

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

BEFORE

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

आ.अपी.सं / **ITA No.298/Hyd/2022**
(निर्धारण वर्ष / Assessment Year: 2017-18)

Assistant Commissioner of Income Tax, Central Circle – 2(1), Hyderabad.	Vs.	Sri Satya Sayee Babu Divi, 506-Bougain Villa Apartments, Ameerpet, Hyderabad. PAN : AYEPS7457B.
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Amrit Kumar Kota, CA
राजस्व द्वारा/Revenue by: Shri Shakeer Ahamed, Sr.AR.

सुनवाई की तारीख/Date of hearing: 28.11.2023
घोषणा की तारीख/Pronouncement on: 28.11.2023

ORDER

PER LALIET KUMAR, J.M.

This appeal is filed by the Revenue feeling aggrieved by the order of Commissioner of Income Tax (Appeals) – 12, Hyderabad dt.13.04.2022 invoking proceedings under section 143(3) of the Income Tax Act, 1961 (in short, “the Act”) for A.Y. 2017-18.

2. The grounds raised by the Revenue reads as under :

“1). The ld. CIT(Appeals) erred both in law and on facts of the case in granting relief to the assessee.

2) The ld. CIT(Appeals) erred in admitting additional evidences filed by the assessee as the assessee did not provide any sufficient, cause for non-submission of the' said evidences before AO as per Rule 46(A)(b).

3) The ld. CIT(Appeals) has erred in deleting the addition made towards unexplained money ignoring the fact that even when the assessee was having hug, cash on hand of Es.93 lakhs, 'he continue to withdraw further amount in cash, on 06-08-2016, 22-08-2016, 08-09-2016, 15-09-2016 and 03-11-2016 for which no explanation was offered.

4). The ld. CIT(Appeals) erred in holding that reasonable cause for withdrawing cash was made out by the assessee of his intention to venture into certain .other business activities for which he had withdrawn the cash when the assessee during the assessment proceedings was not consistent in his explanation and changed his version from the initially stated purpose of developing of assets to that of undertaking of hydro phonics agriculture farming.

5) The ld. CIT(Appeals) has erred in holding that there is no finding by the AO that the assessee used the money withdrawn for any other purposes during the intervening period when the assessee failed to offer a valid explanation for the cash withdrawal.”

3. The brief facts of the case are that assessee is an individual, who filed his original return of income for A.Y. 2017-18 on 11.01.2018 admitting an income of Rs.81,09,780/-. The case was selected for scrutiny under CASS and assessment u/s 143(3) was completed on 30.12.2019. In this case, a search and seizure operation u/s 132 was conducted in the case of M/s. Divis Laboratories Limited and others on 14.02.2019. Subsequently, the case of the assessee was transferred to Central Circle 2(1), Hyderabad and thereafter, a notice u/s 153C dt.25.01.2021 was issued to the assessee. In response to the same, assessee filed the return of income on 05.02.2021 admitting total income of Rs.1,17,82,970/-. Subsequently, notices u/s 143(2) and 142(1) of

the Act were issued to the assessee calling for information. In response to the said notices, assessee uploaded the information as called for on various dates. After verifying the details filed and material available on record, Assessing Officer completed the assessment interalia making an addition of Rs.83 lakhs u/s 69 of the Act r.w.s. 115BBE and also initiated penalty proceedings u/s 271AAC of the Act.

4. Feeling aggrieved with such assessment order, assessee preferred appeal before the ld.CIT(A) who allowed the appeal of assessee.

5. Feeling aggrieved with the order of ld.CIT(A), Revenue is now in appeal before us.

6. Before us, ld. DR submitted that ld.CIT(A) has accepted the written submissions / additional documents filed at the appellate stage without calling for remand report from the Assessing Officer. For the above said purposes, ld. DR has drawn our attention to paras 5.3 to 5.3.2 of the order of ld.CIT(A), which is to the following effect :

“5.3. I have carefully considered the submissions of the appellant, the order of the assessing Officer, the evidence filed by the appellants’ AR. Briefly the facts are the assessee filed, return electronically on 11-01-2018 declaring taxable income of Rs.81,09,780/- after claiming Chapter VIA of Rs.10,000/-. After issuing statutory notice, the AO completed the assessment by making an addition of Rs.83,00,000/- towards unexplained money u/s.69A. It was stated by the AO that the assessee has deposited a total of Rs.83,00,000/- during demonetization period, the source for which was. not properly explained. Assessee stated that he had withdrawn an amount of Rs.93 lakhs on 15-07-2016 out of which a sum of Rs.72 lakhs was deposited on 19-11-2016; Rs.6 lakhs on 23-11-2016 and Rs.5 lakhs on 07-12-2016. The assessee claimed that the deposits were made in the same bank from which the earlier withdrawals were made. The AO went on to examine the need for withdrawing such a huge amount of cash and keeping it for four months with him. The assessee explained that he was contemplating of hydroponics project, and the cash

was withdrawn for that purpose. Further it was stated that he holds a lot of agriculture lands and other properties and keeps the money at different places with their in-charge persons for the purpose of meeting the contingencies, repairs and maintenances, labour payments and other agriculture petty expenses. It was also stated that he planned to develop his properties and agriculture activities and therefore he withdrew the money. The AO opined that even after withdrawal of Rs.93 lakhs on 15-07-2019 the assessee has withdrawn cash on various dates subsequent to that date. A table giving the dates of cash withdrawals was mentioned at page 4 of the assessment order. Thus, the AO came to the conclusion that the assessee was not able to substantiate his claim of cash deposits being from earlier withdrawals and also the purpose for which the cash was withdrawn and kept with him. In view of these reasons, the AO made an addition of the cash deposits of Rs.83 lakhs and treated it as unexplained money u/s.69A of the Act. The appellant is aggrieved and is in appeal.

5.3.1 During the course of appellate proceedings, the AR stated that the assessee regularly files his return of income and declares income from salary, House property, capital gains, income from other sources and agricultural income. It was stated that as per the cash balance details the assessee had an opening cash balance of Rs.8 lakhs and had withdrawn a total cash of Rs.1,24,89,549/- during the year. Out of these withdrawals, it was claimed that the assessee had deposited Rs.83 lakhs during demonetization period. It was also stated that the assessee has withdrawn that amount with an intention to develop properties and develop hydroponics agriculture activity. Due to certain business reasons the same could not be expended and the money was kept with him. Further it was stated that the assessee is holding lot of agriculture land and other properties in and around Hyderabad and has to keep money at different places with their persons in-charge to meeting the contingency expenses. Besides, it was stated the assessee was compelled to deposit his un-utilized cash balance into the bank because of the demonetization. Otherwise the assessee would have kept his cash with him and use for his development of agricultural purpose. The assessee has also filed his wealth tax returns for the past years wherein it was shown that the assessee has withdrawn cash even in the past but has never deposited cash in huge volumes in the bank account. The assessee has also furnished a copy of statement showing cash balance at the year end along with cash withdrawals from financial year 2010-11, to show that withdrawals of cash by the assessee is regularly done for his agricultural and other business activities. Therefore, it was contended that since the source for deposit of Rs.83 lakhs is directly linked to the .previous cash withdrawal of Rs.93 lakhs in the same bank account, it was requested that the said addition being deleted.

5.3.2 I have considered the submissions of the assessee and the contentions of the AO. It is a fact that the assessee had withdrawn a sum of Rs.93 lakhs on 15-07-2016 from his ICICI bank account. After demonetization was announced, the assessee has deposited cash of Rs.72 lakhs on 19-11-2016, Rs.6 lakhs on 23-11-2016 and Rs.5 lakhs on 07-12-2016. There is a gap of about four months from the date of withdrawals to the date of deposit in the bank account. The AO's argument that the assessee could not prove the

purpose of the cash withdrawals is not of much relevance, it is not the case of the AO, that the assessee had utilized the withdrawn cash for some other purpose and had deposited the cash which is not linked to the cash withdrawals. Since there was no such evidence, it cannot be said that the assessee had no business reason for withdrawal of cash. Assessee might have myriad reasons for keeping cash with him and per, his Explanation he was contemplating of venturing into hydroponics and expansion of his agriculture activity. It was mentioned in the assessment order that he has furnished photographs of the assets and copies of permissions granted by relevant authorities for his contemplated business. Therefore, a reasonable cause was made out by the assessee of his intention to venture into certain other business activities for which he had withdrawn the cash. There is no finding by the AO that the assessee used the money withdrawn for any other purposes during the intervening period. In the absence of such finding the appellant deserves the benefit of the source of cash deposits being explained by the earlier withdrawals. Hence, it is held that the sources of cash deposits of Rs.83 lakhs can reasonably be attributed to the earlier withdrawals of Rs.93 lakhs. In view of the above, the AO is directed to delete the addition of Rs.83 lakhs made u/s.68 of the Act.”

7. Per contra, ld. AR had submitted that assessee has no objection if the matter is remanded back to the file of Assessing Officer.

8. We have heard the rival submissions and perused the material on record. Considering the documents placed before us and the order passed by the ld.CIT(A), we are of the opinion that the ld.CIT(A) should have decided the issue after calling for the remand report on the additional documents / fresh material filed by the assessee during the appellate proceedings. Since the needful was not done, the order passed by the ld.CIT(A) is in violation of principles of natural justice, as codified under Rule 46A of Income Tax Rules, 1962. Therefore, we deem it appropriate to remand back the matter to the file of ld.CIT(A) for passing afresh order after seeking remand report from the Assessing Officer.

9. Accordingly, the appeal of the Revenue is remanded back to the file of Id.CIT(A) with a direction to pass a fresh speaking order after seeking remand report from the Assessing Officer and also after giving due opportunity of hearing to the assessee, in accordance with law. The assessee is also directed to produce the documents / details of withdrawing of amount of Rs.93 lakhs on 15.07.2016, if any. The assessee is also directed to furnish the evidence of having agricultural land / other lands for which the said amount was allegedly withdrawn for development of his properties. The assessee shall be at liberty to file documents, as directed hereinabove and other documents, if any, as required for proving his case and the Id.CIT(A) shall consider such evidences, if any, filed by the assessee. Needless to say, the Id.CIT(A) shall examine those documents / evidence filed by the assessee, the remand report to be submitted by the Assessing Officer and thereafter pass the detailed speaking order. Accordingly, the appeal of Revenue is allowed for statistical purposes.

10. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the Open Court on 28th November, 2023.

Sd/-

Sd/-

(R.K. PANDA) VICE PRESIDENT	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 28th November, 2023.

TYNM/sps

Copy to:

S.No	Addresses
1	Sri Satya Sayee Babu Divi, 506-Bougain Villa Apartments, Ameerpet, Hyderabad.
2	Assistant Commissioner of Income Tax, Central Circle – 2(1), Hyderabad.
3	PCIT (Central), Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order