

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad SMC Bench, Hyderabad
(Through Video Conferencing)
Before Smt. P. Madhavi Devi, Judicial Member

ITA No.1378/Hyd/2019		
Assessment Year: 2015-16		
Sri Venkatesh Soutoor Tirupati PAN:DDMPS5269B (Appellant)	Vs.	Income Tax Officer Ward 2(2) Tirupati (Respondent)
Assessee by:	Smt. S. Sandhya	
Revenue by:	Sri Kanika Agarwal,DR	
Date of hearing:	06/04/2021	
Date of pronouncement:	08/04/2021	

ORDER

This is assessee's appeal for the A.Y 2015-16 against the order of the CIT (A)-Tirupati, dated 12.06.2019.

2. Brief facts of the case are that the assessee is an individual. On verification of the information available with the Department under NMS data, it was found that during the financial year 2014-15 relevant to the A.Y 2015-16, the assessee has deposited cash aggregating to Rs.24,74,400/- in his a/c with Andhra Bank, Main Branch, Tirupati and that he has not filed his return of income for the said year. Therefore, the Assessing Officer issued a notice u/s 148 on 22.3.2018, in response to which the assessee e-filed his return of income dated 4.12.2018 admitting an income of Rs.1,92,050/-.

3. The Assessing Officer observed that this is the first year of filing of returns by the assessee and therefore, notices u/s

143(2) and 142(1) along with questionnaire were issued to the assessee to furnish the information with regard to the sources of cash deposits along with necessary evidence.

4. In response to the notices issued, the assessee furnished information stating that he is a goldsmith procuring old gold ornaments through auction sales from Andhra Bank and other customers and also selling them (after melting) and that he is not a registered dealer under VAT. The assessee also explained that in addition to the above, the sources for the total credits were also out of his past savings, hand loans, marriage gifts and business receipts admitted u/s 44AD of the Act. The details of the sources for cash deposits given by the assessee are as under:

1) Sale proceeds	Rs.15,92,000
2) Anticipatory withdrawals (towards old gold purchases)	Rs,10,54,081
3) Past savings, hand loans, interest receipts and marriage gifts	Rs. 6,71,819
4) Transferred from Ramesh, brother (gift on a/c of marriage)	Rs. 2,70,000
TOTAL	Rs,35,87,900

5. The Assessing Officer had also requested the assessee to furnish cash flow statement explaining the sources for the cash deposits in his bank a/c, but the assessee did not furnish the same. The Assessing Officer observed that the total cash deposits made by the assessee into Bank A/c and also through cash depositing machine under BNADP (Bulk Note Acceptor Deposits) are of Rs.35,87,900/- and not Rs.24,74,400/- as per the NMS data/AIR information. Thereafter, the Assessing Officer examined the sources for the cash deposits of Rs.35,87,000/-. The Assessing Officer observed that the assessee had claimed to have

procured old gold ornaments worth Rs.10,94,220/- through auction sales from Andhra Bank on the following dates:

Date of Purchase	Amount (Rs.)
17/03/2015	5,94,241
26/02/2015	44,326
28/11/2014	92,103
08/05/2014	2,52,906
5/5/2014	1,45,644

6. It was also submitted that the old gold ornaments of worth Rs.3,70,420/- were also procured from other customers and that the said gold was sold for a consideration of Rs.15,92,000/- and offered to tax u/s 44AD of the Act. But since the assessee did not furnish any documentary evidence in support of his claim of purchase of old gold as well as sale of gold ornaments, the Assessing Officer issued a letter dated 18.12.2018 to the Andhra Bank, Main Branch, Tirupati in which the assessee is holding the above a/c. calling for information u/s 133(6) of the Act. In response to the said letter, on 27.12.2018, the Chief Branch Manager replied that their branch has not done any auction of gold ornaments on the above dates. Therefore, the Assessing Officer came to the conclusion that the assessee has not purchased any old gold ornaments through auction from Andhra Bank and therefore, the question of sale of gold also does not arise. In view of the reply from Andhra Bank and in the absence of documentary evidence, the claim of declaration u/s 44AD of Rs.15,92,000/- was not accepted and after reducing the business income, admitted by the assessee an amount of (Rs.1,27,360/- minus Rs.15,92,000/-) a sum of Rs.14,64,640/- was treated as unexplained cash credit and brought to tax.

7. Further, the assessee had also claimed that there were a total cash withdrawals of Rs.10,54,081/- and that this was also one of the source for cash deposits. On verification of the same, the Assessing Officer found that there were several ATM withdrawals ranging from Rs.1000/- to Rs.15,000/- aggregating to Rs.2,93,500/- and other cheque withdrawals of Rs.7,60,581/- in the year under consideration. He observed that the ATM withdrawals are usually for the purpose of day to day expenses but not for re-depositing in the same a/c. Therefore, he did not accept a sum of Rs.2,93,500/- as source for the cash deposits and accordingly brought it to tax.

8. The assessee had also stated that he has received a gift of Rs.2,70,000/- from his brother on a/c of his marriage for which he has filed confirmation letter and the gift deed and the transaction was done through banking channel. The assessee has stated that he has received marriage gifts from others totaling to Rs.5,79,419/-. After enquiry conducted through ITI of the Office, it was found that the assessee stated to have received cash gifts from 105 persons and cash ranging from Rs.501/- to Rs.1,00,001/- for which the assessee has provided a list of donors and claimed that these are also the sources for the cash deposits during the year. The Assessing Officer, however, did not accept the entire cash gifts and he has accepted only 1/3rd of the cash gifts and the balance of Rs.3,86,279/- was treated as unexplained cash credit. As regards gift of Rs.2,70,00/- from his brother, the Assessing Officer observed that the transaction was done through Banking channel. He therefore, did not accept it as a source for the cash deposits and accordingly brought it to tax. Thus, the

total of the additions made towards unexplained cash credits was Rs.24,14,419/-.

9. Aggrieved, the assessee preferred an appeal before the CIT (A) but the CIT (A) confirmed the order of the Assessing Officer and against the said order of the CIT (A), the assessee is in appeal before us by 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 confirming the action of the Assessing officer in initiating the proceedings u/s 147 of the I.T Act.

3. The learned Commissioner of Income-Tax (Appeals) erred in confirming the addition of Rs.14,64,640/- made by the Assessing officer disbelieving the source for the deposits made into the bank.

4. The learned Commissioner of Income-Tax (Appeals) ought to have considered the explanation that the amount was received on sale of old gold ornaments and that the amount was properly explained.

5. The learned Commissioner of Income-Tax (Appeals) ought to have considered that the deposits to an extent of Rs.2,93,500/- are from out of the withdrawals by the appellant and should have considered the same as a source available.

6. The learned Commissioner of Income-Tax (Appeals) ought to have considered that the gift received from brother of the appellant Sri S. Ramesh of Rs.2,70,000/- is genuine and should not have been added by the Assessing Officer.

7. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing officer in disbelieving the gifts received by the appellant at the time of marriage to the extent of Rs.3,86,279/ - out of Rs.5,79,419/- and that the said gifts are available for the appellant.

8. The learned Commissioner of Income-Tax (Appeals) erred in confirming levy of interest u/s 234A of Rs.7,461/- and u/s 234B of Rs.3,35,745/-.

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

10. At the time of hearing, the learned Counsel for the assessee submitted that the assessee is not pressing Ground No.2 and it is accordingly rejected.

11. As regards the other grounds of appeal, they are all against the additions made by the Assessing Officer disbelieving the sources of the cash deposits made into the assessee's Bank A/c with Andhra Bank, Main Branch, Tirupati. There is no dispute that the assessee is a goldsmith and also that he has never filed any return of income in the earlier years. Further, the total of the cash deposits made into assessee's Bank A/c are of Rs.35,87,900/-. It is the case of the assessee that the assessee used to pay the loan amount of the people who have taken gold loans from the bank, for release of gold, and thereafter, he sells the said gold ornaments and the sale consideration is deposited into his Bank A/c in cash. However, the Assessing Officer has recorded that the assessee has stated that he has purchased the gold from the Andhra Bank auction and therefore, the Assessing Officer has issued a letter to the Andhra Bank, Main Branch, Tirupati in response to which the Chief Branch Manager has stated that they have not done any auction of old gold on the dates given by the assessee. Copy of the letter filed by the assessee is not before the Tribunal. However, from the recital of the averments of the assessee in the assessment order, it is seen that the assessee is stated to have procured old gold through auction sales from Andhra Bank and other customers as well. Therefore, the entire procurement of gold ornaments is not only through auction from Bank, but they are from other customers as well. The learned Counsel for the assessee has filed before this Tribunal, the copy of the Bank A/c of the assessee as well as the

customers from whom the assessee has allegedly purchased the gold and also the confirmation letters stating that the assessee has paid the loan amount and after release of gold, the said gold was sold and the sale consideration was given to the assessee in cash. None of these letters were considered and verified by the Assessing Officer and he has accordingly disallowed the entire sum of Rs.15,92,000/-. In my opinion, if the assessee is able to prove the transfer of money from the assessee's bank a/c to the bank a/c of the customers and if the said gold loan is repaid on the same date, then taking the confirmation from the parties into consideration, the sale consideration of those transactions should be accepted as source for cash deposits. Therefore, I deem it fit and proper to remand this issue to the file of the Assessing Officer with a direction to verify the Bank A/c of the assessee and also of the other parties and reconsider the issue in accordance with law.

12. As regards the cash withdrawals and the marriage gifts from others and gift from his brother as sources for the balance of cash deposit is concerned, I find that the Assessing Officer has held the ATM withdrawals and also 2/3rd of the gifts at the time of marriage as sources for redeposits into the Bank A/c as unbelievable. In my opinion, the entire ATM withdrawals may not have been used for day to day expenses and some of them might have been utilized for making the deposits into his Bank A/c. Therefore, I am inclined to accept 50% of the same as source for cash deposits. The assessee gets relief accordingly.

13. Similarly, the marriage gifts from others also, I am inclined to accept 50% of the same as against 1/3rd of the cash gifts accepted by the Assessing Officer. Therefore, 50% of the total

amount of Rs.5,79,419/- is accepted as source for cash deposits. As regards gift on account of marriage from his brother, I find that the transaction has been done through banking channel and therefore, it cannot be considered as a source for cash deposits. Therefore, ground relating to this addition is rejected.

14. In the result, assessee gets partial relief as discussed above and the appeal of the assessee is treated as partly allowed for statistical purposes.

Order pronounced in the Open Court on 8th April, 2021.

Sd/-

**(P. MADHAVI DEVI)
JUDICIAL MEMBER**

Hyderabad, dated 8th April, 2021.

Vinodan/sps

Copy to:

S.No	Addresses
1	Sri Venkatesh Soutoor, D.No.17-3-173, Poola Street, Tirupati 517501
2	Income Tax Officer Ward 2(2) Tirupati
3	CIT (A)-Tirupati
4	Pr. CIT - Tirupati
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order