

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER

Jayashree Anand vs. Income-tax Officer, Ward –
Enterprises, Hyderabad. 11(3), Hyderabad.

Appellant

Respondent

Date of hearing: 27/02/2020
Date of pronouncement: 30/04/2020

This is an assessee's appeal for the AY 1998-99 against the order of CIT(A) – 5, Hyderabad, dated 30/06/2016.

2. On perusal of record, it is noticed that there was a delay of 30 days in filing of the appeal before the Tribunal. The assessee filed a petition for condonation of the said delay stating that at the relevant point of time, the Managing Partner of the assessee firm, Sri P. Anand Rao, fell sick due to severe back pain besides hypertension and diabetes and was advised bed rest from 08/09/2016 to 12/10/2016 which has resulted in the delay. (A copy of the medical certificate is also annexed to the petition.). In view of the above, it was prayed that the delay in filing of the appeal, may be condoned

as the reasons for the delay were bonafide and are beyond the control of the assessee.

2.1. The Ld.DR, however, opposed the same.

2.2. Having regard to the rival contentions, I am satisfied that the assessee was prevented by reasonable cause from filing the appeal within the stipulated time. Therefore, I condone the delay of 30 days in filing of the appeal before the Tribunal and admit the appeal for hearing and adjudication.

3. As regards the merits of the case, brief facts are that the assessee firm did not file its return of income within the time allowed u/s 139(1) of the IT Act. Consequent to the information received by the AO that the assessee firm had paid a sum of Rs. 40 lakhs for the purchase of land at Vizag during the year under consideration, a notice u/s 148 for the AY 1998-99 was issued on 29/03/2005. Assessee filed its return of income admitting 'Nil' income on 18/04/2005. The AO observed that during the survey conducted in the case of Sri P. Anand Rao, Managing Partner of the firm, it was noticed that Sri Anand Rao had advanced Rs. 40 lakhs to Sri V. Srinivas, Visakhapatnam, a GPA holder, for the purpose of purchase of a landed property from Sri N. Narayanamurthy and based on this information, the assessment of Sri P. Anand Rao was completed on 30/03/2001 making an addition of Rs. 60,29,412/- u/s 69 of the Act, against which, Sri. P. Anand

Rao, Managing Partner of the firm filed an appeal before the CIT(A) stating that the amount of Rs. 40 lakhs was given by the firm (i.e. the assessee before the Tribunal in these proceedings), in which, he is a managing partner for purchase of land at Vizag.

3.1. On appeal, the CIT(A) was sustained the addition of Rs. 45 lakhs. Mr. Anand Rao then appealed to the Tribunal and before the Tribunal also, he argued that the amount of Rs. 40 lakhs was advanced to him by the firm. The ITAT accepted this contention of Sri Anand Rao and set aside his assessment to the file of the A.O. Thereafter, reassessment was made by the AO in his case on 31/03/2005 by making an addition of Rs. 40 lakhs on a protective basis and the AO of Sri P. Anand Rao had forwarded the information to the AO of the assessee, informing that the substantive assessment has to be made in the case of the firm, i.e., the assessee before us.

3.2. Accordingly, notice u/s 148 dated 29/03/2005 was issued, in response to which, the assessee filed a return on 18/04/2005 declaring 'Nil' income. During the course of assessment proceedings, assessee was asked to furnish nature of transaction entered into by the firm, details of payment of Rs. 40 lakhs, name and address of the party to whom the said amount was paid, copy of the agreement

entered into with the land owners, evidence for the investments made by the partners, copy of the agreements with the land owner for taking back the amount invested without purchasing the land, mode of the receipt, whether by cash or by cheque etc. The assessee submitted that it had entered into a transaction for purchase of land situated at Vizag for which Rs. 40 lakhs was paid in two different years, but the transactions did not materialize and therefore, the amount was returned by the party and the receipts evidencing the payment by the assessee were taken back by the selling party and that the copy of the agreement entered into with the selling party was also returned to the party as the transaction had not materialized and, therefore, the assessee firm did not have any copies to file before the AO. The assessee firm further submitted that the books of firm were already submitted before the AO, which showed the details of investment made by each of the partners. But, the AO held observed that the assessee could not furnish sources of the investments by the partners. He also observed that the assessee firm has claimed to have received the return of investment from the land owner in cash and consequently it returned the receipts and agreement of sale to the selling party and that no other compensation was received by the firm. He observed that the assessee did not maintain any banking transactions and whenever payment is needed to be

made to selling party, it has claimed that the partners have brought the money and the same was paid to the selling party. AO did not believe this contention of the assessee and therefore, he brought Rs. 40 lakhs to tax as unexplained investment by the assessee-firm u/s 69 of the Act.

4. Aggrieved, assessee filed an appeal before the CIT(A), who dismissed the same and the assessee further appealed to ITAT, who restored the matter back to the file of AO with a direction to conduct necessary enquiry to find out the genuineness of the claim of the partners that they had invested the amount of Rs. 40 lakhs for purchase of the land by the firm and accordingly decide the issue afresh.

5. In the consequential proceedings, the AO directed the assessee :

- i. to provide all the material with regard to investment made by the partners in the firm which purportedly was worked, to purchase the land by the firm in the venture,
- ii. to provide the full name and address with correct PAN and IT particulars in order to examine the genuineness of the firm as pointed out in the ITAT order and,
- iii. to produce books of account and any other information in support of the claim/return.

5.1 Since the notices issued by the department were returned back by the postal department, the AO issued summons u/s 131 dated 04/02/2014 to Sri P. Anand Rao, Managing Partner of the assessee-firm requiring him to personally attend and give evidence, produce books of

account and also file the information called for vide notice u/s 142(1) dated 23/12/2013. The other partners were also issued notices for personal attendance. However, neither the Managing Partner nor other partners appeared before the AO. Therefore, AO was constrained to complete the assessment as the assessment was getting time barred by 31/03/2014.

5.2 Meanwhile the Id. AR of the firm appeared before the AO and requested that the submissions made in the letter dated 10/03/2014 be considered. The AO held that the Managing Partner Sri P. Anand Rao in his individual assessment proceedings had categorically stated that the amount of Rs. 40 lakhs was brought by the partners of the firm, which in turn, was used for purchase of landed property at Vizag. Since none of the partners appeared and have not filed any evidence, the AO treated the sum of Rs. 40 lakhs as unexplained investment of the firm and accordingly brought it to tax, against which, the assessee filed an appeal before the CIT(A), who confirmed the order of AO and the assessee is in second appeal before the ITAT by raising the following grounds of appeal:

- 1) *The order of the Id. CIT(A) is erroneous both on facts and in law.*
- 2) *The Id. CIT(A) erred in treating the status of the appellant as AOP instead of Partnership firm*
- 3) *The Id. CIT(A) erred in confirming the addition of Rs. 40 lakhs made by the AO by applying the provisions of section 69 of the IT Act.*

- 4) *The Id. CIT(A) ought to have seen that the partners confirmed the deposit made into the partnership firm of Rs. 40 lakhs and therefore, the said amount should not have been treated as the income of the appellant u/s 69 of the IT Act.*
- 5) *The Id. CIT(A) ought to have considered the fact that the partners admitted the investment made and filed their returns of income.*
- 6) *Any other ground or grounds that may be urged at the time of hearing.”*

6. Though the assessee has raised 6 grounds of appeal, Id. counsel for the assessee advanced his arguments only on ground Nos. 3 & 4. The Id. counsel for the assessee reiterated the submissions of the assessee made before the authorities below and has drawn our attention to Para 5.10 of the order of CIT(A) wherein it is recorded that the assessee has filed copies of the returns of income of the partners and that the CIT(A) had called for a remand report from the AO. He also drew our attention to the remand report, wherein the AO has stated that he has verified the copies of the returns of income of the partners filed before the CIT(A) and that none of the partners have filed their balance sheet, due to which, it is clear that the alleged partners did not have sufficient funds for the periods ending 31/03/1997 and 31/03/1998 to invest such sums as their capital in the firm. It is also mentioned that some of the partners were not assessed to tax, but, they simply filed affidavits to circumvent the income tax proceedings. The CIT(A) provided a copy of the remand report to the assessee and the assessee submitted that when

summons were issued to all the partners to know the genuineness of their introduction of capital in the firm, they could not appear due to various reasons. It is submitted that the assessee has filed confirmation letters and also their individual income tax returns as evidence, but the CIT(A) has however confirmed the order of the AO.

6.1 The Id. counsel for the assessee submitted that though the firm was formed in 1996, it had not carried on any business activity and had even got dissolved in the year 2000. He submitted that when the firm has not done any business, the capital amount of Rs. 40 lakhs brought in by the partners for purchase of land, cannot be treated as unexplained income or investment by the firm. He submitted that the partners have filed their returns of income and only because they failed to appear, the CIT(A) confirmed the addition, which is not proper. He, therefore, prayed for deletion of substantive addition of Rs. 40 lakhs made in the hands of the assessee firm and protective addition made in the hands of Sri. P. Anand Rao.

7. The Id. DR was also heard, who supported the orders of the AO and CIT(A) and submitted that the assessee firm failed to prove the genuineness of the capital contribution by the partners and that though some of the partners never filed

their income tax returns, but copies of the balance sheet were not filed along with returns to prove their creditworthiness.

8. Having regard to the rival contentions and material on record, I find that the assessee firm was formed with effect from 01/04/1996 and also got dissolved in the year 2000. It is also not disputed that the assessee did not carry on any business activity except for making payment of Rs.40 lakhs for purchase of land at Vizag. It is the case of the assessee that the said deal did not go through and the amount was returned by Mr. Srinivas and the same was in turn returned by the assessee to the partners. When the assessee did not carry on any business, it cannot be said that it has unexplained income to make the unexplained investment. For this proposition, the Id. counsel for the assessee relied on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Bharat Engineering and Construction Co., 83 ITR 187, wherein it was held that where the business had not commenced or just commenced, the assessee therein it could not have earned any income within a short period after such commencement. Another decision relied upon by the Id. counsel for the assessee is the decision of the Hon'ble Supreme Court in the case of CIT, Ernakulam Vs. P.K. Noorjahan, reported in 237 ITR 570, wherein it was held that the intention of the parliament in enacting section 69 was to

confer discretion on the ITO in the matter of treating the source of investment which has not been satisfactorily explained. It is also held that the question whether the source of investment should be treated as income or not u/s 69 is to be considered in the light of the facts of each case.

8.1. Thus, the Hon'ble Supreme Court has held that where any assessee had not carried on any business activity, it cannot be presumed to have earned any income. In the case before this Tribunal also, the assessee has not carried on any business activity and earned any income. In such circumstances, it could only have received capital contribution from the partners. Capital contribution by the partners cannot be treated as income of the assessee and if the partners are not able to explain the sources for their investment, the AO can only make the addition in the hands of the partners and not in the hands of the assessee firm. Further in the dissolution deed of the assessee firm dated 10/04/2000 also, there is a mention of the return of the capital and this deed is not disputed by the AO. In view of the same, I am of the opinion that the addition of Rs. 40 lakhs made in the hands of the assessee firm is not justified and, therefore, the said addition is deleted. Accordingly, ground Nos. 3 & 4 are allowed. The other grounds are not adjudicated as no arguments were advanced on such grounds.

9. In the result, appeal of the assessee is partly allowed.
Pronounced in the open court on 30th April, 2020.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, dated 30th April, 2020.

Kv

Copy forwarded to:

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3. CIT(A) - 5 Hyderabad.
4. Pr. CIT - 5, Hyderabad.
5. The DR, ITAT, Hyderabad
6. Guard File

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