

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

**Before Shri Mahavir Singh, Hon'ble Vice-President and
Shri Manjunatha, G. Accountant Hon'ble Accountant Member**

आ.अपी.सं / **ITA Nos.169 & 170/Hyd/2023**
(निर्धारण वर्ष/Assessment Year: 2018-19 & 2019-20)

Shri Govardhan Naidu Gummalla, Hyderabad PAN:ACTPG9082B (Appellant)	Vs.	Asstt. C. I. T. Central Circle 2(2) Hyderabad (Respondent)
निर्धारिती द्वारा/Assessee by:	Shri P Murali Mohan Rao, CA	
राजस्व द्वारा/Revenue by:	Shri Srinath Sadanala, DR	
सुनवाई की तारीख/Date of hearing:	26/09/2024	
घोषणा की तारीख/Pronouncement:	26/09/2024	

आदेश/ORDER

Per Manjunatha, G. A.M

These two appeals filed by the assessee are directed against the separate, but identical orders of the learned CIT (A)-12 Hyderabad dated 09/02/2023 and pertains to A.Ys 2018-19 & 2019-20 respectively. Since facts are identical and common issues are involved in these two appeals, for the sake of convenience, these were heard together and are being disposed off by this common order.

ITA No.169/Hyd/2023 – A.Y 2018-19

2. The brief facts of the case are that the assessee has filed his original return of income for the A.Y 2018-19 on

02/08/2018 declaring total income of Rs.35,99,600/- and the same has been processed and intimation u/s 143(1) of the I.T. Act, 1961 was issued on 12/10/2018. A search & seizure operation u/s 132 of the I.T. Act, 1961 was conducted in the Rithwik group cases on 12/10/2018 and as part of the search & seizure operation, the case of the assessee was also covered. Consequent to search notice u/s 153A of the I.T. Act, 1961, dated 23/09/2019 was issued. In response, the assessee filed return of income on 07/12/2019 admitting total income at Rs.35,99,600/- which is the same income returned in the return of income filed u/s 139(1) of the I.T. Act, 1961. The assessment has been completed u/s 143(3) r.w.s. 153A of the I.T. Act, 1961 on 17/06/2021 and determined the total income at Rs.43,79,600/- by making additions towards exemption claimed u/s 10 of the I.T. Act, 1961 to the tune of Rs.2,40,000/- against the income from salary and addition of Rs.5,40,000/- towards the gifts received from relatives.

3. The assessee carried the matter in appeal before the first appellate authority and challenged the additions made by the Assessing Officer towards exemption claimed u/s 10 of the I.T. Act, 1961 and also addition towards gifts received from relatives. The learned CIT (A) after considering the relevant submission of the assessee and also taken note of various facts, rejected the explanation furnished by the assessee and sustained the additions made by the Assessing Officer towards disallowance u/s 10 and addition towards gifts received from relatives.

4. Aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

5. The first issue that came up for our consideration from the additional ground filed by the assessee is on the legality of additions made in the assessment order passed u/s 153A of the I.T. Act, 1961, in absence of incriminating material. The learned Counsel for the assessee referring to the decision of the Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell (P) Ltd reported in (2023) 454 ITR 212 submitted that in absence of incriminating material found during the search, no addition can be made in unabated assessment. Since the assessment herein, in question, is unabated as on the date of search, the addition made by the Assessing Officer should be deleted.

6. The learned DR, on the other hand, supporting the order of the learned CIT (A) submitted that the assessment in question is abated as on the date of search which is evident from the date of search, in the present case i.e. on 12/10/2018 and the time limit for issuance of notice u/s 143(2) of the I.T. Act, 1961 would expire on 30/09/2019. Therefore, there is no merit in the ground of appeal taken by the assessee and same needs to be dismissed.

7. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the assessment herein, in question, is abated as on the date of search

i.e. on 12/10/2018, because the time limit for issuance of notice u/s 143(2) would expire on 30/09/2019 i.e. much after the date of search. Therefore, once the assessment is abated, then the Assessing Officer shall have power to assessee or re-assess the total income including undisclosed income, if any, found as a result of search and this legal position has been upheld by the Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell (P) Ltd (Supra). Therefore, we reject the legal ground taken by the assessee.

8. The next issue that came up for our consideration from Ground No.3 of assessee's appeal is addition of Rs.2,40,000/- towards denial of exemption u/s 10 of the I.T. Act, 1961. The appellant has claimed exemption u/s 10 for Rs.2,40,000/- against the income from salary received from Rithwik Projects (P) Ltd. The appellant claims that the income exempt u/s 10 has been certified by the employer and therefore, the Assessing Officer is erred in disallowing the claim of the exemption. The Assessing Officer made addition towards exemption claimed u/s 10 of the I.T. Act, 1961 on the ground that the assessee could not furnish supporting evidences.

9. We have heard both parties and considered the relevant reasons given by the Assessing Officer towards addition of Rs.2,40,000/- for disallowance u/s 10 of the I.T. Act, 1961 in light of various evidences filed by the assessee. We find that the assessee except furnishing certificate from the employer i.e. Rithwik Projects (P) Ltd to support his contention for claiming

exemption u/s 10 of the I.T. Act, 1961 for Rs.2,40,000/- but no other evidences has been filed under which section said exemption has been claimed. Even before us, no evidence has been filed except making submission on the basis of confirmation from the employer. Therefore, we are of the considered view, that there is no error in the reasons given by the learned CIT (A) to sustain the disallowance u/s 10 of the I.T. Act, 1961 made by the Assessing Officer and thus, we are inclined to uphold the findings of the learned CIT (A) and reject the ground taken by the assessee.

10. The next issue that came up for our consideration from Ground No.4 of assessee's appeal is addition towards gifts claimed to have been received from sons of the assessee. The Assessing Officer has made addition of Rs.5,40,000/- towards gift claims to have been received from Mr. G. Jaswant & Mr. G. Praneeth, both are sons of the appellant on the ground that no evidence has been filed. It is the claim of the assessee that he has filed relevant confirmation letters from the donors along with their PAN Nos. and further, both donors are income-tax assesseees and they have enough source of income to explain gifts received by the appellant.

11. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. First of all, the addition made by the Assessing Officer towards gift is Rs.4,40,000/- and not Rs.5,40,000/- and the same has been clarified by the learned Counsel for the assessee and also accepted by the learned DR present for the Revenue. The

appellant has received Rs.2,20,000/- gifts from Shri G Jaswant, son of the assessee who is also an income-tax assessee with PAN BEPKJ8935C. The appellant has filed confirmation letter from the donor and the donor has confirmed gift given to his father for an amount of Rs.2,20,000/-. Similarly, the appellant received another gift of Rs.2,20,000/- from his son Mr. G. Praneet who is also an income-tax assessee and files his return of income under PAN No.DDDPP4582H. The donor has also filed confirmation letter and confirmed gift given to the appellant. From the details filed by the assessee including confirmation letters from the donors, it appears that the appellant has explained the gifts received from relatives with relevant evidences. Therefore, we are of the considered view that the Assessing Officer is erred in making addition towards gifts received from relatives. The learned CIT (A) without considering the relevant facts simply sustained the addition made by the Assessing Officer. Thus, we set aside the findings of the learned CIT (A) on this issue and direct the Assessing Officer to delete the additions made towards gifts received from relatives.

12. In the result, appeal filed by the assessee is partly allowed.

ITA No.170/Hyd/2023 – A.Y 2019-20

13. The first issue that came up for our consideration from the additional ground of appeal filed by the assessee is legality of addition made in the assessment order passed u/s 153A of the I.T. Act, 1961 in absence of incriminating material found as a result of search. We find an identical issue has been considered

by us in appellant's own case for A.Y 2018-19 in ITA No.169/Hyd/2023. The facts are identical and the reasons given by us in preceding paragraph No.7 shall mutatis mutandis apply to this ground, as well. Therefore, for similar reasonings, we reject the additional ground of appeal filed by the assessee.

14. The next issue that came up for our consideration from Ground No.3 of assessee's appeal is addition made for Rs.1,98,000/- in respect of assessee's claim of exemption u/s 10 of the I.T. Act, 1961. An identical issue has been considered by us in appellant's own case for A.Y 2018-19 in ITA No.169/Hyd/2023. But for figures, the issue is identical. The reasons given by us in preceding paragraph No.9 shall mutatis mutandis apply to this issue, as well. Therefore, for similar reasonings, we are inclined to uphold the findings of the learned CIT (A) and reject the ground taken by the assessee.

15. The next issue that came up for our consideration from Ground No.4 of assessee's appeal is addition towards gift received from relatives amounting to Rs.5,40,000/-. An identical issue has been considered by us in appellant's own case for the A.Y 2018-19 in ITA No.169/Hyd/2023. The facts and issue is identical. The reasons given by us in preceding para No.11 shall mutatis mutandis apply to this issue as well. Therefore, for similar reasonings, we direct the Assessing Officer to delete the addition made towards gift received from relatives.

16. In the result, appeal filed by the assessee for the A.Y 2019-20 is partly allowed.

17. To sum up, both the appeals filed by the assessee for A.Ys 2018-19 & 2019-20 are partly allowed.

Order pronounced in the Open Court on 26th September, 2024.

Sd/-

Sd/-

(MAHAVIR SINGH) VICE-PRESIDENT	(MANJUNATHA, G.) ACCOUNTANT MEMBER
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Hyderabad, dated 26th September, 2024

Vinodan/sps

Copy to:

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4	DR, ITAT Hyderabad Benches
5	Guard File

By Order