

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

BEFORE

**SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

आ.अपी.सं / **ITA No.570/Hyd/2022**
(निर्धारण वर्ष / Assessment Year: 2020-21)

Smt. Varsha Chitneni, Hyderabad. [PAN No.BANPC8677H]	Vs.	Asst. Commissioner of Income Tax, Central Circle-2(4), Hyderabad.
अपीलार्थी / Assessee		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Jeevan Lal Lavidiya.
राजस्व द्वारा/Revenue by: Shri K.C. Devdas.

सुनवाई की तारीख/Date of hearing: 20.07.2023
घोषणा की तारीख/Pronouncement on: 21.07.2023

ORDER

PER LALIET KUMAR, J.M.

This appeal is filed by the assessee, feeling aggrieved by the order of Commissioner of Income Tax (Appeals) – 12, Hyderabad dt.26.09.2022 invoking proceedings under section 143(3) r.w.s. 153C of the Income Tax Act, 1961 for the assessment year 2020-21.

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

“1. The Hon'ble Commissioner of Income Tax (Appels) [for short "Hon.CIT-A"] erred in reading the facts of the case and in holding contrary to the established law. The assessment in appeal is under Sec. 153C of the Income Tax Act, 1961 (for short "Act").

2. The Hon. CIT-A erred in not adjudicating the jurisdiction of learned AO u/sec.153C read with sec.15313/153A of the Act in passing the assessment order as the same was barred by Limitation and the same is not vires of an action permitted under Act.

3. The Hon.CIT-A failed to appreciate that income escaping assessment, if any, shall be assessed only in the hands of recipient.

4. The Hon. CIT-A is in error in granting relief of Rs.7,43,000 only against the amount of Rs.9,00,000/- after having noted that the Appellant family at search premises consists of her spouse and income tax assessee with PAN AWAPK2478C that claimed ownership of full cash of Rs.9,00,000 consistently during the search and during assessment proceedings by submitting duly executed Affidavit.

5. The Hon. CIT-A gravely erred in restricting the relief to Rs.7,43,000 only by holding that the sum of Rs.7,00,000 as held by her spouse as agent of M/s. Onus Petronet Services, Miyapur, based on Affidavit and Rs.43,000 only was withdrawn by her spouse from his bank account within the six months preceding the date of search at the premises of Appellant as against Rs.2,00,000 cash balance from savings claimed in Affidavit by her spouse. This resulted in Appellant being wrongly taxed on Rs.1,57,000 holding as unexplained which was never received nor claimed by appellant as belonging or owned.

6. The Hon. CIT-A erred in upholding the seizure of cash belonging to Appellant and her spouse during search against the third party searched parties u/sec. 132 of the Act at Appellant premises since the cash does not belong to searched parties in any manner and at any point of time.

7. The Hon. CIT-A failed to order the learned AO to refund the amount of cash that was illegally sized from her hands or to give tax credit for the amount.”

3. The brief facts of the case are that assessee is an individual and deriving income from business of fashion designing and civil construction. The assessee has originally filed the return of income for A.Y. 2020-21 admitting total income at Rs.1,75,840/-. A search and seizure operation u/s 132 of the Act was carried out in the case of M/s. Prathima Infrastructure Pvt. Ltd and its associated entities on 06.02.2020 and the assessee was also covered in the search and seizure operation. During the course of search and seizure operation, an amount of Rs.9 lakhs were seized by the Revenue from the premises of assessee. Subsequently, a notice u/s 153C of the Act was served upon assessee calling for return of income for A.Y. 2020-21. In response, assessee filed her return of income on 20.12.2021 declaring income at Rs.11,46,383/-. Thereafter, notice u/s 143(2) of the Act was served upon the assessee and the case was taken up for scrutiny.

3.1. Subsequently, notice u/s 142(1) of the Act was served upon the assessee calling for certain information, to which assessee filed her sworn statement dt.07.02.2020 stating that her husband namely, Mr. K. Dixith Rao can explain the source of cash. The husband of the assessee vide his sworn statement u/s 132(4) of the Act dt.06.02.2020 stated that out of Rs.9,00,000/-, Rs.2,00,000/- was his past saving and for Rs.7 lakhs belongs to one partnership firm by name M/s. Onus Petronet Services, Miyapur, Hyderabad, Rs.34,500/- belongs to his wife Smt. Varsha Chitneni, the assessee. However, he failed to prove the same with supporting documents and hence, Assessing Officer treated Rs.9,00,000/- treated as unexplained

money in the hands of assessee and added back to the income of the assessee and thereby completed the assessment, assessing the total tax payable income of the assessee at Rs.8,68,660/- and passed assessment order u/s 143(3) r.w.s. 153C of the Act on 15.03.2022.

4. Feeling aggrieved with the order passed by the assessing officer, assessee filed appeal before the Ld. CIT(A). However, the Id.CIT(A) on appeal had confirmed the addition of Rs.1,57,000/- in the hands of assessee. The findings of the Id.CIT(A) mentioned at paragraph 5.5 of his order read as under :

“5.5 I have considered the submissions of the AR and the comments of the AO. It is seen that during the course of search and seizure operation conducted at the premises of the appellant on 06.02.2020, an amount of Rs.9 lakhs was found and seized. Out of Rs.9 lakhs, an amount of Rs.2 lakhs was claimed to have received from the appellant's husband Shri Dixith Rao Komandala and the remaining Rs.7 lakhs from the firm M/s. Onus Petronet Services, Miyapur. The AR has submitted copies of affidavit, ITRs filed for the AYs 2016-17 to 2020-21, bank account statements for the FYs 2017-18, 2018-19 & 2019-20 and extracts of cash book of the firm M/S. Onus Petronet Services for the current year to substantiate its claim. On perusal of the bank account statements of Shri Dixith Rao Komandala, it can be seen that the last five transactions prior to the date of search i.e. 06.02.2020 were withdrawals of Rs.10,000/- thrice on 16.10.2019 followed by another withdrawals of Rs.7,000/- on 27.08.2019 and Rs.6,000/- on 24.08.2019 totaling to Rs.43,000/-. Besides these transactions, there were no withdrawals in the last six months prior to the date of search. Therefore, the contention of the AR that the sources for cash pf Rs.2 lakhs are related to past savings-lacks in merit. Accordingly, the sources for cash of Rs.43,000/- only are explained and the remaining sources for cash of Rs.1,57,000/- remain unexplained. Regarding the sources of balance amount of Rs.7 lakhs, the AR has submitted cash book of the firm M/S. Onus Petronet Services which clearly mentions the name of appellant's husband Shri Dixith Rao Komandala to whom cash of Rs.7 lakhs was given on 06.02.2020. Therefore, the sources for Rs.7 lakhs are related to the firm M/S. Onus Petronet Services. In view of the above, since the sources for cash of Rs.7,43,000/- are explained, the addition upto Rs.7,43,000/- is directed to be deleted and the remaining addition of Rs.1,57,000/- is confirmed. Accordingly, the appeal related to this ground is PARTLY ALLOWED.”

5. Aggrieved with the order of Id.CIT(A), assessee is now in appeal before us.

6. At the outset, Id. AR of the assessee submitted that out of Rs.9 lakhs, amount of Rs.2,00,000/- was savings from the salary of the husband of the assessee, and therefore, the amount of Rs.1,57,000/- has to be considered as duly explained by the assessee.

7. On the other hand, Id. DR had submitted that the Id.CIT(A) had already granted relief which was not otherwise due to the assessee. Hence, it was submitted that the addition is required to be confirmed in the hands of the assessee. Further, the Id. DR relied upon section 292C of the Act and emphasized that a presumption has to be drawn against the assessee once the amount is found and seized from the possession of the assessee during the time of search.

8. We have heard the rival submissions and perused the material on record. Undoubtedly, the assessee had filed the affidavit of her husband, namely, Shri K. Dixith Rao, who claimed that the amount was saved from the past savings from the salary. However, no evidence was provided by the husband of the assessee to substantiate the above said stand, showing that the amount of Rs.1,57,000/- was on account of past savings. In our view, the onus is on the assessee to prove that the said amount is from the savings, and it is for the assessee to prove the source of the said savings. It is for the assessee to provide supporting

documentary evidence to prove the source of said savings. Further, a presumption is required to be drawn against the assessee as per section 292C of the Act, as the amount belonging to the assessee was found and seized from the possession of the assessee during search. However, as the assessee is a homemaker, presumption lies in her favour that she must have saved certain amount for her day-to-day needs. For the above said purposes, we may fruitfully rely upon the decision of Agra Tribunal passed in the case of Uma Agarwal, Gwalior Vs. ITO – 1, (ITA No.35/Agr/2021 dt.18.06.2021). Considering the above facts and also the decision in the case of Uma Agarwal (supra), we confirm the addition of Rs.1,00,000/- and delete Rs.57,000/-. Accordingly, the assessee gets the relief of Rs.57,000/-, and an amount of Rs.1,00,000/- is confirmed. Thus, the appeal of the assessee is partly allowed.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 21st July, 2023.

Sd/- (R.K. PANDA) VICE PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 21st July, 2023.

TYNM/sps

Copy to:

S.No	Addresses
1	<p>1. Smt. Varsha Chitneni, 204-Flat, H.No.2-8-11, Rangineni Apartments, Muarampura, Karimnagar – 505002, Telangana.</p> <p>2. M. Poorna Chander Rao, Partner Sriramamurthy & Co., Chartered Accountant, H.No.6-3-185, Flat No.201, Said Damodar Residency, New Bhoiguda, Secunderabad, Hyderabad – 500080.</p>
2	The Asst. Commissioner of Income Tax, Central Circle 2(4), Hyderabad.
3	Pr.CIT(Central), Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order