

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

I.T.A. No. 178/HYD/2020

Assessment Year: 2016-17

Income Tax Officer,
Ward-15(3),
HYDERABAD

Vs
Shri Ramanalal Gudivada,
HYDERABAD
[PAN: ACWPG4404E]

(Appellant)

(Respondent)

For Revenue : Shri Rohit Mujumdar, DR
For Assessee : Shri S. Rama Rao, AR

Date of Hearing : 31-08-2021
Date of Pronouncement : 06-10-2021

ORDER

PER S.S.GODARA, J.M. :

This Revenue's appeal for AY.2016-17 arises from the CIT(A)-7, Hyderabad's order dated 18-11-2019 passed in case No.0143 / CIT(A)-7 / 2018-19, in proceedings u/s.143(3) of the Income Tax Act, 1961 [in short, 'the Act'].

Heard both the parties. Case file perused.

2. The Revenue has raised the following substantive grounds in the instant appeal:

"i.The Ld.CIT(A), Hyderabad, erred in law and on facts, in not appreciating that the appellant had not been maintaining any regular

books of accounts and the alleged balance sheet as on 31.03.2016 was drawn up by the assessee, considering the assets and liabilities available as on 01.4.2015 and 31.3.2016, without any supporting evidences provided for the alleged claim.

ii. The Ld.CIT(A), Hyderabad, erred in law and on facts, in not appreciating that the assessee in order to arrive at the stock as on 31.3.2015, adopted the figure of stock available as in F.Y.2004-05 and the fact that a survey u/s.133A was conducted on 14.7.2004 in the business premises of the assessee and nay such alleged working over the subsequent years cannot be accepted, in a case where no books of accounts are maintained and no supporting evidences for the alleged workings have been furnished by the assessee.

iii. The Ld.CIT(A), Hyderabad, erred in law and on facts, in not appreciating that during the assessment proceedings, the A.O. repeatedly asked the assessee to produce the books of accounts and supporting relevant documents/evidences, but he assessee failed to produce the same and therefore, the additional evidences filed by the assessee without any reasonable cause, are in contravention to Rule 46A of the Income-tax Rules.

iv. The Ld.CIT(A), Hyderabad, erred in law and on facts, in admitting the alleged additional evidences filed by the assessee during appellate proceedings, without passing a speaking order and assigning any reasons for such admission; in contravention to Rule 46A of the Income Tax Rules.

v. The Ld.CIT(A), Hyderabad, erred in law and on facts, in not appreciating that the assessee was required to file a revised return by admitting the agricultural income of Rs.26,00,000/- earned by him, which was not disclosed in the original return of income filed and accepting the explanation of the assessee.

vi. The Ld.CIT(A), Hyderabad, erred in law and on facts, in deleting the addition of Rs.4,62,87,257/- made by the A.O., in the facts and circumstances of the case.

vii. In the facts and circumstances of the case, the order of Ld.CIT(A)-7, Hyderabad is perverse and deserve to be set aside”.

3. We come to the Revenue's twin substantive grievances herein seeking to reverse the CIT(A)'s findings admitting the assessee's agricultural income of Rs.26 lakhs without filing the revised return along with un-explained stock of Rs.4,62,87,257/-. The CIT(A)'s relevant detailed discussion to this effect reads as under:

"4.3 The above additional evidence/submissions were forwarded vide letter dated 02-08-2019, calling for a remand report from the Assessing Officer and the Assessing Officer vide his letter dated 25-09-2019 forwarded the remand report through Addl.CIT, Range-15, Hyderabad. The contents of the report are as under:

"Please refer to the above.

2. The ld. CIT(A) vide letter cited above forwarded the additional evidences submitted by the assessee during the course of appellate proceedings and directed to submit the remand report after examine and verify the additional evidences along with supporting documents.

3. In this case, the assessment for the A. Y. 2016-17 was completed 143(3) on 28.12.2019 by making an addition of Rs. 4,62,87,257/- on account of unexplained investment. It is observed by the AO during the assessment proceedings that even after expiry of time, the assessee has neither furnished the information nor submitted any books of accounts to substantiate his claim of capital shown in the balance sheet. The AO further observed that the assessee not even explained the sources for additional capital made every year in the balance sheet. In the absence of the proper explanation and the supporting evidences the Assessing Officer has made the addition.

4. During the course of appellate proceedings, the assessee has submitted the additional evidence and requested the ta. CIT(A) to admit the same. In the written submissions the assessee submitted that while uploading the return of income for the A. Y. 2015-16, the loss figure of Rs.2243550/- was uploaded as capital.

5. The assessee further submitted the calculation sheet for the closing stock from F.Y.2005-06 relevant to the A.Y. 2006-07 onwards and balance sheet for the year ending 31.3.2013.

6. The assessee is given an opportunity to substantiate his claim of showing the capital in the balance sheet and introduction of fresh capital during the year under consideration.

7. During the course of remand report proceedings, with regard to the capital shown at Rs. 22,43,550/-, the assessee submitted that the amount shown as capital at Rs. 22,43,550/- is an inadvertent mistake crept in while uploading the return of income for the A. Y. 2015-16. It is nothing but a loss derived during the year from F 86 O. It has shown at column 38 of the return of income filed for the A.Y. 2015-16.

7.1 The submission of the assessee is verified from the return of income and found correct. Therefore, the ld. CIT(A) is requested to consider the issue on merits.

8. With regard to the additional capital introduced during the year of Rs. 42,51,000/- for the year 31.3.2016, Rs. 12,51,000/- for the year 31.3.2015 and Rs. 5,25,000/- for the year 31.3.2014 the assessee submitted that the assessee has owned agricultural lands and the assessee has earned the agricultural income of Rs. 26,00,000/- from A.Y. 2007-08 to 2013-14. In support of his claim the assessee has filed copies of the pattardar pass books and Mandal Revenue Officer's certificate.

8.1 The contention of the assessee is verified from the records. The assessee has not disclosed the agricultural income in his return of income as the agricultural lands are held by the assessee in the capacity of HUF. However, assessee has not filed any return of income in the capacity of HUF as there is no taxable income. Therefore, the ld. CIT(A) may please be considered the issue on merits.

2. With regard to the opening balance of capital of Rs.5,31,23,790/- for the A.Y. 2016-17, the assessee submitted that the assessee has {Jot maintained any books of accounts upto the assessment year 2015-16. When there were no final accounts, the balance sheet has to be prepared by considering the assets and liabilities available as on 1.4.2015. The assessee further submitted that in order to arrive the stock as on 31.3.2015, the assessee has taken the stock available as on 2004-05 as there was a survey under sec. 133A of the I T Act on 14.7.2004 and the department found that there was 15 Kg. of gold jewellery and 96 kg. of silver article as on the date of survey. The modus operandi of the assessee's business is that as and when there is sale of any article, immediately the same weight of ornament will be replaced with new one. Therefore, the quantity of the stock will remain the same. Only there is a fluctuation in the rate, which will be booked as gross profit / gross loss to the profit and loss account. To arrive the opening balance of the capital, the assessee has followed the principle capital = assets - liabilities.

9. With regard to the opening balance of capital of Rs. 5,31,23, 790/- for the A.Y. 2016-17, the assessee submitted that the assessee has not maintained any books of accounts upto the assessment year 2015-16. When there were no final accounts, the balance sheet has to be prepared by considering the assets and liabilities available as on 1.4.2015. The assessee further submitted that in order to arrive the stock as on 31.3.2015, the assessee has taken the stock available as on 2004-05 as there was a survey under sec. 133A of the I T Act on 14.7.2004 and the department found that there was 15 Kg. of gold jewellery and 96 kg. of silver article as on the date of survey. The modus operandi of the assessee's business is that as and when there is sale of any article, immediately the same weight of ornament will be replaced with new one. Therefore, the quantity of the stock will

remain the same. Only there is a fluctuation in the rate, which will be booked as gross profit / gross loss to the profit and loss account. To arrive the opening balance of the capital, the assessee has followed the principle capital = assets - liabilities.

Liabilities			Assets		
Capital account			Fixed asset		2621291
Opening		52123790	Closing stock		49410300
Rental		1108674	Sundry debtors		181500
Net profit		124999	Cash at bank		5114555
Income from other		872632	Cash on hand		154532
Agri income		2269695			
Less:	17612				
		57482178			57482178

9.1 In view of the above reasons, the submissions made by the assessee is verified with the records. The assessee has explained the sources for the additional capital and the opening balance in the capital account with the documentary evidence. Therefore, the Id. CIT(A) is requested to decide the issue on merits. "

4.4. The copy of the remand report submitted by the assessing officer was forwarded to the appellant to submit the explanation vide letter dated 08-11-2019. In response to the remand report, the AR of the appellant vide letter dated 15-11-2019 stated as under:

"The only issue in this appeal is with regard to the addition of Rs.4,62,87,257/- on account of additional capital. According to the Assessing Officer, the opening capital admitted for the year is not properly explained. The Assessing Officer considered the market value of 15 kg of gold available during Financial year 2004-05 and added the incomes received and arrived at the available capital at Rs. 1,11,94,921. The balance of Rs.4,62,87,257/- is treated as unexplained.

The appellant filed a detailed explanation by way of written submissions alongwith the petition for admission of additional evidence. The appellant submitted that he was carrying on the business activity and in the process purchasing and selling the gold jewellery. The increased value of gold, the income derived; the agricultural income formed the basis for increase in the capital account. It is submitted that there was substantial capital in the immediately preceding years and that based on the same the amount of the present capital is shown. The appellant worked out the availability of the funds from the financial year 2004-05 and onwards as the regular books of account were not maintained for all the years. As the said claim was made for the first time before the

Hon'ble Commissioner of Income Tax (Appeals), the learned Commissioner of Income Tax (Appeals) referred the matter to the Assessing Officer for remand report. The Assessing Officer worked out the availability of the capital, the stocks, sundry debtors, cash and bank and all other details and found that the entire amount of the capital is properly explained. In the remand report, the Assessing Officer mentioned that the assessee explained the sources for the additional capital and the opening balance in the capital account with documentary evidence. In the circumstances, the addition made is not justified.

The appellant, therefore, requests the Hon'ble Commissioner of Income Tax (Appeals) to kindly allow the appeal as prayed for."

4.5 I have considered the submissions of the appellant, findings of the Assessing Officer in the assessment order and remand report carefully. The assessing officer after making detailed enquiry during the remand proceedings accepted the claim of the appellant that there was a mistake occurred at the time of filing return of income while uploading the entries. The assessing officer accepted the working given by the appellant considering the stock available as on 14-07-2004 and the returns of income filed from A.Y.2005-06 to 2016-17. The assessing officer did not contradict the submissions made by the appellant in the remand report with any evidence. Hence, I accept the claim of the appellant and direct the assessing officer to delete the addition of Rs.4,62,87,257/-".

4. It has come on record that the CIT(A) has nowhere even dealt with the issue of agricultural income. The Revenue's instant former substantive grievance is rejected therefore. The outcome is no different *qua* the Revenue's latter substantive ground regarding un-explained stock value as well wherein the Assessing Officer's remand report dt.25-09-2019 had itself accepted the source of additional capital as on 14-07-2004 and in the return(s) of income filed from 2005-06 to 2016-17. We thus quote case law – CIT Vs. DM Purnesh (2020) 426 ITR 169 (KA) and B.Jayalakshmi Vs. ACIT (2018) [96 taxmann.com 486] (Mad) and held that the Revenue cannot be held as an aggrieved party once the Assessing Officer files a favourable

remand report before the CIT(A). We thus affirm the CIT(A)'s findings deleting the impugned addition(s).

5. This Revenue's appeal is dismissed in above terms.

Order pronounced in the open court on 6th October, 2021

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Hyderabad,
Dated: 06-10-2021

TNMM

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Copy to :

1.Income Tax Officer, Ward-15(3), Hyderabad.

2.Sri Ramanalal Gudivada, LIG B-295, Dr.A.S.Rao Nagar, Hyderabad.

3.CIT(Appeals)-7, Hyderabad.

4.Pr.CIT-7, Hyderabad.

5.D.R. ITAT, Hyderabad.

6.Guard File.