

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ SMC ‘ Bench, Hyderabad**

BEFORE

SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.607/Hyd/2022		
Assessment Year: 2019-20		
Mujtaba Hussain Ahmed, H.No.9-18-125, Malapally, Nizamabad – 503001. PAN : DFNPA7735D.	Vs.	ACIT, Central Circle 1(4), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Sri Samuel Nagadesi	
Revenue by:	Sri A. Sitarama Rao.	
Date of hearing:	11.04.2023	
Date of pronouncement:	11.04.2023	

ORDER

PER LALIET KUMAR, J.M.

The appeal of the assessee for A.Y. 2019-20 arises from the order of Commissioner of Income Tax (Appeals) – 11, dt.22.09.2022 invoking proceedings under section 143(3) of the Income Tax Act, 1961 (in short, “the Act”).

2. The grounds raised by the assessee read as under :

“1. On the facts and in the circumstances of the case the learned Commissioner erred in law and facts of the case in confirming the order of the Assessing Officer under section 143(3).

2. On the facts and in the circumstances of the case the learned Commissioner erred in law and facts of the case in confirming the addition Rs. 25,81,250/-. On the facts and in the circumstances of the case the learned Commissioner based on the material provided on record ought to have appreciated that the appellant fully explained the case as sale proceeds land of five others and is not connected to any political party, Candidate for election or any publicity material connected with election.

3. On the facts and in the circumstances of the case the learned Commissioner erred in law and facts of the case in confirming the levy of tax under Section 115BBE.”

3. Facts of the case, in brief, are that the assessee, is an individual running proprietary business in the name and style of Numaan Medical and General Stores, apart from having agricultural income. For the AY 2019-20, the assessee has filed the return of income on 25.05.2019 declaring total income of Rs.1,00,800/- apart from declaring agricultural income of Rs.50,000/- and other exempt income in the form of sale of agricultural land of Rs.26,00,000/-. The assessee was intercepted by the Static Surveillance Team on 04.17.2022 near Rajaram Stadium, Nagaram, Nizamabad and found a cash of Rs.25,81,250/- carried by the assessee. The police seized the same u/s 132A of the Act as the assessee did not furnish any evidence for having the same. Accordingly, the case was centralized and the assessment was completed u/s 143(3) of the Act interalia making an addition of Rs.25,81,250/- u/s 69A of the Act.

4. Feeling aggrieved with the order of Assessing Officer, assessee filed an appeal before the ld.CIT(A) who dismissed the appeal of assessee on 07.09.2021. Feeling aggrieved with the order of ld.CIT(A), assessee approached this Tribunal wherein the Tribunal has passed an order on 20.12.2021 setting aside the case to the file of ld.CIT(A) with a direction to provide one more opportunity of being heard to the assessee. In the second round also, the appeal of assessee was dismissed by the ld.CIT(A) on 22.09.2022.

5. Feeling aggrieved with the order of ld.CIT(A) dt.22.09.2022, assessee has filed the present appeal before me.

6. Before me, ld.AR submitted that assessee along with other siblings had sold the agricultural land admeasuring 1 acre and 25 guntas, which was jointly owned by them, for a total consideration of Rs.26 lakhs. The assessee was intercepted by the Static Surveillance Team (SST) while carrying the said amount to the home after getting document registered with the Sub-Registrar Office, Banswada. It was further submitted that the assessee has given the name, identity and source of the cash recovered from his possession immediately after he was apprehended in the statement. by virtue of rectification deed dt.01.04.2019. It is the submission of the ld. AR that the Revenue authorities have not taken the cognizance of the explanation of the assessee and subsequently rectified the sale deed dt.01.04.2019 and had made the addition on the basis of the first sale deed dt.22.03.2019 which

was registered only for a consideration of Rs.1,60,000/-. It was submitted that since the assessee was able to demonstrate the source of the cash in the possession of the assessee, the addition made by the Assessing Officer has to be deleted.

7. Per contra, ld. DR had vehemently argued and submitted that the cash was recovered by the SST team on 23.03.2019 and the assessee was examined for having cash and that the assessee had explained that the cash in his possession was received along with other siblings i.e., three sister and one brother, towards the sale of ancestral agricultural land admeasuring 1 acre and 25 guntas situated at Sy. No.78/1, Ankol area, Basvayipalli Village. However, in the sale deed dt.23.03.2019, a total consideration of Rs.1,60,000/- was mentioned which was registered with the office of the SRO, Bansvada. Ld. DR had submitted that once there was a registered document for consideration of Rs.1,60,000/-, it was the duty of the Assessing Officer to take into account the said consideration only and Assessing Officer was right in rejecting the subsequent document i.e., rectification deed dt.01.04.2019 for the land at Rs.26 lakhs as it was a self-serving document. Hence, the action on the part of the Assessing Officer and the ld.CIT(A) was in accordance with law.

8. I have heard the rival submissions and perused the material on record. Undoubtedly, the assessee had sold his ancestral agricultural land admeasuring 1 acre and 25 guntas by way of a registered sale deed dt.23.03.2019. Incidentally, on the date of

sale of land, SST Team intercepted the assessee and found cash with him and when the assessee was asked to explain the source of cash, the assessee had submitted that the cash was received by them (He and his siblings) on account of sale of land. Subsequently, during the assessment proceedings, the assessee had undertaken to produce the sale deed registered on 23.03.2019 which was mentioned in Para 2 of the assessment order. Subsequently, rectification deed was also got registered in the office of the Sub-Registrar, Banswada on 01.04.2019 whereby the value of the property was duly mentioned at Rs.26 lakhs. In the said rectification deed, the purchaser had paid the deficit stamp duty for sale of agricultural land and also agreed to pay Rs.26 lakhs as sale consideration towards buying the land. The above undisputed facts were already available with the Revenue authorities during the assessment / appellate proceedings, however, the authorities below have not examined the purchaser and the siblings of the assessee to contradict the same. The assessee not the purchaser were examined during the assessment proceedings.

9. As a matter of fact, at the time of seizure, the assessee was examined and the assessee had given an explanation that the cash was received by him along with other siblings on account of sale of agricultural land. In my considered opinion, once the assessee has disclosed the source of the cash on account of sale of agricultural land, then it is the bounden duty of the lower authorities to examine the purchaser and ask the purchaser to

disclose the source of the cash. The above said act was necessary in the light of the mandatory provision mentioned under section 269ST / SS which requires that land for more than the specified limit shall not be purchased / sold by way of cash. In the present case, no action was initiated by the Assessing Officer for violation of provisions under section 269SS/269ST till date, against the seller and purchaser.

10. In the present case, the assessee has explained the source of the cash and has also disclosed the identity of the person from whom the cash was received. However, it is for the Assessing Officer to bring evidence by way of examining the purchaser or otherwise by bringing any cogent evidence about the capacity and creditworthiness of the purchaser thereby contradicting the assessee. However, no contradiction has been brought on record. In fact, as mentioned hereinabove, the addition was made by the Assessing Officer on account of cash received u/s 68 of the Act and the assessee had discharged the onus of proving three requirements of law, then no addition can be made in the hands of assessee. However, once the assessee has explained the source of cash, identity and other facts, which are required for charging u/s 68 of the Act, nothing can be pleaded in the hands of the assessee. In my opinion, the addition made in the hands of the assessee is required to be deleted. Accordingly, the addition made by the Assessing Officer and confirmed by the Id.CIT(A) is deleted. Thus, the appeal of the assessee is allowed.

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

Order pronounced in the Open Court on 11th April, 2023.

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad, dated 11th April, 2023.

TYNM/sps

Copy to:

S.No	Addresses
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2	ACIT, Central Circle 1(4), Hyderabad.
3	PCIT (Central), Hyderabad.
4	DR, ITAT Hyderabad Benches, Hyderabad.
5	Guard File

By Order