

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

**BEFORE Smt. P. MADHAVI DEVI, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCE)**

**ITA Nos. 1842 & 1843/Hyd/2017
Assessment Year: 2011-12**

1. S.M. Qutubuddin, Hyd. vs. Income-tax Officer,
PAN – ABWPS 5341 K Ward – 6(4), Hyderabad

2. S.M. Fasiuddin,
(represented by GPA holder
Mr. S.M. Qutubuddin, Hyd.)
PAN – ABNPS 7562 H

(Appellants)

(Respondent)

Assessee by : Shri S. Rama Rao
Revenue by : Smt. K.J. Divya

Date of hearing : 19-06-2020
Date of pronouncement : 24-06-2020

ORDER

Both the appeals are filed by respective assessees' against the separate orders of CIT(A) – 12, Hyderabad, both dated, 07/08/2017, respectively. Both the assessees are brothers and the issues involved in these appeals are common and, therefore, they were heard together and are disposed of by this common and consolidated order.

2. For the sake of convenience, the facts from the case of assessee, Shri S.M. Qutubuddin are taken into consideration. The assessee filed his return of income for the AY 2011-12 on 31/12/2011 declaring total income of Rs. 9,96,935/-. During the assessment proceedings u/s 143(3) of the Act, the AO has noticed that the

assessee has shown 8 properties as belonging to him and his brothers and after retaining one house for self-occupation, the assessee has offered income from 4 properties and for the balance 3 properties, assessee has shown 'Nil' income. The AO observed that as per section 23 of the IT Act, 1961, the assessee should have adopted fair rental value and offered the same to tax. Therefore, with regard to a property at Tolichowki, he adopted the rental income earned by the assessee during the earlier FYs with 10% hike as the rental income for the relevant AY and accordingly, made the total addition of Rs. 1,65,606/- as income from house property. Further, with regard to other two properties at Banjara Hills, he observed that they were under tenancy and he brought the rent agreed to between the parties to tax though the assessee contended that there was a dispute with the tenants and they were not paying the rent.

2.1 Thereafter, the AO also observed that the assessee has declared agricultural income of Rs. 7 lakhs. He observed that the assessee's brother, one Mr. SM Lateefuddin, had given a statement on 30/12/2013 wherein he has stated that agricultural produce i.e. coffee bean was produced in 65 acres and is sold only to one company i.e. ABC Company and that ABC Company also confirmed that they have purchased 1,648 kgs of coffee bean for Rs. 1,71,700/- from the assessee. In the absence of any evidence for the remaining income of Rs. 5,28,300/- (Rs. 7,00,000 – 1,71,700/-), from

Agriculture, the AO disallowed the same and treated it as income of the assessee from other sources.

2.2. Further, the AO also noticed from the statement of affairs furnished by the assessee that the assessee failed to show the closing balance of Rs. 2,89,318/- from SBH and Rs. 9,214/- from Canara Bank. He, therefore, treated the entire amount of Rs. 2,98,532/- as income of the assessee.

3. 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 by raising the following grounds of appeal:

"1. The order of the Learned Commissioner of Income-Tax(Appeals) is contrary to law and facts in the circumstances of the case.

2. The Learned Commissioner of Income-Tax erred in confirming the addition of Rs 11,550 towards alleged income from house property, even though the property was vacant for the whole year and was in fact demolished, on the facts and in the circumstances of the case.

3. The Learned Commissioner of Income-Tax erred in stating that the assessing officer has adopted the value of the appellant's share 1/1 o" property even though the entire income was brought to tax in the hands of the appellant, on the facts and in the circumstances of the case.

4. The Learned Commissioner of Income-Tax erred in confirming the add it ion of Rs. 90,216 being entire income from Ground Floor of property bearing no. 8-2-596/5/B/1, Banjara Hills, Hyderabad less deduction under section 24(a),on the facts and in the circumstances of the case.

5. The Learned Commissioner of Income-Tax erred in not appreciating the fact that the appellant had only 1/6 th share in the income from the Ground Floor of property, bearing no. 8-2-596/B/1 situated at Banjara Hills, Hyderabad, on the facts and in the circumstances of the case.

6. *The Learned Commissioner of Income-Tax further erred in not appreciating the fact that there was a dispute with the tenant and as such he was not paying rent to the appellant and the amount received by the appellant has been duly disclosed during the previous year relevant to the assessment year 2013-14 , on the facts and in the circumstances of the case.*

7. *The Learned Commissioner of Income-Tax similarly erred in bringing to tax entire income from First Floor of property bearing no. 8-2-596/5/B/I, Banjara Hills, Hyderabad less deduction under section 24(a) at Rs.63,840, on the facts and in the circumstances of the case.*

8. *The Learned Commissioner of Income-Tax erred in not appreciating the fact that the appellant had only 1/6 th share in the income from the First Floor of property, bearing no. 8-2-596/B/I situated at Banjara Hills, Hyderabad, on the facts and in the circumstances of the case.*

9. *The Learned Commissioner of Income-Tax further erred in not appreciating the fact that there was a dispute with the tenant and as such he was not paying rent to the appellant and the amount received by the appellant has been duly disclosed during the previous year relevant to the assessment year 2013-14, on the facts and in the circumstances of the case.*

10. *The Learned Commissioner of Income-Tax erred in confirming the addition of Rs.5,28,300 out of the agricultural income declared by the appellant, on the facts and in the circumstances of the case.*

11. *The Learned Commissioner of Income-Tax (Appeals) erred in confirming the addition of Rs.2,98,532 as alleged income as assets over liabilities, on the facts and in the circumstances of the case.*

12. *The Learned Commissioner of Income-Tax erred in not appreciating the fact that the merely because the closing balances of State Bank of Hyderabad and Canara Bank were not reflected in the Statement of Affairs as assets cannot be added as income, on the facts and in the circumstances of the case.*

13. *The appellant craves leave to add to, alter or amend any of the aforesaid grounds as advised, on or before the date of hearing.”*

4. Ground Nos. 1 & 13 are general in nature and hence need no adjudication. As regards ground Nos. 2 & 3 relating to income from the

property at Tolichowki (wherein the assessee had 1/10th share of the property), the Id. Counsel for the assessee submitted that this property is an open land with a small shed and this was given to Hyderabad Gas company on rent as godown to keep their gas cylinders and, therefore, rent paid by the said company was towards the land. Without prejudice to this agreement, he further submitted that this land was vacated in 2010 and that the same party had again taken the said property on lease in the subsequent year for a short duration and, therefore, the rent paid by the company in the earlier years alone should have been adopted as fair rental value without any hike of 10% and only his share of such income should have been treated as assessee's income.

5. The Id. DR, on the other hand, supported the orders of the authorities below and submitted that the rental agreement itself shows that the property, which was taken on rent was a godown and not just land as argued by the Id. Counsel for the assessee. Therefore, according to him, the AO has rightly computed the fair rental value and has rightly treated the income as 'income from house property and has brought it to tax.

6. Having regard to the rival submissions and material on record, I find that the property, which has been let out by the assessee is not just open land, but, with a shed thereon, which is treated as a godown. In the schedule of rental deed, it is mentioned that godown is built on a plot admeasuring 1000 sq. meters and therefore, income

from such godown has rightly been treated as 'income from house property' and even in the earlier years, the income received from the same godown has been offered / treated as income from house property. However, I agree with the contention of the Id. counsel for the assessee that hike of 10% on rent should not have been adopted, but the rental paid by the said party prior to vacating the same should have been adopted as fair rental value for the period when the property was vacant. Therefore, I direct the AO to recompute the income from this property by adopting the rent paid by the party before the said property was vacated as fair rental value. Thus, Grounds No. 2 & 3 are partly allowed.

7. As regards ground Nos. 4 to 9 with regard to rental income from the property situated at Road No. 10, Banjara Hills, and covers ground floor and first floor of the said building, the Id. Counsel for the assessee submitted that there was a dispute with the tenant with regard to the rent and the assessee has filed a suit for eviction and also recovery of rent from the tenant. He submitted that the tenant was depositing the rent in the court pending final decision and eventually when the case was decided in favour of the assessee, the Court released a sum of Rs. 5,62,674/- and the assessee has offered the said income to tax in the relevant assessment year i.e., AY.2013-14. He submitted that since the assessee has offered the income to tax in the subsequent years on receipt basis, the same should not have been brought to tax in the assessment year before us.

8. The Id. DR, on the other hand, supported the orders of the authorities below.

9. Having regard to the rival submissions and material on record, I find that the assessee has not received the rent from the property during the relevant AY and has also filed a suit in O.S.No.408 of 2009 in the Court of XI Addl. Chief Judge, City Civil Court, Hyderabad for eviction of the tenant and for recovery of rent. It is the case of the assessee that the assessee has paid taxes on the receipt of the arrears of rent in AY 2013-14. In this connection, the assessee has referred to the computation of income for the AY 2013-14 which is available in the paper book to demonstrate that the assessee has paid tax on the same. I direct the AO to verify the same and if it is found that the assessee has offered the income to tax in the subsequent AY 2013-14, then, no addition of the same shall be made during the relevant AY. The ground Nos. 4 to 9 are thus treated as allowed for statistical purposes.

10. As regards ground No. 10 relating to agricultural income, the Id counsel for the assessee submitted that the total land owned by the family was around 97 acres, in which, coffee bean was grown and also various other crops, such as, cardamom, pepper, paddy, etc. were grown. The Id. Counsel for the assessee submitted that the AO has considered the income from coffee bean alone as agricultural income and has disallowed the balance claim of the assessee. He submitted that the assessee had declared agricultural income in the

earlier years, which has been accepted the AO and similar income even in the hands of the co-owners has been accepted by the AO. . He further submitted that the year before us is the year in which the sale of agricultural land has taken place and the assessee has received income from other crops in the land, which should have been accepted by the AO as agricultural income.

11. The Id. DR, however, contended that the assessee has not given any proof of other crops grown in the agricultural land from which assessee has received any income. She, therefore, prayed that the order of the AO be confirmed on this issue.

12. Having regard to the rival submissions and material on record, I find that all the brothers of the assessee together held agricultural land to the extent of 97 acres and offered agricultural income accordingly in their returns of income which has been accepted by the AO except in the case of the assessee's before the Tribunal. Thus, the disallowance was made only in the hands of two brothers relying on the statement of SM Lateefuddin. However, I find that SM Lateefuddin has clearly stated that there were other crops grown in the land and earned income from such other crops as well. The AO has relied upon the statement of SM Lateefuddin, but he cannot pick and choose and accept only part of the statement favourable to the revenue and disbelieve the other part, which is in favour of the assessee. Shri Lateefuddin in reply to Q.No.10, has clearly stated that coffee, was in 65 acres, Nilgiri trees in 10 acres and the balance

area was paddy field. The AO has taken into consideration the income from coffee beans and minor income from pepper and cardamom only. He ignored the income from paddy and Nilgiri trees. AO has accepted the agricultural income from the same land in the hands of the other owners in proportion to their share of land. Therefore, I am of the opinion that the entire agricultural income, which is as per the statement of SM Lateefuddin, should be accepted. The AO is directed accordingly.

13. As regards ground Nos. 11 & 12, the Id. Counsel for the assessee submitted that the AO has failed to appreciate the fact that the closing balances shown in the banks were duly explained.

14. The Id. DR supported the orders of authorities below.

15. Having heard the rival submissions and perusing the bank statement, I find that there is opening balance and also rental income and other incomes which have been deposited into the bank account and are forming part of the closing balance . When the assessee has offered the rental income to tax, bringing the rental income again to tax as part of closing balance in the bank A/c is not permissible. Therefore, I direct the AO to exclude the opening balance and also other income which has already been offered to tax, and only the balance is directed to be brought to tax. This ground is accordingly partly allowed.

16. In the result, the appeal of the assessee is treated as partly allowed for statistical purposes.

17. The facts and grounds raised in the case of Shri SM Fasiuddin in ITA No. 1843/Hyd/2017 are materially identical to the case of Shri SM Qutubuddin in ITA No. 1842/Hyd/2017. Therefore, following the detailed reasoning and decision given in the case of Shri SM Qutubuddin, the appeal of Shri SM Fasiuddin is also treated as partly allowed for statistical purposes.

18. To sum up, both the appeals under consideration are partly allowed for statistical purposes.

Pronounced in the open court on 24th June, 2020

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMEBR

Hyderabad, Dated: 24th June, 2020

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1.	Shri S.M. Qutubuddin
2.	Shri S.M. Fasiuddin, C/o. M/s M.A. Mohiaddin & Co., Chartered Accountants, 307, Lenaine Estate, 5-9-189, Abid Road, Hyderabad – 500 001
3	The Income Tax Officer, Ward 6(4), Hyderabad.
4.	CIT(A)-12, Hyderabad
5.	Pr. CIT-VI, Hyderabad.
6.	D.R. ITAT, Hyderabad.
7.	Guard File