

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI A.K. GARODIA, ACCOUNTANT MEMBER

ITA No.320/Bang/2014
Assessment year : 2009-10

Smt. G. Lakshmi Aruna, No.52, Siruguppa Road, Havambhavi, Bellary – 583 101. PAN: AFJPA 5974P	Vs.	The Joint Commissioner of Income Tax, Central Circle 1(3), Bangalore.
APPELLANTS		RESPONDENT

Appellant by	:	Shri Mayank Jain, Advocate
Respondent by	:	Dr.Sibichen K. Mathew, CIT-III(DR)

Date of hearing	:	01.06.2016
Date of Pronouncement	:	29.07.2016

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal is preferred by the assesseees against the order dated 31.10.2013 of the CIT(Appeals)-VI, Bangalore for the A.Y. 2009-10 *inter alia* on the following grounds:-

- “1. The order of the learned CIT(Appeals) (CIT(A)) in upholding the assessment order u/s. 143(3) dated 30.12.2011 of the Act is opposed to law, facts and circumstances of the case.

2. It should have been appreciated that the capital account credits are already offered to tax and therefore could not have been taxed.
3. It should have been appreciated that an amount of Rs.1,97,88,332/- is already offered to tax and as such, explained.
4. It should have been appreciated that an amount of Rs.1,38,15,161/- is explained and could not be taxed.

The Appellant seeks your leave to add, alter, amend or delete any of the grounds urged at the time of hearing.”

2. This appeal is filed late by 45 days for which application for condonation of delay is filed. Having perused the application for condonation of delay, we find that the assessee has explained the delay and having been convinced with it, we condone the delay and admit the appeal for hearing.

3. During the course of hearing, the Id. counsel for the assessee has invited our attention to the orders of the lower authorities with the submissions that neither the AO nor the CIT(Appeals) have afforded proper opportunity of being heard to the assessee. Moreover, sufficient opportunity was not provided to explain the additions made on account of capital account and also on account of gift. He has also filed the detailed explanation of funds in the capital account and also with regard to the gift with the submission that the matter may be restored back to the file of the Assessing Officer to adjudicate the issue afresh in the light of detailed explanation furnished by the assessee.

4. The Id. DR placed reliance upon the order of CIT(Appeals).
5. Having carefully examined the orders of lower authorities, we find that the order of the CIT(Appeals) is *ex parte*. Though he has recorded few dates of hearing, but has not recorded with regard to proper service of notice of hearing. He has, however, stated that Shri Ashok Kumar Doddi and Sri Sachin Kumar B.P. appeared on behalf of the assessee, but no Power of Attorney in their favour was filed before the CIT(Appeals) and the CIT(A) did not take cognizance of their appearance. Having rejected the request for adjournment, the CIT(Appeals) has disposed of the appeal.
6. During the course of hearing of the appeal, the assessee has filed the explanation and the statement of accounts explaining the addition to the capital account and the gift with the submission that this explanation was filed before the AO, but he did not examine the same and made the additions.
7. Having carefully examined the detailed explanation along with ledger account, capital account, etc., we are of the view that the lower authorities have not examined the issue in the light of the explanation of the assessee, therefore, it requires fresh adjudication. We accordingly set aside the order of the CIT(Appeals) and restore the matter to the Assessing Officer to readjudicate the issue afresh, after affording opportunity of being heard to the assessee. We also direct the assessee to extend all sorts of cooperation to the Assessing Officer in adjudicating the issue.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on this 29th day of July, 2016.

Sd/-
(A.K. GARODIA)
Accountant Member

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 29th July, 2016.

/D S/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.