

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ' B ' Bench, Hyderabad**

**Before Shri R.K. Panda, Vice-President**  
**AND**  
**Shri K. Narasimha Chary, Judicial Member**

|   |                         |  |
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| ITA No. 658/Hyd/2022  |                         |  |
| Assessment Year: 2016-17  |                         |  |
| Shri Sambasiva Rao<br>Chagarlmudi, Godavarikhani<br>PAN:AEAPC3152M<br>(Appellant) | Vs.                     | A.C.I.T<br>Circle-1<br>Karimnagarf<br>(Respondent) |
| Assessee by:  | Shri K.A.Sai Prasad, CA |  |
| Revenue by:   | Smt. Sheethal Sarin, DR |  |
| Date of hearing:  | 24/08/2023              |  |
| Date of pronouncement:  | 30/08/2023              |  |

**ORDER**

**Per R.K. Panda, Vice-President**

This appeal filed by the assessee is directed against the order dated 6.9.2022 of the learned CIT (A)-NFAC, Delhi, relating to A.Y.2016-17.

2. There is a delay of 18 days in filing of this appeal by the assessee for which the assessee has filed a condonation application along with an affidavit explaining the reasons for such delay which is due to sudden death of the Authorised Representative due to Terminal Cancer. After considering the contents of the condonation application filed along with the affidavit and after hearing the learned DR, the delay in filing of

this appeal by the assessee is condoned and the appeal is admitted for adjudication.

3. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the learned CIT (A) NFAC in confirming the addition of Rs.40,97,808/- made by the Assessing Officer as unexplained cash credit u/s 68 of the I.T. Act.

4. Facts of the case, in brief, are that the assessee is an individual and filed his return of income declaring a total income of Rs.43,34,130/-. The assessee derives income from house property, income from other sources and interest and remuneration from partnership firms. The case was selected for scrutiny under CASS and statutory notices u/s 143(2) & 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.

5. During the course of assesment proceedings, the Assessing Officer observed from the statement of total income that the assessee has claimed an amount of Rs.40,97,808/- being share of profit received from the partnership firm M/s. CH. Kishore Kumar, Ramagundam (CHKK in brief) as exempt u/s 10(2A). The same was credited to his capital account on 16.10.2015. He observed from the balance sheet as on 31.3.2016 that the capital balance in the name of firm M/s. CH. Kishore Kumar is not appearing therein. From the various details furnished by the assessee, he observed that the assessee has retired from the partnership firm M/s. CH. Kishore Kumar and the amount receivable from the said firm is shown at

Rs.1,13,55,591/- by the assessee in his balance sheet as at 31.03.2015 which is tallying with the amount shown as payable to the assessee in the return of income of firm M/s. CH. Kishore Kumar for the A.Y 2015-16. He observed from the return of income of M/s. CH. Kishore Kumar for the A.Ys 2015-16 and 2016-17 that the said firm was not dissolved but was reconstituted with six partners out of seven partners continuing as partners. He therefore, asked the assessee to submit the details of Rs.40,97,808/- claimed as exempt. In response, the assessee submitted that he has received an amount of Rs.1,54,53,399/- from the firm through cheques and the amount of Rs.40,97,808/- was received in excess which is the surplus received on his retirement from the firm and shown as share of profit. Since the assessee did not submit the copies of retirement deed, reconstitution deed, settlement deed for the amounts payable, details of revaluation of assets done and the manner in which the amount payable was arrived at, the Assessing Officer issued a letter u/s 133(6) to the firm M/s. CH. Kishore Kumar on 17.12.2018 requesting them to submit the following information:

- i) Nature of payment with respect to the above said amount of Rs.40,97,808/- and how the said amount of Rs.40,97,808/- was arrived at?
  - ii) Whether any retirement-cum-reconstitution deed exists with respect to retirement of Sri C. Sambasiva Rao as a partner in firm M/s. CH. Kishore Kumar-PAN AAIFC6943Q.
  - iii) Ledger extract of Sri C. Sambasiva Rao in the books of M/s. CH. Kishore Kumar-PAN AAIFC6943Q for A.Y 2015-16 and A.Y 2016-17.
  - iv) Capital account and current account of Sri C. Sambasiva Rao in the books of M/s. CH. Kishore Kumar- PAN AAIFC6943Q for A.Y 2015-16 and A.Y 2016-17.
6. In response to the same M/s. CH. Kishore Kumar submitted information enclosing copy of the retirement deed

dated 01.04.2015 along with capital account of the assessee in their books of account etc., which the Assessing Officer has reproduced in the body of the assessment order and which reads as under:

*"Sri C. Sambasiva Rao has a partner in our firm up to 31.03.2015.*

*During the assessment year 2016-17 Sri C. Sambasiva Rao has retired from our firm. For this we are herewith submitting a copy of retirement deed for your kind verification please. At the time of retirement we are payable an amount of Rs. 1,13,55,591/- towards his capital as on 31.03.2015. / A copy of the capital account for the assessment year 2015-16 is herewith enclosing for your kind verification please. In our transport contract business with the S.C.C.L. recovered FSD from the bills and the same has been released from the SCCL after completion of the work. The FSD amount of Rs. 40,97,808/- has also payable to Sri C. Sambasiva Rao. As above the capital payable amount of Rs. 1,13,55,591/- and FSD payable amount of Rs. 40,97,808/- total comes to Rs. 1,54,53,399/-. The excess amount of Rs. 40,97,808/- paid towards FSD.*

7. The ledger account of the assessee in their books of account was also submitted to the Assessing Officer.

8. However, the Assessing Officer was not satisfied with the explanation given by the assessee and made addition of Rs.40,97,808/- by recording the following:

9. It is seen from the extracts mentioned above that the assessee has two accounts i.e. Capital Account and FSD Account in the books of M/s. CH. Kishore Kumar. The opening balance of Rs. 1,13,55,590/- in Capital Account in the books of M/s. CH. Kishore Kumar is tallying with the balance shown in the books of assessee. However, there is an opening balance of Rs. 40,97,808/- in his "Sambasiva Rao FSD account", which is not there in the books of assessee. The same credit appears in the books of assessee on 16.10.2015. The balance in the capital account of Rs. 1,13,55,590/- was transferred to his FSD account .

(i) The assessee claimed the amount of Rs. 40,97,808/- as share of profit. However, the firm M/s. CH.Kishore Kumar has not shown the amount as share of profit. Hence, the assessee's claim is not correct. The amount of Rs. 40,97,808/- is shown as share of profit in addition to share of profit arrived at in the case of the firm

(ii) In the absence of any evidence that financial statements were drawn on 01.04.2015, the date on which the assessee retired from the firm M/s. CH. Kishore Kumar and taxable profits distributed to partners, the claim of assessee is not acceptable. Further, the firm M/s. CH. Kishore Kumar, in its Return of Income for A.Y. 2016-17, distributed the share of profits to its partners wherein the assessee's name is not appearing.

(iii) It is seen from the Point No. 2 in Page No. 5 of the Deed of Retirement dated 01.04.2015 in the case of M/s. CH. Kishore Kumar that the partners of the first party (CHKK) here to have settled the accounts of the partners of the second party (assessee and others) and nothing is due to them. This shows that entire amount due to the assessee was paid by 01.04.2015 which is contrary to the details of payments submitted by the assessee as received from the firm M/s. CH. Kishore Kumar.

(iv) In the absence of any mention in the Deed of Retirement regarding the amount payable to the assessee and the manner in which the same was arrived at, the assessee's claim that the amount of Rs. 40,97,808/- represents surplus received on retirement from the firm is not acceptable.

(v) The firm M/s. CH. Kishore Kumar has submitted that the surplus amount received by the assessee represents assessee's share in deposits / FSD returned to the firm after completion of contract works. The reply submitted by the assessee that the amount represents his share of profit is contradictory to the reply submitted by M/s. CH. Kishore Kumar.

(vi) There is an opening balance of Rs. 40,97,808/- in assessee's capital account in the books of M/s. CH. Kishore Kumar, which is not there in the books of assessee. The same credit appears in the books of assessee on 16.10.2015. //

9. Distinguishing the various decisions relied on by the assessee and relying on certain other decisions, the Assessing Officer made addition of Rs.40,97,880/- as unexplained credit and added the same to the total income of the assessee.

10. In appeal, the learned CIT (A) NFAC upheld the addition.

11. Aggrieved with such order of the learned 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 balance sheet of M/s. CH Kishore Kumar as on 31.3.2015 and submitted that an amount of Rs.6,61,83,483/- has been shown as FSD which has gone down to Rs.11,45,646/- as on 31.03.2016. He submitted that the Assessing Officer has obtained information u/s 133(6) from the firm M/s. CH Kishore Kumar who have confirmed that they have given the amount of Rs.40,97,808/- which is the share of the assessee from FSD Account. According to the learned AR, once the identity and capacity of the payer is established and the amount has been received through banking channels and the genuineness of the transaction is not in doubt, invoking the provisions of section 68 is not called for.

13. The learned DR, on the other hand, heavily relied on the order of the Assessing Officer and the learned CIT (A).

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 AO in the instant case made addition of Rs.40,97,808/- u/s 68 of the I.T. Act which is the surplus amount of Rs.40,97,808/- received by the assessee from the firm and credited to his capital account. While doing so, the Assessing Officer observed that the opening balance of Rs.1,13,55,590/- in the capital account in the books of M/s CH Kishore Kumar is tallying with the balance shown in the books of the assessee.

However, there is an opening balance of Rs.40,97,808/- in the books of the firm under "Sambasiva Rao FSD Account" which is not there in the books of the assessee and the same appears only on 16.10.2015. The relevant observation of the Assessing Officer while making the addition has already been reproduced in the preceding paragraph. It is the submission of the learned Counsel for the assessee that once the firm M/s CH Kishore Kumar submitted that in response to notice u/s 133(6) the surplus amount received by the assessee represents the assessee's share in deposits/FSD returned to the firm after completion of contract work, therefore, addition u/s 68 is not warranted since the identity and the capacity of the partnership firm is not in dispute, the amount has been received through proper channels and the genuineness of the transaction is not in doubt.

15. We find some force in the above argument of the learned Counsel for the assessee. In the instant case, the Assessing Officer himself, incidentally he is the Assessing Officer of the partnership firm also has obtained the information u/s 133(6) from the said firm. The firm in its reply has submitted that the surplus amount received by the assessee represent assessee's share in deposits/FSD returned to the firm after completion of contract work. Therefore, once the partnership firm M/s CH Kishore Kumar has confirmed the payment amount of Rs.40,97,808/-, their identity and creditworthiness is not in dispute, the amount has been transferred through proper banking channels, therefore, merely because the opening balance of Rs.40,97,808/- in assessee's capital account appearing in the books of M/s CH Kishore Kumar which is not there in the books of the assessee cannot be a ground to make the addition u/s 68 of

the I.T. Act. The assessee cannot be held responsible for the manner in which the partnership firm maintains its record after he retires but it is an undisputed fact that the firm has confirmed that the amount of Rs.40,97,808/- is the share of profit of the assessee out of the FSD returned to the firm after completion of the contract work. Once the firm has confirmed the same to be the assessee's share of profit, addition u/s 68 in the hands of the assessee, in our opinion, is not justified. The order of the learned CIT (A) is accordingly set aside and the grounds raised by the assessee are allowed.

16. In the result, appeal filed by the assessee is allowed.  
Order pronounced in the Open Court on 30<sup>th</sup> August, 2023.

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| <b>Sd/-</b><br><b>(K. NARASIMHA CHARY)</b><br><b>JUDICIAL MEMBER</b> | <b>Sd/-</b><br><b>(R.K. PANDA)</b><br><b>VICE-PRESIDENT</b> |
|--|---|

Hyderabad, dated 30<sup>th</sup> August, 2023

*Vinodan/sps*

Copy to:

| S.No | Addresses   |
|------|---|
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| 3    | Pr. CIT-, Hyderabad   |
| 4    | DR, ITAT Hyderabad Benches  |
| 5    | Guard File  |

*By Order*