return of income on 9/6/2017 for the AY 2016-17 admitting a total income of Rs. 5,10,480/- u/s 44AD of the Act(presumptive taxation). Subsequently, the case was selected for "limited scrutiny" under CASS to verify the sources for cash deposits during the year. Accordingly, notices U/s. 143(2) was issued electronically on 9/8/2018 and served on the assessee. Subsequently, notice U/s. 142(1) was also issued on 15/7/2019, 25/10/2019, 5/11/2019, 14/11/2019 and 21/11/2019 calling for the information relating to the cash deposited during the year. Consequently, the Ld. AO also issued letters u/s. 133(6) of the Act calling for the information from the banks. In response to the notices, the assessee filed its return of income on 11/12/2019 stating that the cash deposited in the bank accounts are out of sale of paddy, fertilizers & pesticides, gift received from

his mother-in-law, investment by partners of new firm viz., Dhanalakshmi Traders, agricultural income and cash withdrawn from various banks on various dates. In support of the submissions the assessee enclosed copies of VAT returns, sale deed and details of agricultural land holdings. Subsequently, the Ld. AO issued show cause notice on 11/12/2019 calling for detailed information. In reply, the assessee on 11/12/2019 furnished the details as required by the Ld. AO through ITBA. Examining the submissions made by the assessee on various dates, the Ld. AO concluded the assessment by making the following additions:

1	Disallowance of gift from mother in law	Rs.	18,00,000
2.	Amount received from farmers on sale of paddy, fertilizers and pesticides	Rs.	42,50,280
3.	Amount withdrawn from partnership firm	Rs.	35,40,000
4.	Unexplained agricultural income	Rs.	4,00,000
5.	Unexplained cash deposits in HDFC Bank	Rs.	2,50,000
6.	Unexplained cash deposits during demonetization period	Rs.	32,00,000
		Total	Rs. 1,34,40,280

3. The Ld. AO considered the above additions U/s. 69A r.w.s 115BBE of the Act as unexplained cash deposits in various bank

accounts. Aggrieved by the order of the Ld. AO the assessee filed an appeal before the Ld. CIT(A)-NFAC.

4. The Ld. CIT(A)-NFAC, considering the submissions made by the assessee during the appeal proceedings, dismissed the appeal of the assessee and upheld the order of the Ld. AO. Aggrieved by the order of the Ld. CIT (A)-NFAC, the assessee is in appeal before us.

5. The assessee has raised three grounds in his appeal however, the only issue raised by the assessee is with respect to addition of Rs. 1,34,40,000/- made by the Ld. AO U/s. 69A of the Act towards alleged unexplained cash deposits in bank accounts.

6. The Ld. AR submitted that the assessee is trading in fertilizers and pesticides and has filed copies of VAT returns while admitting the income @ 12% on the sales. Further, the Ld. AR submitted that the assessee has admitted Rs. 2,60,000/- being 5% of the turnover with respect to paddy sales commission. The Ld. AR also further submitted that the assessee owns 10 acres of land and leased 16 acres and derived agricultural income of Rs. 5 lakhs per annum. Further, the Ld. AR also submitted that the assessee's mother-in-law has sold her property on 30/07/2016 for Rs. 18 lakhs and it was gifted to the assessee for

making cash deposit into the assessee's bank account. The Ld. AR submitted the gift deed was also submitted before the Ld. CIT(A)-NFAC. Further, the Ld. AR submitted that the cash deposit of Rs. 32 lakhs during the demonetization period is out of the cash withdrawals made by the assessee and has been re-deposited within a span of 5 days. Further, in respect of amounts received from partners as capital in the partnership firm Dhanalakshmi Traders, the Ld. AR submitted that the partners have contributed capital to the firm and since the firm does not have a bank account these amounts are deposited into the assessee's bank account. The Ld. AR further submitted before us that the petition for admission of additional evidence has been placed before us with respect to the sources for cash deposits made by various partners of the partnership firm Dhanalakshmi Traders and pleaded that the additional evidence may be admitted.

Per contra, the Ld. DR submitted that the gift from mother-in-law was not accepted by the Ld. AO due to the fact that there is a huge time lag between the date of sale of property and date of gift to the assessee. Further, the Ld. DR submitted that the partnership firm is unregistered and it entered into on

11/11/2016 which is during the demonetization period. The Ld. DR also questioned the need of depositing the cash as contribution towards capital by the various partners into the assessee's bank account. The Ld. DR also submitted that the partners to the firm are non-filers of the income tax returns and has never disclosed their agricultural income as claimed by them and has never filed their returns of income for any assessment year. Further, the Ld. DR also submitted that the claim of the Ld. AR that the assessee is a commission agent for Paddy sales and purchases and this fact was not disclosed in the VAT return submitted by the assessee. The Ld. DR therefore pleaded that the order of the Ld. Revenue Authorities may be upheld.

7. We have heard both the parties and perused the material available on record and the orders of the Ld. Revenue Authorities. With respect to Rs. 18 lakhs as gift from mother-in-law, the submission of the Ld. AR is that the assessee deposited the same into the bank account on 30/07/2016 itself. The Ld. AR brought our attention to page 9 of the paper book where the HDFC bank statement has been placed and submitted that the cash of Rs. 40 lakhs was deposited on 30/07/2016 and in his submissions the Ld. AR reiterated that this amount comprised of

Rs. 18 lakhs gifted from mother-in-law and cash withdrawn from bank for Rs. 20 lakhs on 25/7/2016 and cash withdrawn from bank account for Rs. 1 lakh on 15/7/2016 and the balance Rs. 1 lakh was the amount received from farmers on account of sale of pesticides and fertilizers. The Ld. AR also in his reply to the Ld. AO on 16/12/2019 has reiterated that the deposit of the gift from mother-in-law for Rs. 18 lakhs was made into the bank account on 30/07/2016. We also find from the translated copies of the sale deed produced by the Ld. AR in pages 80 to 82 of the paper book confirms the sale of two lands for Rs. 9 lakhs each. In view of the above, the claim made by the assessee that it is a gift from mother-in-law and it was deposited into the bank account on 30/07/2016 itself in our considered view is acceptable and allowed.

8. With respect to the addition on account of sale of paddy, fertilizers and pesticides, it was submitted by the Ld. AR that the assessee has made turnover of Rs. 51 lakhs during the impugned assessment year by way of purchase and sale of paddy and has earned the commission of Rs. 2,60,000/- being 5% as disclosed in the returns of income filed by the assessee. This fact was not disputed by the Ld. AO. The Ld. AO has merely relied on the

reported turnover as per VAT returns and has considered the submissions of the assessee as illogical. We find merit in the arguments of the Ld. AR that the assessee has acted as a mediator between the rice millers and the farmers for a commission and has routed the transactions through his account. This commission was also disclosed in the return of income filed by the assessee. We therefore are inclined to delete the addition made by the Ld. Revenue Authorities on account of sale of paddy for Rs. 42,50,280/-.

9. With respect to unaccounted agricultural income the Ld.AO has relied on the returns of income filed by the assessee that the assessee has not disclosed the agricultural income while filing the return of income. The Ld. AR in his paper book filed narrated that the assessee has shown an exempt income of Rs. 5 lakhs as agricultural income while filing the return of income. We find that the Ld. AO has not considered this exempt income of Rs. 5 lakhs as disclosed by the assessee in his return of income. The Ld. AO has therefore erred in treating the agricultural income of Rs. 4 lakhs as unexplained. We therefore direct the Ld. AO to delete this addition as it has been properly explained and disclosed in the return of income filed by the assessee.

10. With respect to addition of Rs. 2,50,000/- the Ld. AO considered as no source was explained by the assessee and hence treated the same as unexplained. It was the submission of the Ld. AR that this amount was out of surplus available with the assessee and which has been deposited into the bank account. Considering the above submissions, we are inclined to direct the Ld. AO to delete the addition of Rs. 2,50,000/- which was made out of the savings of the assessee.

11. With respect to addition of Rs. 35,40,000/- cash deposits made by the assessee into the bank account, the submissions of the Ld. AR that these amounts have been received by cash being the contribution towards the capital of the firm Dhanalakshmi Traders by various partners of the firm. The Ld. AR also submitted admission of additional evidence substantiating the sources of funds by various partners towards contribution to the capital to the firm. The Ld. AR also submitted a copy of the partnership deed before us. Further, from the verification of the partnership deed, we find that there is no recital with respect to the capital contribution made by the partners. Further, the Ld. AR also could not explain why the capital contribution was deposited into the assessee's bank account instead of the bank

account of the partnership firm Dhanalakshmi Traders. Further, on verification of the additional evidences submitted before us, we find that the various partners have declared their income as agricultural income and has provided confirmation letter regarding their investment in the partnership firm Dhanalakshmi Traders. However, the creditworthiness of the partners could not be established and also the income earned by the partners through agricultural sources could not be substantiated by the Ld. AR. At the cost of repetition, we also find that these cash deposits was made into the assessee's bank account but not into the bank account of the partnership firm. In view of the above facts and circumstances, we are inclined to reject the additional evidence submitted by the Ld. AR.

12. The assessee in paper book pages no. 36 & 37 has stated that he had deposited cash of Rs. 20 lakhs on 10/11/2016; Rs. 12 lakhs on 11/11/2016 into the SOD account and Rs. 1 lakh on 10/11/2016 in the current account of the assessee. Further, the assessee has also deposited Rs. 1 lakh on 19/1/2017 by way of cash and Rs. 1,40,000/- by way of cheque on 7/3/2017. All the above deposits aggregating to Rs. 35,40,000/- is stated by the Ld. AR as received from the partnership firm. We find that

therefore the deposits during the demonetization period for Rs. 33,00,000/- in both the bank accounts by way of cash is out of the capital alleged to be introduced by the partners of the firm. In the absence of any substantiated evidence with regard to deposits of the cash into the assessee's account instead of partnership firm's account we could not accept that these deposits are from explained sources. We are therefore inclined to uphold the addition of Ld. Revenue Authorities to the extent of Rs. 33,00,000/- deposited by way of cash during the demonetization period and hereby confirm the order of the Ld. Revenue Authorities.

13. With respect to addition of Rs. 32 lakhs by the Ld. Revenue Authorities being the cash deposited during the demonetization period we find that these cash deposits in the bank account of the assessee arise out of the alleged cash contribution by the partners. The Ld. Revenue Authorities have erred in disallowing the same cash deposits and we therefore direct the Ld. AO to delete the addition of Rs. 32 lakhs.

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

Pronounced in the open Court on the 17th March, 2023.

Sd/-

(दुव्वुळार.एलरेड्डी)
(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसबालाकृष्णन)
(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated : 17.03.2023

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee-Sabbarapu Narayana Rao, D.No. 3-71, Anjaneya Swamy Temple Street, Bikkavole Mandal, East Godavari District, Andhra Pradesh.
2. राजस्व/The Revenue -Income Tax Officer, Ward-1, 3rd Floor, Deepthi Towers, Main Road, Kakinada.
3. The Principal Commissioner of Income Tax,
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam