

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ B ‘ SMC Bench, Hyderabad**

Before Smt. P. Madhavi Devi, Judicial Member

ITA No.1012/Hyd/2018		
Assessment Year: 2010-11		
Shri P. Ramachandra Reddy, Tirupati PAN:AEIPP2820H	Vs.	Income Tax Officer Ward 1(2) Tirupati
(Appellant)		(Respondent)
Assessee by:	Smt. S. Sandhya	
Revenue by:	Smt. N. Swapna, DR	
Date of hearing:	08/01/2020	
Date of pronouncement:	17/01/2020	

ORDER

This is assessee's appeal for the A.Y 2010-11 against the order of the CIT (A)-Tirupati, dated 16.03.2016.

2. Brief facts of the case are that the assessee, an individual, filed his return of income for the A.Y 2010-11 on 31.03.2011, admitting an income of Rs.3,32,212/-. During the assessment proceedings u/s 143(3) of the Act, the AO called for copies of the Bank statements, details of agricultural income earned during the relevant financial year, cash flow statement in respect of sources of income for the deposits and application for withdrawals made in the Bank A/c and other documents in support of the claims made in the return of income. The assessee filed the relevant documents.

3. On perusal of the same, the AO observed from the joint statement of the joint bank A/c held by the assessee along

with his wife Smt. J. Bhargavi, with the SBI, TTD Administrative Building Branch that on 11.03.2010 an amount of Rs.15,00,000/- was deposited into the said a/c. The assessee was therefore, asked to explain the sources for such cash deposits. The assessee claimed that during the year 2009-10, his wife Smt. J. Bhargavi had borrowed a sum of Rs.15.00 lakhs by cheques from their family friends for the purposes of investment for purchase of a site and since the deal could not be materialised, the amount was redeposited into the Bank A/c and was refunded to the concerned persons by cheques. The AO, however, did not accept the contention of the assessee. He held that the assessee has taken loans for construction of a house which were immediately withdrawn thereafter from his A/c through self cheques and also by way of cheques issued in the names of two persons by name K. Sandeep and K. Sundar respectively and therefore, the assessee did not have further funds to deposit Rs.15.00 lakhs on 11.03.2010. He therefore, brought the sum of Rs.15.00 lakhs to tax as unexplained cash credit u/s 68. Aggrieved, the assessee preferred an appeal before the CIT (A), who confirmed the order of the AO and the assessee is in second appeal before the Tribunal.

4. The learned Counsel for the assessee reiterated the submissions made before the authorities below, while the learned DR supported the orders of the authorities below.

5. Having regard to the rival contentions and the material on record, I find that the assessee has filed the copy of Bank A/c statement at page 18 of the Paper Book. It is seen therefrom that the assessee has received through cheques, a sum of Rs.5.00

lakhs on 21.10.2009 and another Rs.4.00 lakhs on 22.10.2009 out of which Rs.4,00,000/- has been withdrawn on 21/10/2009 and another Rs.4,00,000/- and Rs.20,000/- on 22.10.2009. The assessee had withdrawn a sum of Rs.4,20,000/-. The assessee had again received a sum of Rs.6.00 lakhs on 23.10.2009 by way of two cheques and on 26.10.2009 and 27.10.2009 the assessee had withdrawn sums of Rs.4.00 lakhs and Rs.3.00 lakhs respectively in the names of K. Sandeep and K. Sundar. Thereafter, there are no major deposits into the Bank A/c except the salary of Rs.40,959/- and it is only on 11.03.2010, that the assessee has deposited the cash of Rs.15.00 lakhs which has been utilized to repay the loans by way of cheques to the creditors. The AO and the CIT (A) did not accept the assessee's contention of this fund of Rs.15.00 lakhs has been kept with the assessee for a period of 4 months before redepositing it into the Bank A/c. The CIT (A), in para 3 and 3.1 of his order has brought out that the assessee and his wife are constructing a house and therefore, the cash withdrawn from the Bank was required for utilization in the construction of the said building and should not be considered as available with the assessee for redepositing it into the Bank A/c on 11.03.2010. However, neither the AO nor the CIT (A) have been able to show that the investment made by the assessee and his wife in construction of the house was much more than the funds available with them by way of home loans taken by them. The finding of the AO and the CIT (A) that the assessee has not produced any agreement or document that there was no investment in the property is not sustainable because, when the assessee could not purchase the site, there cannot be any document to support the same. If there is any transaction, there would be some document. The assessee cannot be expected to prove the negative. Since the period of receipt and repayment is

only 4 months and there is nothing brought on record to show that the assessee has invested the entire money in the construction of the house, I am of the opinion that the assessee's contention needs to be accepted. The AO has also not brought out that the assessee has any other source of income other than the salary received by him. Therefore, the appeal of the assessee is allowed.

6. In the result, assessee's appeal is allowed.

Order pronounced in the Open Court on 17th January, 2020.

Sd/-

(P. MADHAVI DEVI) JUDICIAL MEMBER
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Hyderabad, dated 17th January, 2020.

Vinodan/sps

Copy to:

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- 2 ITO Ward 1(2) KT Road, Tirupati
- 3 CIT (A)-Tirupati
- 4 Pr. CIT - Tirupati
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order