

**आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम**

IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष**

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

आयकर अपील सं./ I.T.A. No.121/Viz/2021

(निर्धारण वर्ष / Assessment Year :2017-18)

Income Tax Officer,  
(International Taxation),  
Stalin Corporate Buildings,  
D.No.55-17-2 to 4, 4<sup>th</sup> Floor,  
Near CGO Complex, Industrial  
Estate, Autonagar,  
Vijayawada-520007.  
(अपीलार्थी/ Appellant)

Vs. Sri Krishna Mohan  
Malempati,  
H.No.19810, Wellington  
Manor, BLVD, LUTZ, FL,  
33549, Foreign,  
United States.  
PAN: AJVPM 2067 K  
(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Assessee by

: Sri GVN Hari, AR

प्रत्यर्थी की ओर से / Revenue by

: Sri ON Hari Prasada Rao,  
Sr. AR

सुनवाई की तारीख / Date of Hearing

: 31/05/2023

घोषणा की तारीख/Date of

: 15/06/2023

Pronouncement

**ORDER**

**PER S. BALAKRISHNAN, Accountant Member :**

This appeal filed by the Revenue against the order of the Ld.  
Commissioner of Income Tax (Appeals)-10, Hyderabad [Ld. CIT(A)]  
vide DIN & Order No. ITBA/APL/S/250/2020-21/1028500992(1),

dated 5/11/2020 arising out of the order passed U/s. 143(3) of the Act vide DIN & Order No. ITBA/AST/S/143(3)2019-20/1023039603(1), dated 24/12/2019 for the AY 2017-18.

2. The facts of the case are that the assessee being an individual filed his return of income for the AY 2017-18 on 31/12/2017 admitting a total income of Rs. 6,47,300/- besides agricultural income of Rs. 4,05,730/- including the long term capital gains [LTCG] of Rs. 6,02,448/-. Subsequently, the case was selected for scrutiny under CASS under 'complete category' and notices U/s. 143(2) and 142(1) of the Act were issued and served on the assessee. During the scrutiny assessment proceedings, the Ld. AO observed that the assessee has made a cash deposit of Rs. 90 lakhs on 24/11/2016 during the demonetization period into his NRO account. The Ld. AO received a reply from the assessee based on the online query that the assessee has withdrawn Rs. 95 lakhs on various dates to construct a house and since it did not materialize, subsequent to announcement of demonetization, the assessee deposited the cash into the bank account. The Ld. AO observed that the assessee while filing his return of income has accepted this fact of depositing Rs. 90 lakhs into the NRO account. However,

considering that assessee gave contradictory statements regarding withdrawal of amount from the bank accounts, the Ld. AO concluded that the assessee does not have a proper explanation and hence treated the cash deposits as unexplained and added it to the total income of the assessee. Further, the Ld. AO also observed that the assessee has claimed Rs. 29 lakhs towards cost of improvement in the computation of LTCG. The Ld. AO found that the assessee has not provided the details of all the expenses incurred towards cost of improvement and hence disallowed the same. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A).

3. Before the Ld. CIT(A), the assessee submitted that the cash was withdrawn from the NRO and NRE accounts of the assessee during the period 31/8/2016 to 16/09/2016 aggregating to Rs. 90,80,000/-. In support of the same, assessee filed the bank statements evidencing the cash withdrawals before the Ld. CIT(A). Considering the submissions made by the assessee, the Ld. CIT (A) allowed this ground raised by the assessee. With respect to the ground relating to cost of improvement, the Ld. CIT(A) found from the submissions of the Ld. AR that the assessee has incurred an amount of Rs. 28 lakhs to remove the

hard rock of 30 feet and hence considered the cost of improvement and directed the Ld. AO to allow the same. The Ld. CIT(A) also concurred with the Ld AO with respect to the application of section 50C of the Act thereby resulting in partly allowing the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us by raising the following grounds of appeal:

- "1. The order of the Ld. CIT(A) is erroneous in law and on facts of the case and therefore liable to be quashed and set aside.*
- 2. The Ld. CIT(A) erred on facts and in law in holding that the cash withdrawals made from the assessee's bank accounts prior to demonetization would explain the nature and accounted sources of cash deposit of Rs. 90 lakhs made in the Non-Resident Ordinary (NRO) bank account of the assessee during the demonetization period ie on 24/11/2016, but without appreciating the fact that in the given set of facts and circumstances of the case, the principle of preponderance of probabilities would act against the assessee.*
- 3. The Ld. CIT(A) erred on facts and in law in holding that prior cash withdrawals would explain the sources of subsequent cash deposit in the bank account ignoring the fact that there is an unreasonably substantial amount of time gap between the cash withdrawals made in small amounts on various days and huge amount of cash deposit made on a single day, that too, during demonetization period, ranging from 40 days to 85 days and therefore the assessee has failed to explain the nature and source of acquisition of money to the extent of Rs. 90 lakhs as envisaged U/s. 69A of the Act.*
- 4. The Ld. CIT(A) erred on facts and in law in holding that it is the job of the Assessing Officer to prove that the assessee had utilized the cash withdrawn from the bank accounts for some other purposes rather than re-depositing the same in his NRO bank account on 24/11/2016 without appreciating the fact that as per the settled position of law, the primary*

*onus lies on the assessee to prove that he had not utilized the cash withdrawn from the banks on various days for some other purposes and the same was re-deposited in cash during the demonetization period.*

5. *The Ld. CIT(A) erred on facts and in law holding that the Assessing Officer is required to prove by evidence that the assessee had unexplained / undisclosed source of income in India, ignoring the fact that in terms of section 69A of the Act and also as held by the Hon'ble Supreme Court in Sreelekha Benerjee vs. CIT [1963] 49 ITR 112 (SC), the onus is cast on the assessee to explain the nature and accounted source of cash deposited in bank account ie High Denomination Notes [HDN] banned by the Govt., to the satisfaction of the Assessing Officer, failing which the said cash/money would by default become the income of the assessee without any further action from the Assessing Officer.*
  6. *The Ld. CIT(A) grossly erred in adjudicating the issue of allowability of cost of improvement while computing capital gains U/s. 45 of the Act on sale of immovable property by placing reliance on the additional evidence produced by the assessee for the first time before the appellate authority, but without providing any opportunity to the Assessing Officer to examine such additional evidence and submit his report as to the admissibility or otherwise of the same in terms of sub-rule (1) of Rule 46A of the Income Tax Rules, 1962.*
  7. *The Ld. CIT(A) ought to have followed the principles of natural justice and allowed the Assessing Officer a reasonable opportunity to examine the additional evidence and to submit his comments and evidence in rebuttal of the same, if any, as envisaged under sub-rule (3) of Rule 46A of the IT Rules, 1962 before deciding the issue against the Reenue.*
  8. *Any other ground of appeal that may be pleaded with the prior approval of the Hon'ble ITAT during the course of appellate proceedings."*
4. Grounds No. 1 & 8 are general in nature and need no adjudication.

5. With respect to Grounds No. 2, 3, 4 & 5, the issue is with respect to cash deposits made by the assessee for Rs. 90 lakhs during the demonetization period.

6. At the outset, the Ld. DR fully supported the order of the Ld. AO and stated that the assessee has provided the evidence for payment of cost of improvement only to the extent of Rs. 11 lakhs by way of banking channels and the balance of Rs. 18 lakhs to be disallowed. The Ld. DR also submitted that the cost of plot is only Rs. 11 lakhs whereas the cost of improvement is Rs. 29 lakhs. Further, the proof of payment for the purpose of cost of improvement was submitted before the Ld. CIT(A) and the Ld. CIT(A) has erred in not providing an opportunity to the Ld. AO adhering to Rule 46A of the IT Rules, 1962. The Ld. DR further submitted that the payment for cost of improvement was made to the co-owner only. Further, with respect to cash deposits, the Ld. DR submitted that the assessee has provided various reasons before the Ld. AO and hence the Ld. AO has disbelieved the statements given by the assessee and made an addition of Rs. 90 lakhs. The Ld. DR also submitted that the onus of providing evidence with regard to the cash deposits lies on the assessee

and not on the Department as concluded by the Ld. CIT(A). The Ld. DR therefore pleaded that the order of the Ld. AO be upheld.

7. On the other hand, Ld. AR submitted that the co-owner has confirmed the expenditure incurred by the assessee and receipt of funds from the assessee towards cost of improvement. The Ld. AR further submitted that the Ld. CIT(A) has examined the issue and called for the evidence and on being satisfied, allowed the cost of improvement. The Ld. AR also submitted that the co-owner confirmed the receipt of funds by providing confirmation letters before the Ld. CIT(A). The Ld. AR also submitted that the stay of the assessee in India was very short where the assessee came to India on 29/08/2016 and left to United States of America [USA] on 21/9/2016. The Ld. AR also submitted that subsequent to announcement of demonetization, the assessee authorized his nephew to deposit the cash on 24/11/2016. Further, the Ld. AR submitted that the Ld. AO has not raised any query regarding the availability of the funds in the assessee's bank account from where the cash withdrawals are being made. The Ld. AR further submitted that subsequent to the cash deposit on 24/11/2016, the assessee has invested the same amount in L & T Mutual Funds on 25/11/2016 which is

evidenced in the bank statements submitted by the assessee. He therefore pleaded that the order of the Ld. CIT(A) be upheld.

8. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. From the above submissions made by the Ld. AR, we find that the assessee has withdrawn cash from the bank accounts as follows:

Sl No	Name of the Bank	Bank A/c. No	Amount Withdrawn (Rs)	Total amount of deposit (Rs.)
1.	HDFC Bank, Lakadikapul Br., Hyderabad	00211010004875 Savings - NRO	62,80,000	90,00,000
2.	HDFC Bank, Lakadimkapul Br., Hyderabad	00211060015103] Savings - NRE	28,00,000	NIL
			90,80,000	90,00,000

It is the case of the Ld. AO that the assessee has withdrawn huge cash without finalizing the property or without making any arrangements for construction of house property. The contention of the Ld. AO could not be accepted as it is prerogative of the assessee to withdraw cash as per his requirements and the Department cannot dictate the manner in which the assessee should withdraw the cash. Further, we find that the Ld. AO has not questioned the source of deposits into the bank account out of which the cash withdrawals are made. It is also found from

the paper book page no. 28, the assessee while depositing the cash of Rs. 90 lakhs into the bank account, has clearly mentioned the reason "Re-depositing unused funds withdrawn". Further, we also find that the last day of withdrawal was 16/9/2016 and the assessee has left India on 21/9/2016 within a period of one week. It could not have been possible to invest the said amount within such a short span of time. Further, we also find that the assessee has authorized his nephew who was the custodian of cash to re-deposit the cash into the assessee's same account. Further, from the bank statement of the assessee, we find that the assessee has invested in L & T Mutual Funds on 25/11/2016. Further, we also find that the Ld. AO has not brought on record to controvert the evidence provided by the assessee that the assessee has not utilized the funds for construction of the property or for any other purpose. Considering these facts and circumstances of the case, the Ld. CIT(A) has rightly allowed the grounds raised by the assessee with regard to the cash deposit of Rs. 90 lakhs. Therefore, we find no infirmity in the order of the Ld. CIT(A) on this issue and accordingly we dismiss the grounds 2, 3, 4 & 5 raised by the Revenue.

9. With respect to Grounds No. 6 & 7, relating to the additional evidences provided by the assessee before the Ld. CIT(A), the Ld. DR submitted that no remand report was sought from the Ld. AO with respect to the additional evidences submitted by the assessee. On the contrary, the Ld. AR relied on the order of the Ld. CIT(A).

10. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities on the issue. Admittedly, the agreement of sale-cum-GPA was executed on 16/5/2003 vide Doc. No. 1361/2003, dated 16/5/2003. From the contents of the agreement of sale-cum-GPA, we find that the plot was fully covered with 30 feet height uneven hard rock from the ground level and the vendees have agreed to remove the said rocks at their own expenses. Further, a photograph showing the presence of hard rock is placed in the order of the Ld. CIT (A). The Ld. AO has merely disallowed the cost of improvement relying on the fact that the payments were made to the co-owner Sri Vajja Venkataramaiah. The assessee has also produced the copies of the cheques produced to Mr. V. Venktaramaiah aggregating to Rs. 28 lakhs. The assessee being an NRI made this payment to the co-owner who carried out the

removal of 30 feet height hard rocks existing in the plots. Further, we also find that Mr. V. Venkataramaiah vide letter dated 18/09/2020 has confirmed the receipt of amount of Rs. 28 lakhs from the assessee through banking channels for the removal of hard rock that existed in the plot. Confirmation letters are placed in page 32 of the paper book along with the photos of presence of hard rock in the plot. The Ld. CIT(A) therefore exercised his powers U/s. 250(4) of the Act according to which it is the discretion of the Ld. CIT(A) in case if he has not satisfied with the evidences provided before him or where any further enquiries required, the Ld. CIT(A) may direct the Ld. Assessing Officer for remand report. In the instant case, since the Ld. CIT(A) considering the additional evidences submitted do not require any further enquiry, the Ld. CIT(A) by exercising his powers has admitted the additional evidences and allowed the appeal of the assessee on this ground. We therefore are of the considered view that the Ld. CIT(A) has rightly concluded the matter in favour of the assessee upon consideration of the evidences produced by the assessee and therefore, we find no infirmity in the order of the Ld. CIT(A) on this issue and accordingly grounds no. 6 & 7 raised by the Revenue are dismissed. It is ordered accordingly.

11. In the result, appeal of the Revenue is dismissed.

Pronounced in the open Court on the 15<sup>th</sup> June, 2023.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated :15.06.2023

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Sri Krishna Mohan Malempati, H.No. 19810, Wellington Manor, BLDV, LUTZ, FL.33549, Foreign, United States.
2. राजस्व/The Revenue – Income Tax Officer (International Taxation), Stalin Corporate Buildings, D.No. 55-17-2 to 4, 4<sup>th</sup> Floor, Near CGO Complex, Industrial Estate, Autonagar, Vijayawada-520007, Andhra Pradesh.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam