

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.1624/Hyd/2019		
Assessment Year: 2017-18		
Shri Pottiakula Hemakumar Reddy, Chittoor PAN:AMKPP6285C	Vs.	ACIT, Circle 1(1) Tirupati
(Appellant)		(Respondent)
Assessee by:	Advocate S. Sandhya	
Revenue by:	Sri KPRR Murthy, CIT(DR)	
Date of hearing:	20/04/2023	
Date of pronouncement:	25/04/2023	

ORDER

This appeal filed by the assessee is directed against the order dated 4.9.2019 of the learned CIT (A) Tirupati relating to A.Y 2017-18.

2. This appeal was earlier dismissed by the Tribunal due to non-appearance. However, subsequently, vide M.A Nos. 77 to 79/Hyd/ 2022 dated 10.06.2022, the Tribunal recalled its earlier order. Hence it is a recalled matter.

3. There is a delay of one day in filing of this appeal by the assessee for which the assessee has filed a condonation application alongwith an affidavit explaining the reasons for such delay. After considering the contents of the condonation application along with the affidavit and after hearing both sides,

the delay of one day in filing of this appeal by the assessee is condoned and the appeal is admitted for adjudication.

4. The grounds raised by the assessee are as under:

“The Learned Commissioner of Income Tax (Appeals), is not legally Correct and proper in not considering appellant's submissions.

1. *Interest on sundry debtors addition Rs.2,33,100/- is not correct and proper in any event excessive.*
2. *Liquor business: The CIT(A) sustained profit @ 5% on turnover. The appellant admitted 3% income on turnover. The addition sustained is excessive. The profit @ 3% on turnover is reasonable and addition Sustained has to be deleted.*
3. *Addition of Rs.19,64,300/- unaccounted cash. This relates to liquor business. This is the cash balance in liquor business. This was a accumulation of 10 days sales. The sale having been offered, no need to add this amount. Without prejudice the estimated addition sustained will have to be telescoped to this and deleted.*
4. *Addition on account of sundry creditors Rs.7,44,000/-. They are genuine creditors. No addition is called for.*

The appellant craves leave to file additional statement of facts if necessary in support of grounds of appeal at the time of hearing.”

5. The assessee has also raised an additional ground which reads as under:

“The assessing officer and the commissioner of Income Tax (Appeals) are not justified in making any addition while completing the assessment under section 153C of Income Tax Act without any material found during the course of search and seizure operations.”

6. However, the learned Counsel for the assessee at the time of hearing did not press the additional ground as well as Ground of appeal No.2 for which the learned DR has no objection. Accordingly, the additional ground and Ground of appeal No.2 are dismissed as not pressed.

7. So far as Ground of appeal No.1 is concerned, the same relates to the addition of Rs.2,33,100/- by the Assessing Officer on account of interest on sundry debtors which has been upheld by the CIT (A).

8. Facts of the case, in brief, are that the assessee is an individual and derives income from liquor business, income from other sources and agricultural activities. A search operation u/s 132 of the I.T. Act was conducted in the case of Shri Pottiakula Munirathnam Reddy & Others on 15.12.2016 during the course of which the statements of the assessee were recorded . The assessee filed his return of income on 30.10.2017 declaring total income of Rs.13,27,940/-. The case was selected for scrutiny and accordingly statutory notices u/s 143(2) and 142(1) were issued and served on the assessee to which the AR of the assessee appeared before the Assessing Officer and filed the requisite details.

9. During the course of assessment proceedings, the Assessing Officer observed that in the balance sheet as on 31.3.2017, the assessee has shown sundry debtors of Rs.12,95,000/-. However, in the computation statement no interest income has been offered to tax. He, therefore, asked the assessee to explain as to why interest @ 18% should not be adopted as interest receipts from sundry debtors and accordingly why a sum of Rs.2,33,100/- should not be brought to tax. The assessee submitted that all the sundry debtors have not given interest and some of them are bad debts and therefore, he accepted the estimated addition of Rs.1.00 lakh on this account.

However, the Assessing Officer did not accept the above contention of the assessee and made addition of Rs.2,33,100/-.

10. In appeal, the learned CIT (A) upheld the action of the Assessing Officer holding that the assessee had not given the details of debtors, bad debts and proof for the claim that the money was advanced to the agriculturists. He accordingly confirmed the addition made by the Assessing Officer.

11. Aggrieved with such order of the CIT (A), the assessee is in appeal before the Tribunal.

12. The learned Counsel for the assessee at the outset drew the attention of the bench to the order of the Tribunal in the case of Shri Puttiakula Prathap Reddy vs. ACIT in ITA No.1073 to 1077/Hyd/2019 dated 6.1.2023 for A.Ys 2011-12 to 2015-16 and submitted that under identical circumstances, the addition on account of interest on sundry debtors was deleted.

13. The learned DR, on the other hand, heavily relied on the orders of the lower authorities.

14. 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 Assessing Officer, in the instant case, made addition of Rs.2,33,100/- being interest from sundry debtors @ 18% p.a. We find the learned CIT (A) upheld the action of the Assessing Officer

on the ground that the assessee could not give the details of debtors, bad debts and proof for the claim that the money was advanced to the agriculturists. We find an identical issue had come up before the Tribunal in the case of the related party namely Shri Puttiakula Prathap Reddy and the Tribunal vide ITA Nos.1073 to 1077/Hyd/2019 order dated 6.1.2023 has deleted the interest by observing as under:

“13. The second issue raised by the assessee in the ground of appeal relates to the addition of Rs.1,17,000/- being interest from sundry debtors.

14. After hearing both sides we find the assessee had not disclosed any interest income from sundry debtors. We find the Assessing Officer computed such interest @ 18% on the sundry debtors of Rs.6,50,000/- as on 31.3.2011 on the ground that the assessee himself had voluntarily offered interest income from sundry debtors at more than 18% per annum for A.Y 2016-17 and Shri Hema Kumar Reddy, one of the persons of the group, in his sworn statement recorded u/s 131 on 15.3.2017 in his reply to question No.12 had stated that the assessee group charges interest @ 18% p.a. uniformly. While doing so the Assessing Officer rejected the explanation of the assessee that all the debtors are not giving interest and therefore, no interest should be calculated for making addition to the total income of the assessee. We find in appeal, the learned CIT (A) upheld the addition made by the Assessing Officer. It is the submission of the learned Counsel for the assessee that such an addition of interest is not based on any incriminating material found during the course of search nor the same was stated by the assessee himself in any statement recorded from him. According to her, interest, if any, can be added only from A.Y 2016-17 and not for the impugned A.Y. It is the submission of the learned DR that when one of the members of the group had admitted that the assessee is charging interest @ 18%, therefore, such addition made by the Assessing Officer and sustained by the learned CIT (A) is justified.

15. We find some force in the argument advanced by the learned Counsel for the assessee. Admittedly, the addition was made on the basis of statement recorded u/s 131 dated 15.3.2017 from Shri P. Hema Kumar Reddy who in his answer to question No.12 had stated that the assessee group charges interest @ 18% per annum uniformly. However, the statement was not recorded from the assessee and the statement was recorded only on 15.3.2017. There is no iota of any evidence found during the course of search that the assessee has received any interest during the impugned A.Y nor the Assessing Officer questioned Shri P.

Hema Kumar Reddy for the impugned A.Y. Nothing has been brought on record by the Assessing Officer that the debtors were questioned/confronted and that they have admitted to have given any interest to the assessee. Under these circumstances we are of the considered opinion that the addition of Rs.1,17,200/- being interest @ 18% from sundry debtors of Rs.6,50,000/- as on 31.3.2011 is not justified being added on surmises and presumptions. We, therefore, set aside the order of the CIT (A) on this issue and the grounds raised by the assessee on this issue are allowed.”

15. We find the facts in the case are slightly different since in the instant case the assessee has himself accepted before the Assessing Officer for addition to the extent of Rs.1.00 lakhs on estimate basis on account of interest from sundry debtors. Considering the totality of the facts of the case and considering that uniform amount may not be outstanding throughout the year and that the statement of the assessee was also not recorded and no other evidence was found during the course of search for earning of any interest from sundry debtors, we restrict the disallowance to Rs.1.00 lakhs. Accordingly, the order of the CIT (A) is modified and the addition is sustained at Rs.1.00 lakhs as against Rs.2,33,100/- made by the Assessing Officer. The ground raised by the assessee is accordingly partly allowed.

16. The 3rd ground relates to the addition of Rs.19,64,300/- made by the Assessing Officer as unaccounted cash which has been upheld by the CIT (A).

17. Facts of the case, in brief, are that during the course of search proceedings, cash of Rs.19,64,300/- belonging to the assessee was found at the assessee's premises. On being asked by the Assessing Officer to explain as to why the same should not be treated as unexplained cash, the assessee replied that the cash of

Rs.19,64,300/-found during the search belong to liquor business and it is not cash credit or unexplained money u/s 69A of the Act. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee in the absence of production of books of account. He further noted that no books of account were found during the course of search. No evidence of such huge cash found at the assessee's residence were produced before him. In absence of any evidence to his satisfaction that the money found at the time of search belongs to the liquor business and in the absence of any cash flow statement filed before him to substantiate the same, the Assessing Officer, treated the sum of Rs.19,64,300/- as unexplained money u/s 69A of the I.T. Act r.w.s. 115BBE.

18. In appeal, the learned CIT (A) sustained the addition by observing as under:

“With regard to cash found and added by the Assessing Officer as unexplained money, the appellant during the appellate proceedings stated that the cash relates to liquor business and the 10 days sales could not be deposited in the banks due to difficulties on a/c of demonetization. However, the applicant failed in providing any evidence to prove that the money belongs to the liquor business and kept with the appellant during the time of search. In the absence of any evidence, the contentions of the appellant are rejected and the addition by the Assessing Officer is confirmed. Ground of appeal on, this point is dismissed”.

19. Aggrieved with such order of the CIT (A), the assessee is in appeal before the Tribunal.

20. The learned Counsel for the assessee strongly challenged the order of the CIT (A) in sustaining the addition of Rs.19,64,300/-. She submitted that the assessee is in the business of IMFL with daily sale of approximately Rs.1,50,000/-.

On the date of search, he had 10 days sale which were not deposited in the Bank A/c. Referring to the reverse page No 122 of the Paper Book, she drew the attention of the Bench to the sale of Rs.1,26,890/- on 1.10.2016. Similarly referring to reverse page No 121 of the Paper Book, she submitted that the cash sale on 2.12.2016 was Rs.1,23,660/-. Referring to various other pages, he drew the attention of the Bench to similar sales and submitted that on the date of search i.e. on 15.12.2016, the assessee had a cash balance of Rs.20,43,979/-. She submitted that since the cash found during the course of search was business cash, therefore, the same should have been accepted and no addition u/s 69A should have been made. Referring to page 74 of the Paper Book, she drew the attention of the Bench to the P&L A/c and submitted that the sales for the year has been shown at Rs.4,85,47,500/-. Referring to the balance sheet as on 31.3.2017, she submitted that the cash on balance has been shown at Rs.8,18,119/-on 31.3.2017. She submitted that the cash found at the time of search commensurates with the volume of business. Further, due to the prevailing situation immediately after demonetization, it was not possible to deposit the entire cash by counting the same properly to be deposited in the Bank for which the cash was available with the assessee on the date of search. She accordingly submitted that the order of the CIT (A) be set aside and the grounds raised by the assessee be allowed.

21. The learned DR, on the other hand, heavily relied on the order of the lower authorities. He submitted that the assessee during the course of assessment proceedings or before the CIT (A) has not explained with any evidence to show that the cash found

at the time of search is from the liquor business. Therefore, the learned CIT (A) was fully justified in sustaining the addition.

22. 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 find the Assessing Officer in the instant case made addition of Rs.19,64,300/- being cash found at the time of search u/s 69A r.w.s. 115BBE of the Act on the ground that the assessee could not substantiate with evidence to his satisfaction that the cash so found at the time of search belongs to liquor business. We find the learned CIT (A) sustained the addition made by the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the learned Counsel for the assessee that the cash sale for the last 10 days before the search could not be deposited in the Bank a/c due to demonetization period, that the turnover of the assessee for the year ending 31.3.2017 is Rs. 4,85,47,500/- and that the cash balance as on 31.3.2017 is Rs.8,18,119/- and therefore, the cash so found on the date of search is justified under the facts and circumstances of the case.

23. We find some force in the above arguments of the learned Counsel for the assessee. A perusal of the P&L A/c filed by the assessee in the paper book shows that the assessee has shown sales of Rs. 4,85,47,500/- for the year ending 31.3.2017 which otherwise gives a daily turnover of Rs.1,33,000/- approximately. Further in the balance sheet as on 31.3.2017, the assessee has also shown cash balance of Rs.8,18,119/-. Therefore, it is not correct to say that not a single rupee relates to

the business of the assessee who is admittedly engaged in the liquor business and the profit shown in the business has been accepted by the Assessing Officer. Therefore, some credit, in our opinion, has to be given towards the availability of cash from the liquor business. Considering the totality of the facts of the case, we are of the considered opinion that an amount of Rs.10.00 lakhs on estimate basis may reasonably be held as business cash available on the date of search and the balance amount of Rs.9,64,300/- is to be treated as unexplained money u/s 69A r.w.s. 115BBE of the Act. The order of the CIT (A) is accordingly modified and the ground raised by the assessee is partly allowed.

24. Ground of appeal No.4 relates to the addition of Rs.7,44,000/- on account of sundry creditors.

25. Facts of the case, in brief, are that the assessee in its balance sheet has shown outstanding sundry creditors in the name of Smt. P. Sunita, Smt. P. Jyoti and K.K. Constructions for Rs.2,45,000/-, Rs. 2,49,000/- and Rs.2,50,000/- respectively. The Assessing Officer asked the assessee to furnish the details of sundry creditors shown in the balance sheet along with PAN, address, assessment details, capacity of creditors to advance such loan, genuineness of the transaction and such other identity details along with the mode of receipt of such loans. However, except furnishing the name of the person alongwith PAN No, the assessee did not file any further details for which the Assessing Officer again asked the assessee to substantiate the sundry creditors. However, except filing the name of the assessee and PAN No, the assessee did not file any other details for which the

Assessing Officer made addition of Rs.7,44,000/- to the total income of the assessee u/s 68 r.w.s. 115BBE of the Act.

26. In appeal, the learned CIT (A) confirmed the addition by observing as under:

“With regard to unexplained credits during the appellate Proceedings the appellant stated that the AO by invoking powers vested under law should have called for the details from the Creditors independently to verify the transaction, instead resorting to addition by the AO is incorrect. Hence the appellant requested to delete the addition. As per Sec.68 of the Act onus lies on the appellant to prove the identity, creditworthiness of the creditors and also genuineness of the transaction. In this case, the initial burden was not discharged by the appellant. Hence, there is no merit in the argument of the appellant. In view of this the addition made by the Assessing Officer is hereby confirmed and the ground raised on this issue is hereby dismissed.”

27. The learned Counsel for the assessee submitted that the money has been received through banking channels and all the sundry creditors are I.T. Assesseees. The learned Counsel for the assessee also filed certain additional evidences in the form of affidavits along with statement of a/c of the loan creditors with a request to admit the additional evidence. She submitted that she has no objection if the matter is restored to the file of the Assessing Officer for fresh adjudication.

28. The learned DR, on the other hand, strongly supported the order of the Assessing Officer and the CIT (A) and objected to the admission of additional evidence. He submitted that Smt. P. Sunitha is the wife of the assessee whereas Smt. P. Jyoti is the sister-in-law of the assessee. Further Shri K. Raj Sekhar Reddy, the Managing Partner of K.K. Constructions is also related to the assessee. He submitted that when the assessee was unable to furnish confirmation from his wife, sister-in-law and the close

relation, either before the Assessing Officer or during the appeal proceedings now in absence of any unavoidable reasons as to why such evidences are not filed earlier should not be admitted as additional evidences.

29. 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 find the Assessing Officer in the instant case made addition of Rs.7,44,000/- u/s 69A r.w.s. 115BBE on the ground that the assessee has shown outstanding sundry creditors in the names of Smt. P. Sunitha, Smt. P. Jyoti and K.K. Constructions for Rs.2,45,000/-, Rs.2,49,000/- and Rs.2,50,000/- respectively and despite repeated number of opportunities granted by the Assessing Officer, the assessee failed to furnish the details such as address, assessment details, capacity of the creditors to advance such loan, genuineness of the transaction, mode of receipt etc. It is not understood as to how and why the assessee did not produce confirmations from the loan creditors who are not outsiders but are very closely related persons since Mrs. P. Sunitha is the wife of the assessee, Mrs. Jyoti is the sister-in-law of the assessee and Shri K. Raj Sekhar Reddy, Managing Partner of KK Construction is very close relation of the assessee. Even a perusal of the bank statement filed as additional evidence shows that in the case of Mrs. P. Jyothi cash of Rs.2,50,000/- was deposited on 10.11.2016 and Rs.2,49,000/- was transferred on 29.11.2016. Similarly in the case of Mrs. P. Sunita cash of Rs.2,50,000/- was deposited on 10.11.2016 and transferred to the assessee's a/c on 29.11.2016. This raises serious doubts since cash was deposited immediately prior to the transfer and

therefore, it is assessee's own money which has come back to the assessee in the shape of loan. However, in the case of K.K. Constructions, there is no cash deposit during the month and the money has been transferred from the opening balance of the month. Therefore, considering the totality of the facts of the case, the addition of Rs.2,45,000/- from P. Sunitha and Rs.2,49,000/- from Jyothi are sustained and the amount of Rs.2,50,000/- received from KK Construction is restored to the file of the Assessing Officer with a direction to give an opportunity to the assessee to substantiate with evidence to his satisfaction regarding the creditworthiness of the creditor and the genuineness of the transaction. The Assessing Officer shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. Ground of appeal No.4 is accordingly partly allowed for statistical purposes.

30. In the result appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the Open Court on 25th April, 2023

Sd/-

Sd/-

(LALIET KUMAR) JUDICIAL MEMBER	(R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 25th April, 2023

Vinodan/sps

Copy to:

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4	Guard File

By Order