

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

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं / **ITA No.117/Hyd/2022**
(निर्धारण वर्ष / Assessment Year: 2017-18)

Kasturi Phaneendra Rao (HUF), Kurnool. PAN:AAHHK1390Q	Vs.	Asst. Commissioner of Income Tax, Circle-1, Kurnool.
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri K.A.Sai Prasad, C.A.	
राजस्व द्वारा / Revenue by:	Shri Srikanth Reddy Y, SR-DR	
सुनवाई की तारीख / Date of hearing:	07 / 11 / 2024	
घोषणा की तारीख / Pronouncement:	14 / 11 / 2024	

आदेश/ORDER

PER MADHUSUDAN SAWDIA, A.M.:

This appeal is filed by Kasturi Phaneendra Rao (HUF), Kurnool ("the assessee"), feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), dated 31.03.2022 for the A.Y. 2017-18.

2. The grounds raised in the appeal are as under :

- "1. The order of the Ld. CIT(A)-NFAC, Delhi is not correct, both on facts and in law.*
- 2. The Learned First Appellate Authority in the facts and circumstances of the case is not justified in confirming the addition of Rs.39,50,000/- made by the assessing officer*

u/s.68 of the I T Act based on assumption and presumption, without appreciating the evidences and information on record.

3. The Learned First Appellate Authority failed to appreciate the fact that the cash deposit of Rs.39,50,000/- worked out by the assessing officer was out of cash recovery from loan debtors for A.Y. 2014-15 and 2015-16 and hence the addition u/s.68 is unwarranted.

4. The appellant reserves his right to add, amend, delete or alter any of the above grounds during the course of hearing of the appeal.”

3. The brief facts of the case are that the assessee is a HUF, filed their Return of Income on 30.11.2017 declaring total income of Rs.15,15,930/-. The case of the assessee was selected for scrutiny under CASS and notice u/s.143(2) of the Income Tax Act, 1961 ("the Act") was issued to the assessee. During the year under consideration the assessee had made cash deposit of Rs.50 lakhs during the period from 9.11.2016 to 30.12.2016. The details for the sources of cash deposits were called by the Learned Assessing Officer ("Ld. AO") and not being satisfied with the explanation offered by the assessee, the Ld. AO completed the assessment u/s.143(3) of the Act by treating the cash deposit of Rs.50 lakhs as unexplained u/s.68 of the Act and added to the total income of the assessee.

4. Aggrieved with the order of Ld. AO, the assessee filed an appeal before the Ld. CIT(A). After considering the submissions of the assessee, the Ld. CIT(A) gave part relief to the assessee sustaining the addition of Rs.39,50,000/-

5. Aggrieved with the order of Ld. CIT(A), the assessee is in appeal before us. The Ld. AR submitted that the assessee is engaged in advancing loan on

interest to various persons. Some advances given were not accounted in the books of accounts of the assessee, therefore, during the survey the assessee had surrendered Rs.20 lakhs each in A.Y. 2014-15 and A.Y. 2015-16 as his undisclosed income. He further submitted that tax on the above surrendered income of Rs.40 lakhs has already been paid by the assessee. He also submitted that the amount of Rs.50 lakhs has been deposited in his bank account during the year under consideration out of recovery from such debtors and out of opening cash balance as on 1.4.2016 and out of income earned during the year. The Ld. AR drew our attention to page no.45 of the paper book related to cash flow statement, page nos.47 to 49 of the paper book related to cash book for A.Y. 2016-17, page nos.50 & 51 related to details of amounts given to the debtors, interest received from them and amount recovered from debtors, page nos.56, 56A, 57 to 60 related to confirmations of some debtors. Relying on all these documents, the Ld. AR submitted that the assessee had produced all the necessary details/evidences to justify the source of amounts deposited in the bank. However, without considering the submissions of the assessee, the Ld. AO added all the amounts of cash deposited into the bank to the total income of the assessee. But, the Ld. CIT(A) gave relief of Rs.10,50,000/- on account of opening cash balance and interest income declared during the year and upheld the addition of Rs.39,50,000/-

which was on account of the amount realized from debtors. The Ld. AR further submitted that in spite of all the aforesaid details filed i.e. the name of the debtors, the date of advances given, the amount of interest received from the debtors, the date of advances realized from the debtors etc., the Ld.CIT(A) without noticing any deficiency in the details filed, upheld the addition of Rs.39,50,000/-. The Ld. AR relying on the decision of the co-ordinate bench in the case of Shri Skanda Kumar Kasturi in ITA No.459/Hyd/2024 dated 26.06.2024, submitted that under the identical case of one of the relative of the assessee, the Hon'ble ITAT has deleted the addition made by the Ld. AO. Finally consolidating all the grounds, the Ld. AR prayed before the bench to delete the addition of Rs.39,50,000/-.

5. Per contra, the Ld. DR relied on the orders of authorities below and submitted that the argument of the Ld. AR regarding realization from the debtors just before the date of deposit of cash in the bank account is not reliable. The Ld. DR also submitted that the assessee has given and realized the amounts in cash and therefore contravened the provisions contained u/s. 269SS and 269T of the Act. Therefore, he reiterated to uphold the order of Ld.CIT(A).

6. We have heard the rival contentions and perused the material on record in the light of the submissions made on either side. As far as the

objection of the Ld. DR with regard to contravention of section 269SS and 269T is concerned, the Ld. AO has not raised such issue in his assessment order. Therefore, the Ld. DR is not allowed to improve the case of the Ld. AO. Therefore without adjudication whether there was contravention of the provisions contained u/s. 269SS / 269T of the Act, this contention of the Ld. DR is rejected. Further, there is no dispute about the facts that the assessee had surrendered total income of Rs.40,00,000/- on account of unaccounted advances given to sundry debtors. The submission of the Ld. AR is that the assessee had realized the amount from such debtors and deposited into the bank account. In support of his submission the Ld. AR drew our attention to page no.45 of the paper book related to cash flow statement, page nos.47 to 49 of the paper book related to cash book for A.Y. 2016-17, page nos.50 & 51 related to details of amounts given to the debtors, interest received from them and amount realized from debtors, page nos.56, 56A, 57 to 60 related to confirmations of some debtors. From all these documents, the Ld. AR demonstrated that the assessee had submitted all the necessary details/evidences before the revenue authorities to justify the source of amounts deposited in the bank. On perusal of all these documents, we found that the assessee had given all the relevant details i.e. the name of the debtor, the date of advances given, the amount of interest received from the debtor,

the date of advances realized from the debtor, to the revenue authorities. The revenue authorities neither noticed any discrepancy in the details filed by the assessee nor they tried to verify any such details by issuing any notices to such debtors. Therefore, as all the relevant details have been filed by the assessee before the revenue authorities, the revenue authorities did not notice any discrepancy in such details, we are of the considered view that the assessee has complied his duty with regard to justifying the sources of cash deposited into the bank account. Therefore, we set aside the order of Ld.CIT(A) and direct the Ld. AO to delete the addition of Rs.39,50,000/-, sustained by the Ld.CIT(A). Accordingly, the appeal of the assessee is allowed.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 14th Nov., 2024.

Sd/-

(LALIET KUMAR)
JUDICIAL MEMBER

Sd/-

(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Hyderabad.
Dated: 14.11.2024.

* *Reddy gp*

Copy of the Order forwarded to :

1. Kasturi Phaneendra Rao (HUF), C/o Katrapati & Associates, 1-1-298/B/3, 1st Floor, Ashok Nagar, Hyderabad-500 020
2. ACIT, Circle 1, Kurnool.
3. Pr.CIT, Kurnool.
4. DR, ITAT, Hyderabad.
5. Guard file.

BY ORDER,