

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM
(through web-based video conferencing platform)**

श्री एन के चौधरी, न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI N.K.CHOUDHRY, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकरअपीलसं./I.T.A.No.436/Viz/2019
(निर्धारण वर्ष/ Assessment Year:2015-16)**

Income Tax Officer
Ward-1
Tuni

(अपीलार्थी/ Appellant)

Vs. M/s M.K.Aqua Hatchery
D.No.3-36, Chintakayalapeta
Thondangi (M)
E.G.Dist.
[PAN :AAZFM0955H]
(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से/ Respondent by

: Smt.Suman Malik, DR
: Shri G.V.N.Hari, AR

सुनवाई की तारीख/ Date of Hearing

: 22.12.2020

घोषणा की तारीख/Date of Pronouncement

: 23.12.2020

आदेश / O R D E R

Per Shri D.S.Sunder Singh, Accountant Member :

This appeal is filed by the revenue against the order of the Commissioner of Income Tax (Appeals) [CIT(A)], Rajamahendravaram in ITANo.10128/2017-18/ITO,W-1,Tuni/VSP/2018-19 dated 21.03.2019 for the Assessment Year(A.Y.)2015-16 with the delay of 17 days. The Assessing officer filed the condonation petition giving administrative reasons for delay. The Ld.AR expressed no objection for condoning the delay. Therefore, the delay is condoned and the appeal is admitted.

2. All the grounds in this appeal are related to the addition of Rs.2,12,50,000/- made u/s 68 of the Income Tax Act, 1961 (in short 'Act') which was deleted by the CIT(A. During the assessment proceedings, the Assessing officer(AO) found that the assessee is a partnership firm having 8 partners with Sri Ch.Mahankali as the main partner. All the partners together have contributed the share capital of Rs.2,25,50,000/- during the impugned assessment year as under :

Name	Percentage of Share	Investment
Ch.Mahankali	20	45,10,000
Ch.Apparao	20	45,10,000
Ch.Kasirao	10	22,55,000
Ch.Srinu	10	22,55,000
Ch.Kameswara Rao	10	22,55,000
M.Suryaprakash	13	29,31,500
M.RajaVarahalu	12	27,06,000
N.Kondababu	5	11,27,500
	100	2,25,50,000

3. When the AO asked to explain the sources for the investment, the partners explained the sources from the savings and unsecured loans as under:

Name	Capital sourced from savings (Rs.)	Capital sourced from unsecured loans (Rs.)	Investment (Rs.)
Ch.Mahankali	2,30,000	42,80,000	45,10,000
Ch.Apparao	5,75,000	39,35,000	45,10,000
Ch.Kasirao	3,45,000	19,10,000	22,55,000
Ch.Srinu	2,95,000	19,60,000	22,55,000
Ch.Kameswara	3,10,000	19,45,000	22,55,000

Rao			
M.Suryaprakash	29,31,500		29,31,500
M.RajaVarahalu	27,06,000		27,06,000
N.Kondababu	4,00,000	7,24,000	11,27,500
	77,96,000	1,47,54,000	2,25,50,000

3.1. The AO viewed that the investment made by the partners from own sources to the extent of Rs.77,96,000/- was not acceptable since no evidence was produced for investment. In respect of sources explained from unsecured loans to the extent of Rs.1,47,54,000/-, the AO stated that though the loan creditors appeared and explained the sources, all of them have given stereo typed answers, hence the AO did not believe the genuineness of the source. Further the AO also found that the creditors were mostly from fisherman and agriculturist having white ration card. Therefore, the AO disbelieved the credit worthiness and made the addition of Rs.2,12,50,000/- to the returned income.

4. Against the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) found that the assessee has produced the unsecured creditors who were examined by the AO and did not find any specific defect in the submissions made by the creditors except stating that the persons gave stereotyped answers. The Ld.CIT(A) also observed that though the AO stated that all the creditors are fishermen and engaged in agricultural activities, having no means, the AO did not ask

any question with regard to their financial capability and elicited the truth with regard to credit worthiness. The Ld.CIT(A) further observed that the creditors have answered all the questions posed by the AO in sworn deposition and no specific defect was found by the AO with regard to genuineness and credit worthiness of the creditors, hence, viewed that the AO cannot disregard the results of his own enquiry. The Ld.CIT(A) is also of the opinion that since, the partners have introduced the capital from their own sources, as well as sourced from borrowings and explained the source, the AO cannot make addition in the hands of the firm and viewed that the AO ought to have made the addition in the hands of the partners, if the genuineness of the creditors was disbelieved. The Ld.CIT(A) after considering the explanation and material placed before her, viewed that the assessee has explained the source and discharged it's burden with regard to identity, creditworthiness of creditors and genuineness of the transaction and investments made by the partners of the firm. Therefore, held that the addition was made by the AO on preponderances and probabilities which cannot be sustained. Accordingly, the Ld.CIT(A) deleted the addition and allowed the appeal of the assessee.

5. Against which the department has filed appeal before this Tribunal. During the appeal hearing, the Ld.DR argued that the partners of the firm failed to explain the sources for introduction of capital in the firm, therefore, the AO rightly made the addition in the hands of the firm. The Ld.DR further submitted that the creditors have given stereotyped answers and they were tutored, thus the statements given by the creditors cannot be relied upon. All of them are fishermen or agriculturists with white ration card thus argued that they have no means to give such large sums as loans and hence, argued that the AO rightly made the addition in the hands of the firm and requested to set aside the order of the Ld.CIT(A) and restore the order of the AO.

6. On the other hand, the Ld.AR relied on the order of the Ld.CIT(A) and argued that in the instant case, the AO has made the addition in the hands of the firm, though the capital was introduced by the partners. He argued that the partners have explained the source and if the AO suspects the source of source, AO ought to have made the addition in the hands of the individuals partners, but not in the hands of the firm. He relied on the decision of Hon'ble High Court of Andhra Pradesh in M/s M.Venkateswara Rao & Others in I.T.T.A. No.29 of 2003 dated 27.08.2014

and the decision of this Tribunal in the case of m/S Gowthami Builders in I.T.A.No.247/Viz/2016 and I.T.A. No.323/Viz/2017 dated 14.03.2018.

7. We have heard both the parties and perused the material placed on record. In the instant case, the assessee has filed the return of income admitting total income of Rs.nil. The AO found that the partners have introduced the share capital to the extent of Rs.2,25,50,000/- as per the details given above in this order. Out of which, Rs.77,96,000/- was introduced by the partners from their own source and Rs.1,47,54,000/- was sourced by the partners from unsecured loans and brought into the partnership firm. The AO made the addition of Rs.77,96,000/- representing own savings of the partners stating that no evidence was produced by the partners for investment. What was the exact evidence required by the AO, which was not produced by the partners was not specified. Therefore, without having specific defect or without specifying that the partners does not have source, the finding of the AO cannot be upheld. Similarly, the AO has examined 79 unsecured creditors who appeared before the AO and given statements on oath. All of them have accepted that they have given the loans to the partners, however, as observed by the AO, all the statements were stereotyped answers, hence, the AO viewed that the creditors were tutored and the source is

unbelievable. No specific defect with regard to source, credit worthiness and genuineness of the creditors was brought by the AO in his finding in the order. Thus, we find from the order of the AO that the creditors and the partners have explained the sources to the satisfaction of the AO and the Ld.CIT(A). Therefore, we do not see any reason to interfere with the order of the Ld.CIT(A).

7.1. In addition to the above, as argued by the Ld.AR, in this case, the capital was introduced by the partners in the firm and the AO made the addition in the hands of the firm instead of partners. In the instant case the the partners have accepted that they have brought the capital and there is no dispute in this regard. The source of the partners also was explained, thus the source of introduction of capital stands explained and there is no case for making the addition in the hands of the firm as held by Hon'ble High court of Andhra Pradesh in M/s M.Venkateswara Rao & Others(Supra). This Tribunal in the case of M/s Gowthami Builders (supra) relied upon by the assessee following the order of the Hon'ble High Court of Andhra Pradesh cited (supra) held that introduction of capital by the partners needs to be taxed in the hands of the partners, but not in the hands of the firm. For the sake of clarity and convenience, we

extract relevant part of the order of this Tribunal in para No.9 and 10

which reads as under :

“9. In this case, the Assessing Officer has noted from the balance sheet that a sum of Rs. 56,55,000/- was introduced by the partners towards capital contribution, and Rs. 16,75,000/- towards current account contribution. The Assessing Officer has called for identify, creditworthiness of the partners and also genuineness of the transactions. The partners have filed their affidavits before the Assessing Officer that the contributions are made by them. However the Assessing Officer has not accepted the explanation given by the partners and came to a conclusion that the partners did not have sufficient source for introducing the amounts into the business towards their capital contribution and current account contribution and the investments made by the partners are added in the name of the firm as unsubstantiated cash credits under section 68 of the Act. On appeal before the Id.CIT(A), it was submitted that all the partners filed their affidavit and having PAN numbers and also their return of incomes, and therefore, if at all addition has to be made, it is to be made in the hands of the partners and not in the hands of the firm. Ld. CIT(A) by considering the submissions of the assessee and also by following the judgment of the Hon'ble Jurisdictional High Court in the case of M. Venkateswara Rao (supra), deleted the addition made by the Assessing Officer and given liberty to the Assessing Officer to examine and consider these amounts in the respective partners. The relevant portion of the order is extracted as under:-

“7.3. I have carefully considered the above submissions I have also gone through the assessment order, statement of facts and other details Even though the business is carried out in the name of the firm the entire business is owned, managed and run by the partners When the partners confirm that they contributed to capital account and current account it is not correct to assess these amounts in the hands of the firm. It would be more appropriate to consider these amounts in the hands of the respective partner. On identical facts, the Hon'ble Andhra Pradesh High Court in the case of CIT Vs Venkateswara Rao (232 Taxmann 123) held that the amounts received by the firm from its partners cannot be assessed in the hands of the firm though they may be assessed in the hands of the individual partners. The relevant extract of the decision of the Hon'ble High Court is reproduced hereunder:- Section 68 of the Act no doubt directs that if assessee fails to explain the nature and source of credit entered In the books of account of any previous year, the same can be treated as income In this case, the amount, that Is sought to be treated as income of the firm, is the contribution made by the partners, to the capital In a way, the amount so contributed constitutes the very su1tratam for the business of the firm It is difficult to treat

the pooling of such capital, as credit It is only when the entries are made during the course of business that can be subjected to scrutiny under section 68 of the Act. It is evident that the respondent explained the amount of Rs 76,57,263/- as the contribution from Its partners That must result in a situation, where Section 68 of the Act can no longer be pressed into service However, In the name of causing verification under Section 68 of the Act, the Assessing Officer has proceeded to identify the source for the respective partners, to make that contribution. Such an enquiry can, at the most be conducted against the individual partners. If the partner is an assessee the concerned Assessing Officer can require him to explain the source of the money contributed by him to the firm. If on the other hand, the partner is not an assessee, he can be required to file a return and explain the source. Undertaking of such an exercise, vis-a-vis the partnership firm itself, is impermissible in law.

7.3.1. Thus the capital contribution made by the partners and confirmed by them cannot be assessed in the hands of the firm Respectfully following the decision of the Hon'ble Jurisdictional High Court, the AO is directed to delete the addition of Rs.73.30,000/-. However, the AO is at liberty to examine and consider these amounts (contribution to capital accounts and current accounts) in the hands of the respective partners.

10. We find that Id. CIT(A) by flowing the decision of the Hon'ble Jurisdictional High Court in the case of M. Venkateswara Rao (supra) deleted the addition made in the hands of the firm. Therefore, respectfully following the above referred to judgment of the Hon'ble Jurisdictional High Court, we find no infirmity in the order of the Id. CIT(A). Thus, this appeal filed by the Revenue is dismissed."

7.2. Since the facts are identical, respectfully following the view taken by the Hon'ble High Court of Andhra Pradesh in the case of M.Venkateswara Rao & Others (supra), we hold that the addition made by the AO in the hands of the firm in respect of capital contributed by the partners cannot be sustained in law. Hence, we uphold the order of the Ld.CIT(A) and dismiss the appeal of the revenue.

8. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 23rd December, 2020.

Sd/-
(एन के चौधरी)
(N.K.CHOUDHRY)

Sd/-
(डि.एस. सुन्दर सिंह)
(D.S.SUNDER SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER
दिनांक /Dated : 23.12.2020

L.Rama, SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

- 1.राजस्व /The Revenue – Income Tax Officer, Ward-1, Tuni
- 2.निर्धारिती/ The Assessee– M/s M.K.Aqua Hatchery, D.No.3-36, Chintakayalapeta, Thondangi (M), E.G.Dist.
3. The Pr.Commissioner of Income Tax -2, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-2, Visakhapatnam
- 5.विभागीय प्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/DR,ITAT,Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam