

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 1569/Hyd/2019
(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s. Sri Gayatri Constructions, Secunderabad [PAN No. ABDFS1795C]	Vs. Dy. Commissioner of Income Tax, Circle-10(1), Hyderabad
अपीलार्थी / Appellant	प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri A. Srinivas, AR
राजस्व द्वारा/Revenue by: Ms. Helen Ruby Jesindha, DR

सुनवाई की तारीख/Date of hearing: 01/03/2023
घोषणा की तारीख/Pronouncement on: 29/03/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 09/08/2019 passed by the learned Commissioner of Income Tax (Appeals)-1, Guntur ("Ld. CIT(A)"), in the case of M/s. Sri Gayatri Constructions ("the assessee") for the assessment year 2012-13, assessee preferred this appeal.

2. Assessee is a firm, derives income from house property and from business as a builder in construction of apartments. For the assessment year 2012-13 it has filed the return of income declaring the total income of Rs. 4,49,400/- from house property and Rs. 36,84,450/- from

construction activities. By way of order dated 03/03/2015 passed under section 143(3) of the Income Tax Act, 1961 (for short "the Act"), learned Assessing Officer determined the income of the assessee at Rs. 74,61,410/- by making addition of Rs. 5.95 lakhs under section 69A of the Act and a sum of Rs. 28,67,375/- under section 68 of the Act, insofar as this appeal is concerned.

3. During the course of assessment, learned Assessing Officer found that in the individual transaction statement (ITES) of the assessee there were cash deposits to the tune of Rs. 59.5 lakhs and the assessee failed to prove the identity and creditworthiness of the customers or the genuineness of the transactions. He, therefore, added the un-explained cash deposits. Apart from this learned Assessing Officer also noticed that the receipt for Rs. 28,67,375/- from one Amar Singh was shown in the Balance Sheet and according to the assessee such amount is not a trading liability and there is no cessation of liability to be considered under section 41(1) of the Act. Stating that no confirmation, address, PAN or any identity proof of such person was provided, learned Assessing Officer added such amount also.

4. In appeal, learned CIT(A) reduced the estimate of the profit of the assessee to 8% as against 10% adopted by the learned Assessing Officer. In respect of the addition of Rs. 59.5 lakhs, and Rs. 28,67,375/- learned CIT(A) upheld the additions. Hence the assessee is in this appeal before us challenging the addition Rs. 59.5 lakhs under section 69A of the Act and Rs. 28,67,375/- under section 68 of the Act vide grounds No. 2 and 3 & 4 respectively, whereas Grounds No. 1 & 5 general in nature. We shall deal with the contentions of the assessee one after the other.

5. It is the contention of the learned AR that all the entries in respect of Rs. 69.5 lakhs added under section 69A of the Act are reflected in the bank account of the assessee and are part of the regular books of accounts and, therefore, the addition under section 69A of the Act cannot be

sustained. According to him for invoking section 69A of the Act, there must be money, bullion, jewellery or other valuable articles which are not recorded in the regular books of accounts maintained by the assessee and such un-recorded money, bullion, jewellery or other valuable articles shall remain un-explained to the satisfaction of the learned Assessing Officer. However, learned AR submits that all the entries pointed out by the learned Assessing Officer are recorded in the books. He placed reliance on the decision of a Co-ordinate Bench of this Tribunal in the case of DCIT vs. M/s. Karthik Construction Co. in ITA No. 2292/Mum/2016 (AY. 2011-12), dated 23/02/2018.

6. Learned DR submitted that the assessee failed to offer satisfactory explanation during the assessment proceedings and the identity and creditworthiness of one J. Satish or the genuineness of the transaction with him was not proved and so also, though the assessee claims that Rs. 25 lakhs said to have been received from one Siddharth Chandra in respect of purchase of a flat is also not free from doubt because no sale deed etc., was produced. According to the learned DR, the capital introduced by a partner is also not satisfactorily explained.

7. We have gone through the record in the light of the submissions made on either side. The dispute in respect of the addition of Rs. 59.5 lakhs revolves around four receipts, namely, Rs. 10 lakhs from one J. Satish, Rs. 10 lakhs from a customer in respect of Flat No. 309, Rs. 30 lakhs from one Siddharth Chandra and Rs. 9.5 lakhs from one of the partners of assessee firm. In respect of these receipts, learned AR took us through various entries in the paper book.

8. At page No. 8 of the paper book in the balance sheet of the assessee, under contract works, a sum of Rs. 5,60,95,877/- is shown and at page No. 10 thereof the break-up of this figure is given. Out of this amount, a sum of Rs. 10 lakhs is shown to have received from one Srinivas Reddy towards flat No. 309. At page No. 9, the account of J. Satish with

assessee shows that a sum of Rs. 10 lakhs was received on 19/04/2011 and the same is shown to have been returned on 20/04/2011. At page No. 11 in the break-up of sale of flats at Kakaguda venture, a sum of Rs. 25 lakhs is shown as revenue as received from Siddharth Chandra in respect of flat No. 215. Likewise, in the capital account of Shri P. Srinivas Reddy, one of the partners to be found at page No. 12 of the paper book a sum of Rs. 9.5 lakhs was first debited on 19/09/2011 and credited back on 28/12/2011 and the explanation of the assessee is that such capital introduced by the partner was withdrawn on 19/09/2011 from the firm and it was re-introduced on 28/12/2011.

9. It is, therefore, clear that the assessee had taken into account the transactions relating to flat No. 309 and also with one Siddharth Chandra apart from the partner reintroducing the withdrawn amount. To this extent, we find it difficult to accede to the contention of the Revenue that even in respect of the Revenue that is recognized in the books, the deeming provisions of section 69A of the Act are applicable. However, the amounts said to have been received and paid back to J. Satish are concerned, learned Assessing Officer needs to verify the said fact with reference to the cash book and ledger, and if he is satisfied, he may delete the said addition also.

10. Coming to the addition of Rs. 28,67,375/-, learned AR submits that during the financial year ending with 31/03/2009, the assessee made certain payments to K. Amar Singh and others towards refundable deposits to the tune of Rs. 55 lakhs and the same was recorded in the books; that the said advance was transferred to the individual account of Amar Singh on 04/01/2011. Apart from this, the assessee purchased two flats from the said Amar Singh and the sale consideration was credited to his account. There were certain other sundry transactions during the year under consideration and the account of Mr. Amar Singh with the assessee shows the credit balance of Rs. 28,67,375/- which the learned Assessing Officer

added as the un-explained income of the assessee. Even the learned CIT(A) also missed this aspect.

11. Learned CIT(A) adverted to the aspect of the learned Assessing Officer proposing or not the applicability of section 41(1) of the Act, but it did not look into this aspect argued before him. It remains un-disputed that a sum of Rs. 55 lakhs was advanced to for the land at Karkhana through banking channels between 14/08/2008 and 08/09/2008 as could be seen from such account at page No. 14 of the paper book and it establishes that, that amount of Rs. 55 lakhs is coming as opening balance from the earlier years to the financial year 2010-11. Further, the account of Amar Singh with the assessee to be found at page No. 13 shows that such advance for land at Karkhana was transferred to his account on 04/01/2011, and stood debited.

12. It further establishes that on 27/05/2011, sums of Rs. 15.62 lakhs and 29.66 lakhs were credited towards the sale consideration of flats No. 307 and 116 at Kakaguda. Subsequently, there are certain sundry transactions on various dates and finally the balance of Rs. 28,67,375/- stood credited to his account. It is, therefore, clear that the learned Assessing Officer added the final balance that stood to the credit to the account of Amar Singh at the end of the year under consideration. In these circumstances, we are of the considered opinion that this addition is a misconceived one and the same has to be deleted. We hold and order accordingly.

13. In the result, appeal of the assessee is allowed in part.

Order pronounced in the open court on this the 29th day of March, 2023.

Sd/-

(RAMA KANTA PANDA)
ACCOUNTANT MEMBER

Hyderabad, Dated: 29/03/2023

TNMM

Sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

1. M/s. Sri Gayatri Constructions, D.No. 1-1-163/1, 65, Alexander Road,
R.P.Road, Secunderabad.
2. Dy. Commissioner of Income Tax, Circle-(10)1, Hyderabad.
3. Pr.CIT-1, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

TRUE COPY

ASSISTANT REGISTRAR
ITAT, HYDERABAD