

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" : HYDERABAD

BEFORE SHRI D. MANMOHAN, VICE PRESIDENT
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA.No.1198/Hyd/2014
Assessment Year 2009-2010

Sri Bodiga Ramdas Goud Parvathapur, Uppal, RR Dist., PAN AROPB8568K (Appellant)	vs.,	The DCIT, Central Circle-7, Hyderabad. (Respondent)
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For Assessee :	Mr. K.C. Devdas
For Revenue :	Mr. A. Sitarama Rao

Date of Hearing :	15.12.2016
Date of Pronouncement :	11.01.2017

ORDER

SHRI D. MANMOHAN, V.P.

This appeal by the assessee is directed against the order passed by the CIT(A), Guntur and it pertains to the A.Y. 2009-2010. The following grounds were urged before us.

- 1. "The order of the Hon'ble CIT(A) is erroneous in law as well as facts of the case.*
- 2. In the facts and circumstances of the case, the Hon'ble CIT(A) ought not to have sustained the addition to the extent of Rs.9.50 lakhs and therefore the same is liable to be deleted.*
- 3. The Hon'ble CIT(A) ought to have observed that the amount of Rs.2.89 crores mentioned at para 9.8 of the order represent advances received and therefore there would not be any element of commission in such advances received. Similarly the amount of Rs.1.83 crores were the advances made for purchase of properties and therefore in respect of those advances also no commission has accrued to the assessee. Hence estimation of*

commission at 2% in respect of such total advances of Rs.4.75 crores is liable to be deleted.

4. *The Hon'ble CIT(A) ought to have rendered a specific finding with regard to action of the A.O. in adopting the income declared figure at Rs.2,24,440 without mentioning any reason instead of Rs.36,520 declared by the assessee.*
5. *Any other ground will be raised at the time of hearing of appeal."*

1.1 In addition thereto, the assessee raised the following additional ground.

"The Learned CIT(A) failed to note that the satisfaction as enjoined in Section 153C of the I.T. Act, 1961 that the appellant had undisclosed income not having been recorded by the A.O. in the assessment file of B. Ramdas Goud who was subject to proceedings u/s.132 of the I.T. Act, 1961 and therefore the order passed u/s.143(3) r.w.s. 153C of the I.T. Act, 1961 in the case of the Appellant for the A.Y. 2009-10 is without jurisdiction and therefore wholly unsustainable in law and facts."

2. At the time of hearing, Learned Counsel for the Assessee, submitted that identical issue was considered by the ITAT in assessee's own case for the A.Ys. 2003-2004, 2007-08 and 2008-09 (ITA.No.1195 to 1197/Hyd/2014 dated 09.12.2016).

3. The assessee, aged about 65 years, is a local (village politician) for the last 03 decades. He was elected as Sarpanch for 04 times. According to the assessee, the contacts as a politician were useful in settling local disputes amongst the villagers, as an elderly member of the village. In that process, he arranged some local land deals among the intending sellers as well as purchasers. For arranging such land deals he was getting some commission.

4. As could be noticed from the assessment order, search and seizure operation under section 132(2) of the Act was conducted in the

case of the group on 15.09.2008. As a consequence thereto, the assessee was called-upon to file its return of income. The assessee declared total income of Rs.9,57,090 and also agricultural income of Rs.3,13,600. The net income declared was only Rs.2,24,440. During the course of assessment proceedings, the A.O. noticed that the assessee filed an affidavit before the Investigation Wing wherein it was stated that following incomes were hitherto undisclosed but now offered as undisclosed income for the A.Y. 2009-2010.

(i)	Commission Income	Rs.12,47,000
(ii)	Interest received	Rs. 33,197
(iii)	Salary	Rs. 6,000
(iv)	Lease Rent	Rs.3,25,000
	Total	Rs.16,11,197

5. However on verification of the return of income filed in response to the notice issued under section 153C of the Act, the assessee admitted income of Rs.36,520 only. Cross-verification of the income shown in the affidavit, filed before the Investigation Wing, along with the income admitted as per the return of income filed under section 153C showed a difference of Rs.15,74,677. The assessee has not filed any reasons for not disclosing the income as admitted before the investigation authorities. Therefore, the A.O. concluded that the assessee failed to disclose the correct income and treated the sum of Rs.15,74,677 as undisclosed income.

6. Aggrieved, assessee contended before the CIT(A) that the A.O. erred in making addition of Rs.15,74,677 without furnishing any basis. It was also submitted that the A.O. has no basis to work-out the commission income of Rs.12,47,000 and interest of Rs.33,197, lease rent of Rs.3,25,000. Further, the A.O's order was challenged on the

ground that there was no basis for adopting the income declared figure of Rs.2,24,440 as against Rs.36,520.

7. Ld. CIT(A) discussed the grounds of appeal from page-19 of his order. The operating portion of the order is at page Nos.22 and 23 wherein he observed that the affidavit filed by the assessee during post-search enquiries referred to specific source of income and it was not a general statement without any basis. Therefore, the affidavit filed by the assessee should be given greater weightage over other evidence gathered as well as the earlier statement given. He further observed that the rental income pertain to the vacant plot given to Sri Ram Reddy for petrol pump which was adjacent to the appellant's house at Medipally. In his statement the assessee mentioned that Sri Ram Reddy has paid rent of Rs.25,000 per month from February-March, 2005 till 2008. Since there is nothing on record to indicate that rent has already been received in the F.Y. 2008-09, relevant to the present assessment year, the addition in respect of rental income was deleted by the CIT(A).

8. As regards cash flow statement he observed as under :

"The appellant, while preparing the cash flow statement for A.Y. 2008-09, has reflected advances of Rs.2.89 crores and Rs.1.83 crores towards purchase of properties, where the appellant is a broker. Thus, the appellant has acted as a broker/conduit for property advances aggregating Rs.4.75 crores (Approx.) in the immediate preceding year. It is reasonable to assume that most of these transactions would have concluded in the subsequent financial year i.e., A.Y. 2009-10 and the appellant would have received commission on the same. In any case, the appellant has regularly been reflecting income from commission on sale of property in all the years prior to the present assessment year. I am hence inclined to determine income from commission at 2% of the value of property transactions routed through the appellant i.e., Rs.4.75 crores, which works out to Rs.9.5 lakhs. Thus, out of commission income mentioned in the affidavit, Rs.9.50 lakhs is being sustained. Hence, out of the total addition of Rs.15,74,677,

an amount of Rs.9.50 lakhs is being sustained and the balance deleted.”

In otherwords, out of the total addition of Rs.15,74,677 an amount of Rs.9.50 lakhs is sustained by the CIT(A).

9. Aggrieved by the order of the Ld. CIT(A) assessee is in appeal before the Tribunal. There is nothing on record to indicate as to whether Revenue has preferred a cross-appeal or cross-objection on the issues which were decided in favour of the assessee. Therefore, we confine ourselves to the grounds urged by the assessee before us. The main contention of the assessee is that an amount of Rs.2.89 crores mentioned at para 9.8 of the order of the CIT(A) represent advances received and therefore, there would not be any element of commission in such advances. Similarly, the amount of Rs.1.83 crores was the advance made for purchase of properties and even in respect of those advances no commission is accrued to the assessee. Thus, estimation of commission at 2% in respect of such total advances is liable to be deleted.

10. Vide ground No.4, it was also contended that the Ld. CIT(A) ought to have given a specific finding with regard to action of the A.O. in adopting the income declared figure of Rs.2.24 lakhs. In fact the said addition was deleted by the Ld. CIT(A) and therefore, it is not necessary to consider ground No.4. In fact, neither the Ld. D.R. nor the Learned Counsel for the Assessee advanced any arguments on that ground.

11. Though the assessee has raised an additional ground with regard to requirement of recording satisfaction, as enjoined under Section 153C of the Act, no arguments were advanced even on that ground and therefore, additional ground is rejected. Thus, we only confine to the issue of estimation of commission income.

12. Learned Counsel for the Assessee submits that assessee has not maintained any books of account and notes down the receipts and payments in a dairy till the transactions are finalised and hence there will not be any accrual of commission income and hence, the CIT(A) erred in bringing to tax the commission income in the year under consideration.

13. Both the parties admitted that the identical issue was considered by the Tribunal in the assessee's own case for the A.Y. 2003-04 to 2008-09 (ITA.Nos.1195, 1996 & 1197/Hyd/2014 dated 09.12.2016). Vide para-7 of the said order the Tribunal observed as under :

“7. After considering the rival contentions and perusing the documents placed on record, we are of the opinion that assessee has correctly declared the commission in AY. 2008-09. Assessee is not maintaining any books of account and has noted down in the diary on the basis of the receipts and payments. Admittedly, the transaction between Shri Phoolchand Singh and others and Shri Sukender Reddy and others regarding 20 acres in Parvathapur village was being negotiated and ultimately finalised in 2007 only by way of final registration. Accordingly, the commission is accounted for by assessee in AY. 2008-09. The Hon'ble Supreme Court in the above case of CIT Vs. Excel Industries Ltd., [358 ITR 295] (supra), has held that ‘it is well settled that income tax cannot be levied on hypothetical income. Income accrues when it becomes due but it must also be accompanied by a corresponding liability of the other party to pay the amount only, then can it be said that for the purpose of taxability that the income is not hypothetical and it has really accrued to the assessee’. Keeping the principles in mind, we are of the opinion that the advance receipt of commission cannot be brought to tax in AY. 2003-04 and assessee has correctly accounted for the same in AY. 2008-09. In view of that, AO is directed to delete the said addition made in this assessment year. The grounds raised by assessee on this issue are accordingly allowed. In case, AO gave relief in AY 2008-09 consequent to Ld.CIT(A) order the same can be modified.”

14. Consistent with the view taken therein, we set aside the issue to the file of the A.O. with a direction to take into consideration only the income which is earned in the year of finalisation of the deal. Since no finding was given on that aspect the matter is set aside to the file of the A.O.

15. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open Court on 11.01.2017.

Sd/-
(S.RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(D.MANMOHAN)
VICE PRESIDENT

Hyderabad, Dated 11th January, 2017.

VBP/-

Copy to

1.	Sri Bodiga Ramdas Goud, Parvathapur, Uppal, R.R. District. C/o. Sri B. Narsing Rao & Co., Chartered Accountants, Plot No.554, Road No.92, Jubilee Hills, Hyderabad – 500096.
2.	The DCIT, Central Circle-7, Hyderabad.
3.	CIT(A), Guntur
4.	CIT (Central), Hyderabad.
5.	D.R. ITAT “A” Bench, Hyderabad.
6.	Guard File.