IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM

BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 243/VIZ/2019
(Asst. Year : 2009-10)

Dr. P. Visweswara Rao, D.No. 15-3-7, Krishna Nagar, Maharanipeta, Visakhapatnam. PAN No. AANPR 3208 G (Appellant)	vs.	ITO, Ward-1(4), Visakhapatnam. (Respondent)

Assessee by	:	Shri G.V.N. Hari, Advocate
Department By	:	Smt. Suman Malik, Sr.DR
Date of hearing	:	11/03/2020.
Date of pronouncement	:	10/06/2020.

O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-1, Visakhapatnam, dated 29/01/2019 for the Assessment Year 2009-10.

2. Revised grounds of appeal raised by the assessee are as under:-

> *"1. The order of the ld. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.*
> *2. The ld. CIT(A) is not justified in sustaining the addition of Rs. 20,00,000/- made by the Assessing Officer u/s*

68 of the Act by treating the land advances received back by the appellant as unexplained.

3. Any other ground that may be urged at the time of appeal hearing."

3. Ground Nos. 1 & 3 are general in nature, no adjudication is required therefore same are dismissed. The only ground for adjudication is ground No.2 relates to addition of Rs. 20.00 lakhs.

4. Facts of the case are that assessee is an individual engaged in running hospital in the name and style of M/s. Sagar Durga Hospital, filed his return of income declaring income of Rs.4,11,927/- besides agricultural income of Rs. 55,000/-. The return filed by the assessee was processed u/sec. 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'). Later on case was selected for scrutiny through CASS and after following due procedure assessment was completed by making addition of Rs. 20.00 lakhs. In the assessment order, the Assessing Officer has noted that on verification of the books of account revealed that assessee has credited an amount of Rs. 20.00 lakhs in cash on 31/12/2008 in the ledger account shown in the name of 'land advance'. When the Assessing Officer asked the assessee in respect of the above land advance, a detailed submission was made, which is reproduced as under:-

"I submit that I have given an amount of Rs. 20 lakhs for the

acquisition of agricultural lands from 3 farmers through one advocate by name Mr.Badarinarayana Panigrahi of Orissa a transaction took place In the presence of the said advocate and the transaction was routed through Mr. Panigrahi negotiated with the local farmers of the Orissa.

During the regular assessment proceedings of my case for the financial year 2007-08 relevant to the assessment year 2008-9, the assessing officer directed me to furnish a confirmation from the said advocate to support the payment of Rs. 20 lakhs to the advocate for acquiring land for me from the local farmers. A copy of the said confirmation filed during the regular assessment proceedings of 2008-09 was enclosed herewith for your immediate reference.

The transaction could not be completed due to the reason mentioned in the confirmation given by the advocate and finally the amount of Rs.20 lakhs was returned by the advocate to me on 31.12.2008. The said entries were clearly recorded in my books of accounts. The ledger account copy standing in my books of accounts for the assessment year 2008-09 and ledger account copy standing in my books of accounts for the assessment year 2009-2010 were enclosed herewith for your immediate reference. The said transactions were negotiated through the said advocate since he is acting as an intermediary as the local people cannot be directly dealt by us due to language problem and verification of the title of the seller. Since the titles are deemed to be defective, the amount was returned by the advocate."

The Assessing Officer after considering the explanation of the assessee he has noted that from the above explanation it is clear that the assessee has credited an amount of Rs. 20,00,000/- purported to have been received from an Advocate. As can be seen from the confirmation given by the Advocate, he never confirmed that he has returned the amount which he had earlier taken, he only confirmed that he has arranged the refund of amount to the assessee which means that he has arranged the return of amount from the farmers to whom the assessee had earlier paid. Therefore, the Assessing Officer is of the opinion that assessee has failed to discharge the burden by showing the identity of the person and capacity of such person and genuineness of the transaction. Accordingly, addition was made.

5. On appeal, ld. CIT(A) confirmed the order of the Assessing Officer.

6. On being aggrieved assessee carried the matter in appeal before the tribunal.

7. Before us, ld. counsel for the assessee has pointed out from the paper book page No.13 that balance sheet as on 31/01/2008, under the head 'details of deposits', land advance is specifically mentioned as Rs. 20.00 lakhs. He also pointed out from paper book page No.8 and submitted that Mr.Badarinarayana Panigrahi, Advocate who is mediator of the transaction arranged the refund of the funds from the land owners to whom advance is given by the mediator and submitted that the payment is reflected in the balance sheet for the A.Y. 2008-09 and the mediator has also given confirmation by stating that funds are refunded to the assessee, under these circumstances, the addition confirmed by the ld. CIT(A) is not correct.

8. On the other hand, ld.DR relied on the orders of the authorities below.

9. We have heard both the sides, perused the material available on record and orders of the authorities below.

10. The assessee has given advance of Rs.20.00 lakhs for acquisition of agricultural land from three farmers through Advocate by name Mr.Badarinarayana Panigrahi of Orissa. The above transaction took place in the presence of said Advocate and the transaction was routed through Mr.Badarinarayana Panigrahi who negotiated through local farmers of Orissa. On verification of the land records, the Advocate found that the lands originally belonging to the SCs and subsequently acquired by these three farmers who are forward cast and therefore he expressed his opinion that law does not permit to purchase those lands and assured the assessee to refund the amount. Accordingly, Advocate-Mr.Badarinarayana Panigrahi of Orissa arranged funds to the assessee of Rs. 20.00 lakhs on different dates i.e. on 10/01/2008 Rs. 6.00 lakhs, on 08/02/2008 Rs. 8.00 lakhs and on 04/03/2008 Rs. 6.00 lakhs, total amounting to Rs. 20.00 lakhs. To that effect, he filed a confirmation wherein he specifically mentioned that the lands originally belonging to the SCs & STs and later on purchased by the present owners which is not regularised, that apart the assessee has already shown in his balance sheet in respect of the land advance of Rs. 20.00 lakhs.

By considering all these facts, we have come to a conclusion that the transaction is a genuine transaction and the amount is arranged by the mediator-Mr.Badarinarayana Panigrahi. Though the names of the land owners who wanted to sale the land not mentioned, but the fact remains that Mr.Badarinarayana Panigrahi who is the mediator arranged the refund, therefore it cannot be disbelieved that the identity of the parties are not proved. It is a fact that assessee has advanced the amount and also a fact that transaction is not materialized because the legality of the agricultural land is the issue. It is also a fact that mediator is arranged repayment of the amount. By considering the facts and circumstances of the case, in our opinion, the addition made by the Assessing Officer and confirmed by the ld. CIT(A) is not correct and we delete the addition. Thus, this appeal filed by the assessee is allowed.

11. In the result, appeal filed by the assessee is allowed.

Order Pronounced in open Court on this 10th day of June, 2020.

Sd/-	sd/-
(D.S. SUNDER SINGH)	**(V. DURGA RAO)**
Accountant Member	**Judicial Member**

Dated: 10th June, 2020.

vr/-

Copy to:

1. *The Assessee - Dr. P. Visweswara Rao, D.No. 15-3-7, Krishna Nagar, Maharanipeta, Visakhapatnam.*
2. *The Revenue – ITO, Ward-1(4), Visakhapatnam.*
3. *The CIT-1, Visakhapatnam.*
4. *The CIT(A)-1, Visakhapatnam.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.