

**HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE K.LAKSHMAN**

I.T.T.A. Nos.378 and 379 of 2019

COMMON JUDGMENT: (Per Hon'ble Sri Justice M.S.Ramachandra Rao)

These two appeals are being disposed of by this common judgment since they relate to same assessee/appellant in relation to two different assessment years 2009-10 and 2010-11.

2. In both these appeals, the orders dt.15-11-2019 in ITA No.1246 & 1247/Hyd/2018 passed by the Income Tax Appellate Tribunal, Hyderabad Bench 'A' at Hyderabad are assailed by the assessee.

3. The assessee is an individual deriving income from agriculture and claiming that he had no other source of income. The assessee, his wife, father and mother together possess Ac.58.30 gts of agricultural land.

4. During the financial year 2008-09, the assessee deposited Rs.83,78,700/- and during the financial year 2009-10, he made deposits into his S.B.Account totaling Rs.56,60,450/- by way of cash deposits. The assessee had not filed any returns of income for the assessment year 2009-10 and also for the assessment year 2010-11.

5. To verify the source for cash deposits, the respondent Department initiated action under Section 147 of the Income Tax Act, 1961 (for short 'the Act') and issued notice dt.30-03-2016 under Section 148 of the Act to the assessee, which were served on him on 31-03-2016.

6. Notices dt.21-04-2016 under Section 142(1) of the Act were also issued to the assessee. There was no compliance from the assessee either to the notice under Section 148 of the Act or notice issued under Section 142(1) of the Act.

7. Thereafter another notice under Section 142(1) of the Act dt.02-05-2016 was issued to the assessee calling for information, for which also there was no response from the assessee.

8. Due to the non-cooperation of the assessee, a show cause notice dt.06-10-2016 was issued informing the assessee that his case for the assessment year 2009-10 and 2010-11 had been taken up for consideration and the assessee was directed to file information for completion of assessment and to show cause why the entire cash deposit of Rs.83,78,700/- for the assessment year 2009-10 and the entire cash deposit of Rs.56,60,450/- for the assessment year 2010-11 should not be treated as income from unexplicable sources and directing the assessee to file objections.

9. Even to this show case, there was no explanation from the assessee.

10. Another set of final show cause notices dt.06-12-2016 were issued to the assessee.

11. In response to this final show cause notice, assessee addressed a letter dt.08-12-2016, which was received in Inward Section of the Income Tax Department, Range-4, Hyderabad on 26-12-2016.

12. In the said explanation, the assessee contended that he received the notice dt.21-04-2016; that he was furnishing his account details; that he was not carrying on any business and all amounts stated in the Bank Accounts are solely from agricultural income; and that as he was the only male member of the family, all expenses and income relates to his father, mother and wife are operated through his bank account only. He gave details of the agricultural holdings in his name, and in the name of his parents and wife. He also furnished pattadar pass books, Bank Account statements and transaction narration sheets for the period from 01-04-2008 to 31-03-2009 and 01-04-2009 to 31-03-2010.

The orders of the Assessment Officer dt.30-12-2016

13. The Assessment Officer considered the said material and passed assessment orders on 30-12-2016 for both assessment years under Section 143(3) r/w Section 147 of the Act holding that to some extent the cash deposits made by the assessee could be from the sale proceeds of agricultural produce of the land holdings held by him and his family members and that to the extent of Rs.30,00,000/- p.a., such agricultural income can be considered for both assessment years.

14. He also referred to the sworn statement made by the assessee before the ITO (Inv.) Unit-I, Hyderabad on 16-10-2015 that *cash deposits are from real estate business* and some are collections from the petrol bunk till the opening of current Bank Account of petrol bunk, which was being run in the name of the spouse of the assessee. He then held that petrol bunk business was started only in 2012 and was not in existence

during the previous assessment year 2010-11, and the version of the assessee that all the amounts deposited in the bank accounts are solely from agricultural income, cannot be accepted.

15. Therefore, for the assessment year 2009-10, he held that an amount of Rs.53,78,700/- is to be treated as income from unexplained sources and for the assessment year 2010-11, Rs.26,60,450/- is to be treated as income from unexplained sources. Tax and penalty were also levied thereon.

The order dt. 1-3-2018 of the CIT (Appeals)

16. This was questioned by the assessee before the Commissioner of Income Tax (Appeals)-1, Hyderabad vide Appeal No.0239/CIT(A)-1/Hyd/2016-17/2017-18 and Appeal No.240/CIT(A)-1/Hyd/2016-17/2017-18.

17. It was contended before the Appellate Authority by the assessee that Assessing Officer erred in holding that the aggregate of the deposits made into the Bank Account of Rs.83,78,700/- for the assessment year 2009-2010 and Rs.56,60,450/- for the assessment year 2010-11 represents the income of the assessee; that there were substantial withdrawals during the year under consideration which explain the deposits made into the Bank Accounts; that the Assessing Officer should have considered the fact that peak credit in the Bank Account is much lesser and the entire amount of peak is less than the agricultural income determined by the Assessing Officer.

18. By separate orders dt.01-03-2018, both the appeals were dismissed. The appellate authority held that before him, the assessee had submitted that agricultural land owned by the assessee was sold, but no evidence was brought before him that any property was sold during the year relevant year; that the Assessing Officer had allowed an extent of Rs.30,00,000/- as agricultural income by estimation, but the assessee did not accept it ; and the assessee also did not bring out any evidence to show that the agricultural receipts during the relevant financial year were more than Rs.1.00 crore.

19. He also held that assessee did not submit any details of crops sold and income received out of the agricultural pursuits, and the attempt of the assessee to justify Rs.26,60,450/- as agricultural income for the assessment year 2010-11 and Rs.53,78,700/- as agricultural income for the assessment year 2009-10, was not supported by evidence.

20. He also observed that in the Bank Accounts, deposits were spread over all the year; the assessee had been selling crops all-round the year specially when the Bank Account was reduced to Nil; and it was evident that the deposits were made to make payments. He held that the Assessing Officer concluded that the income of Rs.26,60,450/- for the assessment year 2010-11 and Rs.53,78,700/- for the assessment year 2009-10 is income from other source i.e. real estate and petrol bunk and there is no material submitted by the assessee contradicting the same. Consequently, he confirmed the orders of the Assessing Officer.

The orders dt.15-11-2019 of the ITAT

21. Challenging the said orders of the appellate authority, the assessee filed I.T.A.Nos.1246 and 1247/Hyd/2018 before the Income Tax Appellate Tribunal, Hyderabad Bench 'A', Hyderabad.

22. It was contended in the appeals before the Tribunal that the CIT(A)-1, Hyderabad ought to have held that the assessee did not have any other source of income except agricultural income and that the assessee was in possession of sufficient funds from agricultural income for depositing the cash into the bank accounts. It was also contended that the aggregate of deposits would not represent the income of the assessee and the CIT (Appeals)-1, Hyderabad erred in treating them as income of the assessee.

23. The Tribunal considered the Bank Account statements and observed that the assessee was making cash deposits and also making corresponding cash withdrawals and therefore the contention of the Assessee that the gross receipts from the agricultural operations were deposits, withdrawn and re-deposited cannot be brushed aside in toto. The Tribunal then referred to the action of the Assessing Officer in relying upon the statement of the assessee recorded during the course of search wherein he has stated that he is also doing real estate business and cash deposits were receipts of such business as well. It therefore accepted that some of the deposits would be from real estate business while others are cash withdrawals made earlier. It therefore partly allowed the appeals by treating 50% of the deposits which have been

treated as income from other source as unexplained and the balance 50% to be part of agricultural income (in addition to Rs.30,00,000/- already treated as agricultural income by the Assessing Officer) which were re-deposited into the bank account.

The present Appeals

24. Assailing the same, these appeals are filed.

25. Learned counsel for assessee strenuously contended that the approach of the Assessing Officer, CIT (Appeals)-1, Hyderabad as well as the Tribunal is erroneous and that conclusions reached by the Tribunal with regard to the source of deposits made in the Bank Accounts is perverse.

26. It is also contended that the said authorities did not mention the provision of law under which the alleged income is assessable and that they had ignored the decision of the Supreme Court in **CIT Vs. PK Noorjahan**¹.

27. We have considered the orders passed by the Assessing Officer, CIT (Appeals)-1, Hyderabad as well as the Tribunal.

28. The statement made by the assessee before the Income Tax Officer (Inv.), Unit-I, Hyderabad in response to summons issued under Section 131(1A) of the Act has also been placed before us by the counsel for the assessee. In the said statement, to Question No.5 'please give the

¹ 237 ITR 570 (SC)

sources of your income and explain the cash deposits more than Rs.50,000/- deposited in your account', the assessee stated:

"My source of income is from agriculture and rental income from HUF properties situated at Nalgonda and Suryapet. For the above income I am maintaining SBH, Nalgonda which is in the name of my mother Smt.Sulochana, my wife is having Bharath Petrol Bunk at Chivvemla, Suryapet since March, 2012 and my wife Madhuri Latha is proprietor of M/s.Dheekha Fuel Centre. I am deriving salary income from the above petrol bunk of Rs.25,000/- per month. I am also into real estate business at Hyderabad on entering agreement of sale and by keeping certain margin and sell the same to others and I will get on average income of Rs.4.0 lakhs per annum from real estate business since 2010 and we have done small ventures at Uppal behind Bus depot. I will furnish the details in couple of days. The cash deposits are from real estate business and some are collection from petrol bunk till the opening of current account at SBH, Chivvemla. I will submit the above bank accounts for your verification."(emphasis supplied)

29. From the above statements, it appears that the sources of income of the assessee are agriculture and also rental income from HUF properties situated at Nalgonda and Suryapet. Though he mentioned about a petrol bunk, since according to the assessee, the petrol bunk business commenced only in 2012, the income from the petrol bunk business cannot be said to be a source of income for the assessee to deposit in the Bank Accounts for the assessment years 2009-10 and 2010-11. He also stated that he was doing real estate business at Hyderabad and was entering into agreements of sale and by keeping certain margin, he was selling the same to others. Though he stated that he was getting an average income of Rs.4,00,000/- p.a. from the real estate business since 2010, and he claims to have done small ventures at Uppal Bus Depot and

promised to furnish details, there is nothing to show that he did furnish any details. Therefore, the cash deposits, which are admitted by him to be from real estate business or rental income, have also to be taken into account.

30. It was the duty of the assessee to disclose these aspects before the Assessing Officer or the CIT (Appeals)-1, Hyderabad or the Tribunal because these are within his exclusive knowledge. Having admitted that he was also doing real estate business and was also having rental income, and by not furnishing any details of the same, he cannot blame the Assessing Officer or the Tribunal for drawing conclusion that his source of money for making deposits other than agricultural income, is the real estate business.

31. No doubt in exercise of appellate jurisdiction under Section 260-A of the Act, this Court has power to interfere with the findings of fact which are vitiated by use of inadmissible material and if a decision is based on conjectures, surmises and suspicions or irrelevant material or if there is perversity, but the instant case does not fall in any of these categories. The several opportunities given to the assessee to persuade him to reveal the sources of income have already been mentioned in the order passed by the Assessing Officer. The assessee therefore cannot have any complaint against the Department when he was not furnishing all the details as sought by the Department though he agreed to do so in the statement given by him to the Department on 16-10-2015.

32. In **PK Noorjahan** (1 supra) relied upon by the assessee, the Supreme Court interpreted Section 69 of the Act and observed that the word 'may' occurring therein shall not be read as 'shall', and that it confers discretion on the Assessing Officer in the matter of treating the source of investment which was not satisfactorily explained by the assessee as the income of the assessee, and the Assessing Officer was not obliged to treat such source of investment as income in every case where the explanation offered by the assessee is found to be not satisfactory. The Supreme Court held that the question whether the source of investment should be treated as income or not under Section 69 of the Act has to be considered in the light of the facts of each case.

33. We are of the opinion that in the instant case, no error of law has been committed by the Assessing Officer or the CIT (Appeals)-1, Hyderabad or the Tribunal in treating a portion of the unexplained deposits as income of the Assessee.

34. There is no question of law, much less substantial question of law, arising from the facts of the case warranting interference by this Court in exercise of its power under Section 260-A of the Act.

35. These appeals fail and are accordingly dismissed. No costs.

36. Pending miscellaneous petitions, if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

K.LAKSHMAN, J