

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri S.Rifaur Rahman, Accountant Member**

ITA Nos.962 to 968/Hyd/2015
(Assessment Years: 2005-06 to 2011-12)

Shri A. Ashok Simha Reddy Vs DCIT, Central Circle – 8
Hyderabad Hyderabad
PAN; ADHPA 3602 Q
(Appellant) (Respondent)

ITA Nos.998/Hyd/2015
(Assessment Year: 2008-09)

DCIT, Vs Shri A. Ashok Simha Reddy
Central Circle – 3(1) Hyderabad
Hyderabad PAN; ADHPA 3602 Q
(Appellant) (Respondent)

For Assessee : Shri A.V. Raghuram
For Revenue : Shri J. Siri Kumar, DR

Date of Hearing: 22.11.2017
Date of Pronouncement: 30.11.2017

ORDER

Per Smt. P. Madhavi Devi, J.M.

ITA Nos. 962 and 966 to 968/Hyd/2015 are assessee's appeals for the A.Ys 2005-06 to 2011-12 against the order of the CIT (A) for the respective A.Ys while ITA No.998/Hyd/2015 is Revenue's appeal against the order of the CIT (A) for the A.Y 2008-09.

2. The learned Counsel for the assessee has filed a chart depicting various issues arising in all of these appeals and it is seen that most of the issues are repetitive in all the years. Therefore, we are disposing of the appeals on the basis of the issues arising therefrom.

3. The first issue in the appeals for A.Ys 2005-06 to 2008-09 is the addition of the amount mentioned in the promissory notes found in the course of search as unexplained cash credits. Brief facts relating to this issue are that during the course of search u/s 132 of the Act in the case of the assessee and others on 2.9.2010, certain promissory notes for the amount lent by him were found. The assessee's contention that these promissory notes were obtained as security from the chit members, was not accepted by the AO and accordingly, he made the addition. The CIT (A), on the other hand, held that they are not cash credits, but represent unexplained investment and is to be brought to tax u/s 69. Aggrieved, the assessee is in appeal before us for the relevant A.Ys. The learned Counsel for the assessee submitted that similar issue had arisen in assessee's brother's case and ITAT has remanded the issue to the AO with some directions and reconsideration of the issue on merits. The learned DR, however, relied upon the orders of the authorities below.

4. Having regard to the rival contentions and the material on record, we find that in the case of A. Pandu Ranga Reddy, the Tribunal at Para 13 to 15, has held as under:

“Addition based on Promissory Notes:

13. AO made addition of Rs. 6 Lakhs in AY. 2009-10 and 1,50,000/- in AY. 2010-11 on two promissory notes found in the course of search proceedings. AO was of the opinion that an amount of Rs. 6 Lakhs was lent on 03-07-2008 against cash receipt to Shri A. Rajavardhan Reddy, which was brought to tax in AY. 2009-10 and an amount of Rs. 1,50,000/- lent on 31-12-2009 against promissory note to Shri V. Ravi Kumar was brought to tax in AY. 2010-11. Similar to the 'agreements of sale' seized by the department, assessee contended that promissory notes were also obtained for securing the chit business. On the reason that assessee has not substantiated with any documentary evidence, Ld. CIT(A) confirmed above amounts.

14. Before us, Ld. Counsel submitted that in the un-organised chit business conducted by the assessee and his family members, sometimes security was taken in the form of agreement of sale if the bidders are having properties and some times, by way of promissory notes for a higher amount than what was lent. It was submitted that these two transactions also pertain to chit business. It was further submitted that the relevant pro-notes were seized by the department and are available with them. Ld. DR supported the orders of the Ld. CIT(A).

15. On this issue also, we are of the opinion that AO has not made out any enquiries. It is accepted that assessee is conducting un-organised chit business and as discussed earlier for the 'agreements of sale' found during the course of search, the modus operandi has been accepted. In view of that, assessee's contentions cannot be brushed aside without proper enquiry. Since the promissory notes are available with the department (by this time, they would have been time barred), it is necessary that AO makes necessary enquiries with the persons who executed the promissory notes to ascertain whether assessee has advanced cash or obtained them towards security for the chit availed by them. Unless proper enquiry is made, it would not be proper to refuse assessee's contentions, when part of the contentions with reference to 'agreements of sale' were accepted. In view of this, we are of the opinion that necessary enquiries with the persons who executed promissory notes is required to be conducted by the AO to know the exact nature of a transaction and then take a decision whether the amount can be brought to tax as unexplained investment/

unexplained asset or not. For this purpose, we set aside the orders of the AO and CIT(A) on this issue and restore the matter to the file of AO for fresh enquiry. Assessee should be given due opportunity and assessee is free to furnish the necessary evidences in support of his claim. With these directions/observations, the grounds in these two years are considered allowed for statistical purposes”.

For the reasons given in ITAT order in the case of Shri A. Pandu Ranga Reddy in ITA Nos.797/Hyd/2015 to 803/Hyd/2015 for the A.Ys 2005-06 to 2011-12 vide order dated 21.9.2016 as above, this issue in the assessee's appeals for 2005-06 to 2008-09 is remitted to the file of the AO with similar direction.

5. The second issue in all the A.Ys is the treatment of agricultural income as “income from other sources”. We find that this issue also has arisen in the case of A. Panduranga Reddy and ITAT in para 6 of its order has held as under:

“6. We have considered the rival contentions. There is no dispute with reference to the fact that assessee owns agricultural land and also purchased 4.71 guntas of land in September 2004. Considering the value of the land purchased and the extent of agricultural income offered, the AO's contentions seems to be partially correct. Since assessee is not in a position to furnish any evidence to substantiate the incomes earned and returned, we have no option than to estimate the agricultural income at a reasonable basis. Assessee's submission that it has grown Paddy, Grapes and Vegetables on a piece of land of 1.27 acres cannot be accepted as it is not possible to cultivate all the three in small piece of land. However, since assessee owns some agricultural land in the impugned years, we are of the opinion that income at Rs. 10,000/- per acre can be justified as a reasonable income earned on the said lands. Accordingly, AO is directed to accept income at Rs. 10,000/- per acre for AY. 2005-06, 2006-07, 2007-08. The balance of the income in each year is confirmed as 'income from other sources' as was done by the AO. Assessee's grounds are partly allowed”.

For the above reasons, and also in view of the fact that the assessee is the owner of agricultural land and has claimed to have grown similar crops, we are inclined to direct the AO to accept Rs.10,000 per acre as agricultural income. This issue is also treated as partly allowed.

6. The third issue in the appeals for the A.Ys 2006-07 to 2011-12 is the disallowance of the assessee's claim of deduction u/s 80C of the Act. The assessee has claimed the maximum sum of Rs.1.00 lakhs allowable as a deduction u/s 80C of the Act for all the A.Ys. The assessee claimed LIC payment and also the payment of housing loan as a deduction u/s 80C of the Act. The AO observed that the assessee did not submit proof of payment of LIC premium. Further, regarding the repayment of housing loan principal, he observed that the loan was said to have been taken for commercial building and since the deduction is available only for a residential house, he held that assessee's claim is not allowable. Thus, he brought the entire amount of Rs.1.00 lakh to tax by disallowing the claim of deduction u/s 80C of the Act. Aggrieved, the assessee filed appeals before the CIT (A) along with proof of LIC premium and interest certificate of Bank of India narrating the purpose of the loan as for the purchase/reconstruction of house/flats. On appeal, CIT (A) accepted the payment of LIC premium, but as regards the repayment of housing loan, she held that the assessee has not furnished any rental agreement to substantiate his claim that it is a residential property. In view of the same, the CIT(A) restricted the claim of deduction u/s 80C of the Act to LIC premium only

and the assessee is in appeal before us against the relief denied by the CIT (A).

7. The learned Counsel for the assessee has drawn our attention to the certificate issued by the Bank to state that the loan was taken for a residential property and therefore, repayment of principal of such loan is to be allowed u/s 80C of the Act subject to the maximum of Rs.1.00 lakh. We find that the CIT (A) has held that the interest certificate given by Bank of India does not establish that the said property was used as a commercial property and also that the assessee has not filed any rental agreement during the appellate proceedings to substantiate his claim.

8. We have gone through the certificate issued by the Bank of India and find that the loan is given for purchase of a flat. The nature of the said flat purchased by the assessee, is not mentioned in the certificate. It could be a residential flat also. In view of the same, we deem it fit and proper to remand this issue to the file of the AO with a direction to verify the nature of the property, and if it is found to be a residential property purchased by the assessee against which the assessee has been given loan by the Bank of India, then irrespective of the use of the building, the claim of deduction u/s 80C of the Act shall be allowed in respect of the repayment of the principal amount, of course subject to the maximum limit. Thus, the grounds of appeal for all the A.Ys on this issue are treated as allowed for statistical purposes.

9. Fourth issue only for the A.Ys 2008-09 & 2009-10 is enhancement of income as accretion to capital. Brief facts are that during the appellate proceedings, from the capital account furnished by the assessee, the CIT (A) observed that as on 31.3.2007, there is an increase of Rs.6.38 lakhs in its capital account for A.Y 2008-09. He observed that the assessee has shown total income of Rs.3.34 lakhs in its return of income filed for the A.Y 2008-09 and therefore, he asked the assessee to show-cause as to why the increase of capital of Rs.3.04 lakhs should not be treated as unsubstantiated and should not be treated as unexplained investment u/s 69 of the Act. In effect, the CIT (A) asked the assessee to prove the source of investment of capital. The assessee submitted that on the occasion of his birth day, he has received a gift of Rs.5.00 lakhs from his paternal uncle and further that he had received a gift of Rs.2,08,460 and Rs.52,000 from his father and mother respectively which are the sources of his investment. The CIT (A) was not convinced with the contentions of the assessee. He therefore, held that the assessee's contentions are nothing but an afterthought and treated the sum of Rs.3.04 lakhs as unexplained investment u/s 69 of the Act. Similar addition of Rs.3,28,000 was made in the A.Y 2009-10 as well and the assessee is in appeal before us.

10. The learned Counsel for the assessee reiterated the submissions made by the assessee before the lower authorities and submitted that the assessee has income in the earlier A.Ys sufficient to explain the increase in its capital during the A.Y 2008-09 and 2009-10. He has also filed before us copies of his capital account and statement of affairs of the assessee for the

relevant previous years to explain the source for the increase in the capital. On perusal of the same, we find that the assessee has not been maintaining any books of account prior to the date of search and has prepared the capital a/c and statement of affairs only from the A.Y 2005-06 onwards. It is seen that from the A.Y 2005-06 onwards, the assessee has shown opening capital and there is increase in capital year after year. The source is also explained as income from chit fund business and past savings. We therefore, deem it fit and proper to remand this issue in both the A.Ys to the file of the AO for verification of the above sources for increase in the capital.

11. The fifth issue arising in these appeals is the addition made as unexplained investment based on the documents other than relating to chits, found during the course of search. We find that for the A.Ys 2006-07, 2007-08, 2009-10, 2010-11 & 2011-12, the AO has made the additions towards unexplained investment. Brief facts are that during the course of search and seizure operation u/s 132 of the I. T. Act, certain property documents were found and seized. The assessee was asked to explain the nature of the transaction and the source of funds for such investments in the respective A.Ys.

12. For the A.Y 2006-07, The assessee explained that the assessee has purchased agricultural land measuring 1.22 acres in survey No.371 & 371 E of Mangalapalli Village, Ibrahimpatnam for a sum of Rs.2.00 lakhs which is being reflected in his HUF return of income, and that an extent of Ac 5.02 gts of agricultural land in survey No.7, Sahubguda, Mangalapaly, Ibrahimpatnam

was purchased for a sum of Rs.6,31,500 and the same is also being reflected in his HUF returns of income. The AO, however, held that the assessee has not produced any evidence in support of his contention that these investments are declared in the assessee's HUF returns. He therefore, made the addition of Rs.8,31,500. The CIT (A) also confirmed this addition.

13. For the A.Y 2007-08, the assessee has stated that he has purchased Ac 2.11. gts of agricultural land in survey No.285, 284, 284A and 283 in Penjarla Village, Kothur Mandal, Mahaboobnagar for a sum of Rs.1,26,500 and that the same is being reflected in the his HUF return o income. As regards the source of investment in other agricultural land as stated in Table 3 & 4 of the assessment order for the relevant A.Y, the assessee explained the source to be from sale proceeds of agricultural land at various places, particularly, Thumaloor Village. The AO, however, was not convinced with the assessee's contention and made the addition of Rs.44,04,075. On appeal, the CIT (A) confirmed the addition of Rs.1,26,500 as the assessee could not produce books of account of the HUF and also because there was no mention of HUF in the purchase deed of the property. As regards the sources for investment in other properties, the CIT (A) accepted the source to the extent of Rs.34,77,575. The CIT (A) gave the benefit of telescoping of Rs.7.00 lakhs out of the balance of the sale proceeds of Rs.15.00 lakhs out of Thumaloor land and confirmed the addition of Rs.8.00 lakhs.

14. For the A.Y 2009-10, the assessee has shown to have purchased a plot at Tummalakunta Village for a sum of Rs.30,35,000. The assessee could not explain the source of investment, therefore, the AO made addition of this amount as unexplained investment and brought it to tax. Before the CIT (A), the assessee reiterated his submissions, but after verifying the cash in hand of the assessee for the previous assessment year, the CIT (A) confirmed the finding of the AO that the assessee has failed to prove with necessary evidence, the source for such investment.

15. The assessee is in appeal before us against all these additions for the relevant A.Ys.

16. For the A.Y 2006 07 the learned Counsel for the assessee reiterated the submissions made before the AO but has not been able to produce any evidence in support of his contention that they are reflected in HUF returns. In the absence of any evidence in support of his claim, we are not inclined to interfere with the order of the CIT (A). The assessee's grounds of appeal relating to the additions of Rs.8,31,500 are therefore, rejected.

17. In the A.Y 2007-08, there are two additions. As regards the sum of Rs.1,26,500, we find that the assessee has not been able to produce the balance sheet of the HUF to demonstrate that the property worth of Rs.1,26,500 is reflected in the HUF

return of the assessee. Therefore, we confirm the addition of Rs.1,26,500.

18. As regards addition of Rs.8.00 lakhs, we find that at pages 60 to 62 of the paper book, the assessee has filed the copy of the capital a/c and the statement of affairs as on 31.3.2006 to demonstrate that as on 1.4.2005, the assessee had an opening capital amount of Rs.30,87,987 and the closing balance of Rs.53,46,710. The assessee has explained this amount to be the source for investment of Rs.8.00 lakhs. We find that neither the CIT (A) nor the AO have actually verified this claim of the assessee. Therefore, we deem it fit and proper to remit this issue to the file of the AO for verification of the assessee's claim and if it is found that the assessee had sufficient capital for making the investment of Rs.8.00 lakhs during the previous year relevant to the A.Y 2007-08, then no such addition shall be made. In the result, the grounds against the addition of Rs.8.00 lakhs are treated as allowed for statistical purposes.

19. As regards the addition of Rs.30,35,000 in the the A.Y 2009-10, the assessee has explained the source as (i) cash in hand as on 31.3.2008 and (ii) loan amount from his HUF. We find that the CIT (A) has verified the cash book of the assessee and found that the closing balance of cash in hand was Rs.4,263/-. Further he did not accept the balance of investment of Rs.12.00 lakhs as loan from his HUF because the assessee failed to produce any documentary evidence, much less the books of account of HUF. Even before us, the assessee has not furnished any evidence in support of his contention. However, since the

assessee has claimed to have sufficient balance in his capital a/c on the opening day of the relevant previous year and for the A.Y 2007-08, we have referred the matter to the file of the AO to consider its acceptability as a source of investment, we deem it fit and proper to remit this issue for this year also to the file of the AO for verification and decision in accordance with law after giving the assessee a fair opportunity of hearing. However, as regards the sum of Rs.12.00 lakhs which is explained to be the loan amount from his HUF a/c, the assessee has not filed any evidence before the authorities below or even before us to consider the same. Therefore, the addition of Rs.12.00 lakhs is confirmed. Grounds relating to this addition are therefore, treated as partly allowed for statistical purposes.

20. For the A.Y 2009-10, there is an additional issue of addition of Rs.12,02,000 as unexplained cash credit. During the course of search, the AO found certain documents showing that the assessee has paid Rs.2,32,000 as fees to Orchid School and Rs.8,00,000 to Matrusri Educational Society towards development fund. With regard to the source for such payments, the assessee explained that the fee paid to Orchid School is reflected in his HUF return and that the sum of Rs.8.00 lakhs was deposited by his uncle in his Bank A/c and the assessee has drawn the DD in favour of Matrusri Education Society. In the absence of any evidence to prove this contention, both the AO and the CIT (A) did not accept the contention of the assessee. The assessee has not filed any evidence even before us. Therefore, the addition of Rs.12,02,000 is confirmed.

21. For the A.Ys 2010-11, the addition u/s 69 of the Act is to an extent of Rs.1,37,63,400. The assessee had explained the source as the amount received back from his debtor. It was submitted that he had given a loan of Rs.80.00 lakhs to one Mr. Mohd. Suleman and as a security for the said loan, Mr.Suleman through his partner , has offered the property bearing Municipal No.16-6-33/P, Chaderghat, Hyderabad and an agreement of sale from GPA was executed to protect the assessee's interest. The AO was not convinced with the assessee's contention and treated the amounts mentioned in the GPA, MOU and also the receipts as unexplained investment. The said addition was confirmed by the CIT (A).

22. The assessee has filed an application dated 8.4.2017 before us, requesting us to admit the additional evidence filed by the assessee and to remand the same to the file of the AO for verification. In the additional evidence, the assessee has filed copies of (1) bank a/c statement of Bank of India, Malakpet Branch, Hyderabad for the period Feb. 2009 to Jan. 2011 and (2) Encumbrance certificate dated 22.3.2013 reflecting that the GPA-cum-POA dated 23.2.2010 was cancelled in March, 2011. It is submitted that if these two documents are considered, it would be evident that the assessee has advanced the loan of Rs.80 lakhs to Mr. Mohd. Suleman and further that all the other documents are executed only to secure such transaction.

23. The learned DR objected to the admission of this additional evidence.

24. We find that the documents now filed by the assessee are only bank statements and the encumbrance certificates which are issued by the bank authorities and the govt. agencies respectively. In our opinion, these documents, being third party records, can be admitted. Similarly, for the A.Y 2011-12 also, the assessee has filed the additional evidence being the Bank A/c copy and the encumbrance certificate for the very same property. Therefore, we are inclined to admit the additional evidence filed by the assessee and remit the same to the file of the AO for verification and we direct the AO to consider the allowability of the assessee's claim in accordance with the law. In the result, assessee's ground of appeal for the A.Ys 2010-11 & 2011-12 against these additions are treated as allowed for statistical purposes.

25. For the A.Y 2008 09, there is an appeal filed by the Revenue. In this appeal, the Revenue is aggrieved by the order of the CIT (A) deleting the addition of Rs.40.00 lakhs which was made by the AO as unexplained investment u/s 69 of the Act. The CIT (A) has accepted the assessee's contention that the agreement of sale in respect of agricultural land in survey No.191 & 192 of Mankhal Village, Maheswaram Mandal, was taken only as a measure of security against the prize money for the chit business run by his father Shri A. Narasimha Reddy. We find that this issue is similar to the issue in the assessee's brother's case i.e. Shri A. Pandu Ranga Reddy in ITA No. 797/Hyd/2015 to 803/Hyd/2015 for the A.Ys 2005-06 to 2011-12 and the Tribunal at Para 12 of its order has observed that the AO did not make inquiry with regard to the contention of the assessee and

therefore, had remitted the matter to the file of the AO with a direction to verify the assessee's claim and also allow the assessee to furnish necessary documents/evidence/confirmation/affidavits in support of his contention. Respectfully following the decision of the Coordinate Bench on similar set of facts, this ground of appeal raised by the Revenue is also remitted to the file of the AO with similar direction.

26. In the result, Revenue's appeal is treated as allowed for statistical purposes.

27. To sum up, assessee's appeals for the A.Ys 2005-06 to 2011-12 are treated as partly allowed and Revenue's appeal for A.Y 2008-09 is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 30th November, 2017.

Sd/-
(S.Rifaur Rahman)
Accountant Member

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, da ed 30th November, 2017.

Vinodan/sps

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- 4 CIT – Central, Hyderabad
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- 6 Guard File

By Order