

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SMT P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 875/Hyd/2014
Assessment Year: 2009-10**

Katikaneni Prem Kumar, vs. Income-tax Officer,
Hyderabad. Ward – 8(3), Hyderabad.

PAN – ALTPK 1992 R (Appellant) (Respondent)

Assessee by : Shri S. Rama Rao
Revenue by : Smt. Suman Malik

Date of hearing : 04-01-2017
Date of pronouncement : 13-01-2017

ORDER

PER S. RIFAUR RAHMAN, A.M.:

This appeal filed by the assessee is directed against the order of CIT(A)- III, Hyderabad, dated 25/02/2014 for AY 2009-10.

2. Briefly the facts of the case are that the assessee filed his return of income for AY 2009-10 on 31/07/2009 declaring total income of Rs. 1,76,650/-. The AO completed the assessment u/s 143(3) by determining the total income at Rs. 1,34,33,150/- as against Rs. 1,76,650/- admitted by the assessee by making the addition of Rs. 1,32,56,500/- being the aggregate of all the cash deposits made during the year under consideration in the savings bank accounts of the assessee in ING Vysya Bank (Rs. 98,12,000/-) and ICICI Bank (Rs. 34,44,500/-).

3. During the assessment proceedings the assessee was confronted with its bank accounts where the aforementioned cash deposits were made by the assessee. In spite of various notices

issued by the AO over a span of more than 15 months and opportunities provided to the assessee, there was no compliance from the assessee and did not provide any explanation regarding cash deposits in his own bank accounts. Therefore, the AO added the aforementioned amounts by giving following reasons:

“13. On all the occasions referred to above, the assessee and his AR were asked specifically to explain the sources for the cash deposits made, during previous year relevant to the assessment under consideration aggregating to Rs.1,32,56,500/- into his S.B accounts with ING Vysa Bank - Rs.98,12,000/- and ICICI Bank Rs.34,44,500/-. However neither the assessee nor his AR chose to comply with the notices and to explain the sources for the said cash deposits. Also it was specifically mentioned in the above notices that (i) the assessee should file the information as called for therein, (ii) in the event of non-compliance from the assessee the assessee would lose opportunity to file the same subsequently before any appellate authority and also the assessment would be finalized ex-parte, under sec. 144 of the Act.

4. The assessee's failure to comply with the notices and adjournments as granted above would lead to the inference that he has no reasonable explanation to officer for the subject cash deposits. In the circumstances as this is a time-barring assessment, it is considered necessary and reasonable to treat the entire cash deposits of Rs.1,32,56,500/- as an income from undisclosed sources.”

4. Aggrieved, the assessee preferred an appeal before the CIT(A) and before the CIT(A) the assessee filed a petition requesting for admission of additional evidence, which pertains to one affidavit from Sri S. Venkateswara Rao, S/o Late Sri Thirupathi Rao resident of Madinaguda, Hyderabad who is supposed to be a relative of the assessee and who is said to have used the bank accounts of the assessee for his own business of real estate. The assessee stated that the amounts deposited in the bank account and the amounts withdrawn do not belong to him but to this person.

5. The CIT(A) referring to the provisions of Rule 46A, rejected to admit the additional evidence filed by the assessee in the form of affidavit.

5.1 On merits, the CIT(A) referring to the standard terms of opening of bank account, observed that allowing another person to use the accounts is a serious offence as it amounts to abetment both for tax evasion and for concealing the identity of the real person. This is also a serious violation of the contract of the assessee with the banks. The CIT(A) further observed that it is also on record that all the cheques for withdrawals were signed by the assessee and no details of the sources with respect to the relative have been provided. Why is it that the assessee allowed this relative to clandestinely use his bank account whereas the relative who is supposed to have a legally valid PAN could have easily opened his bank account anywhere. CIT(A) noted that when a query posed to assessee; whether the entire transactions had been disclosed by the so-called relative in his income tax returns, the assessee could not provide any reply.

5.2 In view of the above observations, the CIT(A) confirmed the addition made by the AO by holding as under:

"4.13 It is clear from above that the amounts in question were unaccounted and belongs to the appellant who only deposited these amounts in his own bank accounts. When these unaccounted transactions were discovered by the assessing officer, the appellant did not appear before him. As an afterthought he obtained a self-serving evidence by getting some person to file an income tax return and to obtain a PAN so as to show a bogus business. The explanation of the appellant does not have any evidence in its support. The entire conduct of the appellant is clearly aimed at tax evasion and the presentation of self serving evidence."

6. Aggrieved, the assessee is in appeal before us raising the following grounds of appeal:

1. The order of the learned Commissioner of Income-tax (appeals) is erroneous both on facts and in law.

2. *The learned Commissioner of Income-tax (appeals) erred in not admitting the additional evidence produced without considering the fact that the evidence is required to decide appeal and is relevant for ascertaining the facts. The learned Commissioner of Income-tax (appeals) ought to have considered the fact that the appellant was prevented by sufficient reason in not furnishing the said information before the Assessing Officer.*

3. *The learned Commissioner of Income-tax (appeals) ought to have deleted the addition of Rs.1,32,56,500 made by the Assessing Officer treating the aggregate of the deposits made into the ING Vysya Bank of Rs. 98,12,000 and ICICI Bank of Rs. 34,44,500 as the unexplained income of the appellant.*

4. *The learned Commissioner of Income-tax (appeals) ought to have accepted that the deposits were made by one Shri S. Venkateswara Rao and utilized the bank account for his purposes and therefore, the deposits made do not relate to the appellant.*

5. *The learned Commissioner of Income-tax (appeals) ought to have seen that Shri S. Venkateswara Rao, through his affidavit confirmed the fact and the learned Commissioner of Income-tax (appeals) ignored the important evidence which shows that the deposits made do not belong to the appellant.*

6. *The learned Commissioner of Income-tax (appeals) ought to have seen that the appellant explained the sources for the deposits made into the above mentioned two bank accounts and ought to have held that the deposits were properly explained by the appellant.*

7. *Without prejudice, the learned Commissioner of Income-tax (appeals) ought to have considered the fact that the aggregate of the deposits should not have been treated as the income of the appellant without considering the withdrawals.*

8. *The learned Commissioner of Income-tax (appeals) erred in confirming the assessment made by the Assessing Officer without admitting the additional evidence produced before him.*

9. *Any other ground that may be urged at the time of hearing."*

7. Before us, the Id. AR submitted that the additional evidence filed by way of an affidavit to claim that the deposits made in the assessee's account were belonged to Shri S. Venkateswara Rao, who had confirmed the transactions through an affidavit. He, therefore,

prayed that the additional evidence may be accepted and the addition may be deleted.

7.1 Alternatively, the AR submitted that, in case, additional evidence is not entertained by the Hon'ble Bench, there are subsequent withdrawals in the bank account, which signify that they are business transactions. He, therefore, submitted that all the deposits cannot be treated as income instead only profit of the business should be brought on record or peak credit in the bank account may be treated as income of the assessee.

8. The Ld. DR, on the other hand, submitted that the revenue authorities have given enough opportunity to the assessee to substantiate his claim by way of material evidence, but, the assessee did not comply, therefore, the CIT(A) has rejected the additional evidence submitted before him. Ld. DR placed reliance on the order of the CIT(A).

9. Considered the rival submissions and perused the material facts on record. The assessee has brought on record the additional evidence after a lapse of 2½ years. The additional evidence submitted before us could have been submitted before the AO to substantiate his claim, so that the department could have initiated proper proceeding in the case of Sri. S. Venkateswara Rao. At this juncture, we find inappropriate to consider the additional evidence filed by the assessee before us and, accordingly, we reject the additional evidence filed by the assessee.

9.1 Coming to the alternate submissions of the AR of the assessee, we agree that only the income should be brought to tax and not the credits in the bank account. Considering the transactions in the bank account, there are receipts as well as payments taken place, hence, it can be treated as business transactions and only the net profit alone

can be brought to tax as held in various decisions of the Courts. Accordingly, we direct the AO to estimate the profit on the gross receipts @ 8% or the profit %age as declared by the assessee in his own business for the AY under consideration, whichever is higher. Accordingly, the grounds raised in this regard by the assessee are treated as allowed for statistical purposes.

10. In the result, appeal of the assessee is allowed for statistical purposes.

Pronounced in the open Court on 13th January, 2017.

**Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER**

**Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Hyderabad, Dated: 13th January 2017

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Copy to:-

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- 2) *ITO, Ward - 8(3), Hyderabad.*
- 3) *CIT(A) - III, Hyderabad*
- 4) *CIT – II, Hyderabad*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File*