

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

BEFORE SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 360/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

Pitchi Reddy Garlapati, Vs. Income Tax Officer,
Hyderabad Ward-4,
[PAN No. ABSPG5067G] Karimnagar
अपीलार्थी / Appellant प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri S. Phanindra, AR
राजस्व द्वारा/Revenue by: Shri Suresh Anubham, DR

सुनवाई की तारीख/Date of hearing: 03/08/2023
घोषणा की तारीख/Pronouncement on: 03/08/2023

आदेश / ORDER

Aggrieved by the order dated 19/06/2023 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Pitchi Reddy Garlapati ("the assessee") for the assessment year 2017-18, assessee preferred this appeal.

2. Brief facts of the case are that the assessee is an individual and at relevant point of time he was deriving income by way of salary due to employment in Singareni Collieries. He filed his return of income for the assessment year 2017-18 on 17/08/2017 declaring income at Rs. 8,85,720/-. It was found that there was a large volume of cash deposit during the demonetization period as compared to returned income. Learned Assessing Officer, therefore, issued notice under section 143(2) of the Act through ITBA.

3. According to the learned Assessing Officer, assessee did not respond to any of the notices issued subsequently, and, therefore, the deposit to the tune of Rs. 9,07,000/- was treated as 'un-explained money' by the learned Assessing Officer and added back to the income of the assessee.

4. Aggrieved by such an addition, assessee preferred appeal before the learned CIT(A) and contended that on the eve of birthday of his grandson, the maternal grandfather of the boy wanted to give a gift of Rs. 9 lakhs and he delivered the same by way of cash to the assessee, which was deposited in the bank account. It appears from the impugned order that the assessee also submitted the confirmation letter from Mr. Aleti Sanjeeva Reddy, who is the maternal grand father of the boy along with his bank account.

5. Learned CIT(A) recorded that though the assessee filed the bank account statement of Mr. Aleti Sanjeeva Reddy, assessee failed to produce cash book, return of income, books of accounts etc. Learned CIT(A) further observed that the bank statement of Mr. Aleti Sanjeeva Reddy shows that there was a cash withdrawal of Rs. 8 lakhs on 08/06/2016 and it is quite unlikely that a business man would keep such amount of cash intact for a period of five months to give it as a gift. Learned CIT(A) did not believe such a contention of the assessee.

6. Learned CIT(A) further recorded that even estimating for a while for the sake of argument that Mr. Aleti Sanjeeva Reddy, who withdrew the cash of Rs. 8 lakhs on 08/06/2016, gave it to Mr. Aleti Sanjeeva Reddy on 12/11/2016 with full knowledge of Government's notification, declaring that any currency note in the form of specified notes were not legal tender. Learned CIT(A), accordingly dismissed the appeal.

7. Aggrieved thereby, assessee preferred this appeal before the Tribunal. It is the submission on behalf of the assessee that nowhere in

the assessment order it is stated that whatever the deposit that was made by the assessee in his bank account on 12/11/2016 was specified notes. There is nothing to suspect that only to defeat the purpose of notification demonetizing the specified notes, this particular deposit was made by the assessee. He further submits that even the assumption made by the learned CIT(A) is not firmly based on any piece of record and it is only on his own he presumed something and tried to answer the same against the assessee. According to the learned AR, the maternal grandfather of the boy is a man of means, doing business and, therefore, there is nothing unusual or suspicious for such a man to part with a sum of Rs. 9 lakhs. Learned AR explains that it is not un-common for the business man, however, to keep some money on hand and out of such money available on hand and given the same to the assessee, though not precisely the 8 Lakhs that was withdrawn on earlier occasion. It is also not something unusual for a business man to rotate the money and to have a sum of Rs. 9 lakhs at a particular point of time.

8. Learned DR vehemently contends that in spite of affording several opportunities to the assessee, assessee failed to put forth his case before the learned Assessing Officer and it is clearly an afterthought for the assessee to concoct this version of contention with the convenience of Mr. Aleti Sanjeeva Reddy and, therefore, the same cannot be believed. Further, it is doubtful that a business man keeps Rs. 8 lakhs idle only to be given in gift to the boy, to be born five months later on. He further argued that the contention was a fabricated story by the assessee and far from truth and cannot be believed. He, therefore, prays that there are no merits in the appeal and the same is liable to be dismissed.

9. I have gone through the record in the light of the submissions made on either side. It is clear that there were some deposits to the tune of Rs. 9,07,000/- in the bank account of the assessee during the period after commencing of demonetization notification. However, there is no material

on record to say that such deposit was in the shape of specified demonetized notes. When such allegation is not made by the learned Assessing Officer and it was the assumption of learned CIT(A), without revealing source of his knowledge, does not hold any water and such assumptions cannot have any legal consequences.

10. Now coming to the source as explained by the assessee, he explains that, it has flown from his son's father-in-law as confirmed by him that is namely Mr. Aleti Sanjeeva Reddy, according to the learned AR is a man of means and does not disputed by the learned CIT(A). What all learned CIT(A) stated is that it is unlikely that business man would preserve Rs. 8 lakhs with him for five months, without turning it in the business. According to the learned CIT(A), assessee failed to establish this fact with reference to cash book, return of income and the books of accounts of Mr. Aleti Sanjeeva Reddy.

11. In these circumstances, I deem it reasonable for the learned CIT(A) to entertain a doubt as to whether there was an occasion for Mr. Aleti Sanjeeva Reddy to possess that much of cash with him because it is unlikely that the same amount of Rs. 8 lakhs that was withdrawn six months earlier was kept idle without turning it in the business. However, no liability could be fastened on the likelihood or otherwise. Such a thing falls in the realm of verification of fact.

12. Since I deem it justifiable for the authorities to look for supporting evidence to give credit to the contention of the assessee in respect of Mr. Aleti Sanjeeva Reddy, bequeathing gift of Rs. 9 lakhs to the newly born grandson, it is difficult to absolve the assessee of the burden of proof on this aspect. It is submitted across the Bar that given an opportunity, such an evidence will be produced by the assessee. At this stage, learned AR submits that since it is a question of fact requires verification, it would be just and convenient, if the issue is restored to the file of learned Assessing Officer. I consider the same.

13. In these circumstances, to balance the interest of assessee and also the legal consequences, I set aside the impugned order and restore the issue to the file of learned Assessing Officer, before whom the assessee is directed to produce the cash book, return of income and books of accounts of Mr. Aleti Sanjeeva Reddy in support of the confirmation letter issued by Mr. Aleti Sanjeeva Reddy. Needless to say that learned Assessing Officer will take a view according to law on affording an opportunity to the assessee. I hold and order so. It is made clear that if the assessee fails to avail this opportunity for any reason, no further opportunity would be given.

14. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on this the 3rd day of August, 2023.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 03/08/2023

TNMM

Copy forwarded to:

1. Pitchi Reddy Garlapati, #408, G1 Block, Induaranya Pallavi,
Bandlaguda, Nagole, Hyderabad.
2. Income Tax Officer, Ward-4, Karimnagar.
3. Pr.CIT
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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