

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" (SMC), HYDERABAD**

BEFORE SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER

I.T.A. No. 753/HYD/2015

Assessment Year: 2010-11

Sri Chilukurthi Veeraiah Income Tax Officer,
Chowdary, Vs Ward-2,
HYDERABAD KHAMMAM
[PAN: AFKPC5678P]

(Appellant)

(Respondent)

For Assessee : Shri A.V. Raghu Ram, AR
For Revenue : Ms. K.J. Divya, DR

Date of Hearing : 07-12-2017
Date of Pronouncement : 20-12-2017

ORDER

This is an appeal by assessee against the order of the Commissioner of Income Tax (Appeals)-VII, Hyderabad, dated 30-04-2015, for the AY. 2010-11. The grounds raised by assessee are as under:

"2. The AO ought not have added an amount of Rs. 28,05,420/- as unexplained investments of the assessee, ignoring the explanation of sources for the same.

3. The Appellate Commissioner ought not to have confirmed the order of the AO on amount of addition of Rs. 28,05,420/- and ought not to have dismissed the appeal of the assessee".

Ground Nos. 1 & 4 are general in nature.

2. Briefly stated, assessee is an individual deriving income from salary, house property and other sources. He filed his return of

income on 14-10-2010 declaring total income of Rs. 3,89,000/-. The Assessing Officer (AO) completed the assessment u/s. 143(3) of the Income Tax Act [Act] by making the addition of Rs. 28,05,420/- towards unexplained investment, being peak deposits in bank account and determined the total income of Rs. 31,94,420/-.

3. Before the Ld.CIT(A), it was explained as under:

“5.1 During appeal proceedings, the appellant submitted that he has (i) opening balance of around Rs.10 lakhs being his accumulated savings over past five years for which returns of income have been duly filed, (ii) past agricultural income of Rs.6 lakhs earned in the HUF capacity, (iii) agricultural income of Rs.2,40,000/- of his wife for the last five years, (iv) sale of agricultural land of Rs.5,89,000/-, (v) gifts of Rs.11 lakhs received from his relatives and (vi) Rs.86,000/- from other sources, all aggregating to Rs.36,17,834/-. From this aggregate figure, the appellant reduced Rs.6.50 lakhs towards his house hold expenses for five years and claimed that he has explainable sources for the amount of Rs.29 lakhs treated as unexplained by the Assessing Officer. In support of the above, the appellant has filed (i) copies of statements of total income for the past five years, wherein the agricultural income of HUF was also shown separately, (ii) copies of two sale- deeds of agricultural lands and (iii) affidavits from three relative donors along with their pattadar passbooks. It is the claim of the appellant that he has explainable sources for the cash credits appearing in his bank account and consequently the investment made by him in M/s SMC”.

4. Ld.CIT(A) dismissed the contentions, stating as under:

“5.2 I have gone through the assessment order, written submissions and the material filed by the appellant in support of his claims. Before deciding the issue, it is in place to refer to the dates and amounts of cash credits appearing in the bank account of the appellant. The appellant opened an SB account with M/s. Axis Bank on 09.03.2009 and the major cash credits made during the year are as under:

14.09.2009	-	Rs. 13,00,000
15.09.2009	-	Rs. 15,00,000
19.10.2009	-	Rs. 9,90,000

5.3 Now coming to the explanation of the appellant that he is in receipt of Rs.5,90,000/- being sale consideration of agricultural lands, it is seen that

the agricultural lands were sold on 13.03.2008 (Rs.3,76,000) and on 30.04.2008 (Rs.2,13,000). As rightly pointed out by the Assessing Officer, the gap of receipt of the above sale consideration and deposit of cash in bank account was not explained by the appellant. It is simply referring to the sale of lands, the appellant is trying to linkup the sources for the cash deposits made after 17 months.

5.4 The next source explained by the appellant is the past savings out of admitted incomes and admitted agricultural income in the HUF status. However, no evidences for proving the nexus between the past savings and the cash deposits made on three dates during the year were furnished. It is only referring to the admitted incomes and some agricultural income admitted in HUF capacity of last five years, the appellant is trying to explain the sources of cash deposit made during the year. Admittedly, the appellant is a Chemistry lecturer and is admitting salary income including tuition incomes over the past 5 years. No iota of evidence or any whisper of explanation was furnished by the appellant explaining how he had kept the money for all these five years. In these circumstances, it is hard to believe that all the past 5 years savings were clubbed together and deposited in the bank on three different dates within a period of 35 days.

5.5 The next major source explained for the credits is the gifts received from three relatives. Though the appellant produced confirmations in this regard, but has miserably failed here also to fill in the gap between the date of receipt of cash gifts and the cash deposits made in the bank. As per the gift deeds filed, the appellant received Rs.8 lakhs on 04.06.2009 from two relatives and Rs.3 lakhs on 05.06.2009 from his aunt. However, the credits in the bank account are made in the months of September and October, 2009 and the deposits made also are not matching with the amounts claimed as gifts. Apart from the gap brought above, what all the appellant furnished in support of sources in the hands of relatives is the pattadar passbooks evidencing agricultural land holdings. The extent of land holdings in the name of above three persons is Ac.10.10, Ac.6.00 and Ac.7.51 and no evidences in support of earning agricultural income from the above lands were furnished.

5.6 As could be seen from the above discussion, the appellant made some vague claims for explaining the sources for the cash credits in the bank account and has not furnished any cogent evidences. The capital account with an opening balance of around Rs.18 lakhs was brought out only during the year and even the form in which this capital was held by the appellant during the period was not explained anywhere. As regards the claim of the appellant that the total of the past savings including the current incomes should be considered and deficit should be arrived, it is seen that the appellant has not furnished any reasonable evidences for holding cash of around Rs.18 lakhs at the beginning of the year. As

regards the current sources, it can be 'seen that the Assessing Officer has adopted the peak cash credit method, a method which takes care of the total debits and credits appearing in the bank account. Therefore, no interference is warranted on the method adopted by the Assessing Officer. 5.7 A perusal of the Axis Bank Account show that a total amount of Rs.28 lakhs was deposited by the appellant in cash on 14th & 15th of September, 2009 and the same was paid to M/s SMC through cheque on 15.09.2009 itself. Further, an amount of Rs.9,90,000/- was deposited in rash on 19.10.2009 and the very next day i.e., on 20.10.2009, an amount of Rs.9,60,000/- was paid to M/s SMC through cheque. Going by the above cash credits and the payments made, it is clear that the appellant has brought in cash from unexplained sources and made investments in M/s SMC through cheques. When the sources for these investments were questioned by the Assessing Officer, the appellant brought in the theory of past savings, agricultural income, sale of agricultural lands and gifts without any cogent evidences.

5.8 As the appellant has not produced any plausible evidence for the cash credits made in his bank account and went on making vague claims of cash balance and without filling in the gaps between the date of purported receipts and cash deposits in the bank account, I find no infirmity with the action of the Assessing Officer in arriving at the peak credit of Rs.28,05,420/- and accordingly, the addition so made is confirmed”.

5. It was the contention of Ld. Counsel that assessee is not a Government employee but private employee giving chemistry tuitions and basically agro based. He submitted that assessee has agricultural incomes which are declared and also sold lands in earlier years. Regarding the contention that assessee had not deposited the amounts in bank, it was submitted that the place from which assessee hails is a remote part of Khammam District and the AO as well as the CIT(A) accepted that assessee has opened the bank account only on 09-03-2009 and assessee is transacting in cash only all along. Only for the purpose of investment in a company, the account was opened and cash available including amount of gifts were deposited in the said bank account. It was submitted that assessee will produce the parties who gave gifts to him, if given an opportunity, as sufficient

opportunity was not given by AO during the assessment proceedings.

6. Ld.DR, however submitted that it was illogical to have that much cash and deposit in bank account and the discrepancy in in dates was not explained. There is no reasonable explanation for the gap in gifts and subsequent deposits. The DR relied on the order of Ld.CIT(A).

7. I have considered the rival contentions and explanations on record. It is an admitted fact that assessee opened the bank account on 09-03-2009 only and subsequently deposited cash to issue cheque/DDs to the said company for investment. It is also true that assessee has agricultural lands and agricultural income including amounts received on sale of agricultural lands, which are verifiable from the returns of earlier years. Thus, the source of agricultural income cannot be denied, just because assessee had not deposited the same in bank account. Considering the small town from which assessee hails and the fact that he is from agricultural family, the objections of AO and CIT(A) that these moneys are not deposited in bank and there was a gap can be rejected. Thus, the explanation for agricultural income and sale proceeds being a source, as explained before the CIT(A), can be accepted. AO is directed accordingly.

7.1. Then the issue of gifts of Rs. 11 Lakhs. Assessee explained that an amount of Rs 11 lakhs was gifts from three persons. They could not be produced before AO for verification. Ld.CIT(A) could have got them examined before deciding the issue against

assessee. I am of the view that the sources of gifts can be examined by AO by giving opportunity to assessee to produce the persons before AO or adducing evidence which can be verified/got verified by AO. Therefore, verification of source for gifts of Rs. 11 Lakhs is restored to the file of AO for fresh examination. Needless to say that assessee should be given due opportunity in the proceedings. To that extent, order of AO/CIT(A) is set aside and addition of Rs. 11 Lakhs is restored to the file of AO for necessary action. The grounds are allowed accordingly.

8. In the result, appeal of assessee is treated as partly allowed for statistical purposes.

Order pronounced in the open court on 20th December, 2017

Sd/-
(B. RAMAKOTAIAH)
ACCOUNTANT MEMBER

Hyderabad, Dated 20th December, 2017

TNMM

Copy to :

1. Sri Chilukurthi Veeraiah Chowdary, C/o. K. Vasant Kumar, A.V. Raghu Ram, P. Vinod & M. Neelima Devi, Advocates, 610, Babukhan Estate, Basheerbagh, Hyderabad.

2. The Income Tax Officer, Ward-2, Khammam.

3. CIT (Appeals)-VII, Hyderabad.

4. CIT-VII, Hyderabad.

5. D.R. ITAT, Hyderabad.

6. Guard File.