

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. 508/Hyd/2024
(निर्धारण वर्ष / Assessment Year: 2021-22)

Somavarapu Shoba Rani Vs. Income Tax Officer,
Hyderabad Ward-1,
[PAN No. BJEPS5991N] Nalgonda

अपीलार्थी / Appellant प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Advocate S Sandhya
राजस्व द्वारा/Revenue by: Shri M Naveen Kumar, DR

सुनवाई की तारीख/Date of hearing: 13/06/2024
घोषणा की तारीख/Pronouncement on: 05/07/2024

आदेश / ORDER

Aggrieved by the order dated 31/03/2024 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Somavarapu Shoba Rani ("the assessee") for the assessment year 2021-22, assessee preferred this appeal.

2. Assessee is an individual and filed the return of income for the assessment year 2021-22 on 4/10/2021 declaring an income of Rs. 4, 78, 110/-and claimed deduction under Chapter VI-A of the Act. According to the learned Assessing Officer, the assessee purchased 8, 556 Sq. ft of commercial property jointly with her husband, son and daughter-in-law for a total consideration of Rs. 2, 09, 40, 000/- by obtaining a housing loan of Rs. 65 Lacs. After obtaining explanation from the assessee, learned Assessing Officer added a sum of Rs. 36.10 Lacs to the income of the

assessee being the difference between the value of her share in the property and one fourth value of the bank loan, on the premise that the assessee purchased one fourth share in the property.

3. Assessee preferred appeal before the Learned CIT(A) and pleaded that she does not have one fourth share in the property purchased, but she along with her husband son and daughter-in-law possessed only 5%, 5%, 2.5% and 2.5% each respectively totaling to only 15% thereof. She further pleaded that they have obtained bank loan to the tune of Rs. 65 Lacs, there was a withdrawal of Rs. 20 Lacs from ICICI bank on 20/5/2019, a sum of Rs. 30 Lacs from Kotak bank by one Mr. Anup Kumar on 11/1/2019, whereas Rs. 39 Lacs were paid to the wife of the builder by name Smt. Usharani on various dates.

4. Learned CIT(A) directed the learned Assessing Officer to verify the percentage of shares held by the assessee and her family. Learned CIT(A) further directed learned Assessing Officer to verify the payments made to Smt. Usharani and to accept such payments if those were made by way of cheque. Learned CIT(A) accepted the bank loan of Rs. 65 Lacs. Learned CIT(A), however, did not accept the withdrawals of Rs. 20 Lacs and 30 lakhs from ICICI bank and Kotak bank on the ground that the withdrawals are not in proximity to payment. Learned CIT(A) accordingly allowed the appeal in part.

5. Assessee is therefore aggrieved and filed this appeal stating that the payments were made to Smt. Usharani only through HDFC bank account and therefore, the same should have been accepted by the Learned CIT(A). So also, according to the learned AR when the withdrawals were made from the ICICI bank and Kotak bank, there was no reason for the learned CIT(A) not to accept the same. According to the learned AR such withdrawn amounts were kept with the family members of the assessee because by the time itself they were searching for purchase of a suitable property and as and when the suitable property was found out, such amount was utilised for purchase of the same.

6. Per contra, Learned DR strongly supported the impugned order and stated that both the authorities accepted the bank loan. Apart from that the Learned CIT(A) did not reject the contention of the assessee as to the share held by the family of the assessee in the property purchased, but only directed verification of the same and it will not cause any prejudice to the case of the assessee. Further, if the entire amount of Rs. 39 Lacs was

paid to Smt. Usharani through banking channels of HDFC bank, on verification of the same as directed by the Learned CIT(A), the same will be allowed by the learned Assessing Officer. Lastly, in respect of the withdrawals and utilisation of the amount, learned DR submitted that it is not something usual for the prospective purchasers to keep huge amounts of Rs. 50 Lacs in cash in their houses running the risk of it being stolen, and such a conduct of the family members of the assessee runs contrary to the ordinary course of human conduct.

7. I have gone through the record in the light of the submissions made on either side. I do not find any reason to interfere with the direction of the learned CIT(A) given to the learned Assessing Officer to verify the percentage of share held by the family members of the assessee and the assessee in particular in the property purchased or the mode in which the payments were made to Smt. Usharani, because such a course does not cause any prejudice to the case of the assessee. If really the percentage of share held by the assessee is only 5% in the property purchased and all the money paid to Smt. Usharani was to HDFC bank, the same will be allowed by the learned Assessing Officer.

8. Coming to the observations of the Learned CIT(A) that for want of proximity of time between the withdrawal and payment, the source for the payment of sum of Rs. 50 lakhs cannot be believed, when the statement of account with the bank shows such withdrawals, such withdrawals cannot be disbelieved. Whether the family members of the assessee kept the same in cash with them or kept somewhere or with someone else has not come out on record. Learned CIT(A) reached a conclusion as to the proximity of time, perhaps, on the presumption that the assessee pleaded that such an amount was kept in cash in the house of the assessee. We do not know the actual mode of keeping such amount with the family members of the assessee or someone else.

9. Further, through a catena of decisions the judicial of opinion is that no addition could be made on the sole reason that there is a time gap between the date of withdrawal from bank account and redeposit the same into the bank, unless the learned Assessing Officer demonstrates that the amount in question was used by the assessee for any other purpose. *Gordhan vs ITO* in ITA No. 811/Del/2015 and *ACIT vs. Baldev Raj Charla* 121 TTJ 366 (Delhi) are to cite a few. Spending or otherwise of the withdrawn amount is only a matter of suspicion and again by the authorities. No

addition could be made basing on suspicion. There is no reason not to believe the plea of the assessee that the withdrawn amounts were meant to be spent towards purchase of a suitable property, but the delay in finding such property left that amount in the hands of the assessee. In the circumstances, there is no reason for me not to believe this probable plea taken by the assessee and to accept the withdrawals as a source explaining the part of sale consideration. I, therefore, accepting the same, direct the learned Assessing Officer to delete the addition to the extent of Rs. 50 lacs withdrawn from the bank.

10. With this view of the matter, I uphold the findings of the Learned CIT(A) giving directions to the learned Assessing Officer to verify the percentage of property held by the assessee and also the mode of payments to Smt. Usharani. Learned Assessing Officer is directed to delete the addition of Rs. 50 lacs attributable to the withdrawals from Bank. Grounds accordingly treated as allowed in part for statistical purpose.

11. In the result, appeal of the assessee is treated as allowed in part for statistical purpose.

Order pronounced in the open court on this day 5th July, 2024.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 05/07/2024
Pvv/SPS

Copy forwarded to:

1. Somavarapu Shoba Rani, Flat No.306, Samadhura Nakshtra Apartments, Plot No.22, Saroornagar, HUDA Residential Complex, Hyderabad 500035
2. Income Tax Officer, Ward-1, Nalgonda.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE.

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