

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, BANGALORE**

**BEFORE SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER
and
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA Nos.732 & 733/Bang/2015
(Assessment year: 2009-10)

Dr.(Smt.) Madura Chandu,
No.27, 1st Main, II Cross,
Chakravarthy Layout,
Palace Cross Road
Bengaluru-560 020. ... Appellant
PAN:ADLPC 0562 E

Vs.

Income-tax Officer,
Ward 5(4),
Bengaluru. ... Respondent

Appellant by : Shri V.Srinivasan, Advocate.
Respondent by : Ms.Swapna Das, JCIT.

Date of hearing : 07/09/2016
Date of pronouncement : 14/10/2016

O R D E R

Per INTURI RAMA RAO, AM :

These are appeals filed by the assessee directed against the two orders of the Commissioner of Income-tax (Appeals) [CIT(A)], Bengaluru, both dated 31/03/2015 for the assessment year 2009-10.

2. The assessee raised the following grounds of appeal in ITA No.732/Bang/2015:

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1. The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.
2. The learned CIT [A] is not justified in sustaining a part of the addition of amounting to Rs. 30,01,000/- out of the original addition of Rs.1,10,50,000/- made as unexplained cash deposits in the bank account of the appellant under the facts and circumstances of the appellant's case.
3. The learned CIT [A] ought to have appreciated that the appellant had offered a sum of Rs. 45 Lakhs as miscellaneous income and therefore, the sum of Rs. 30,01,000/- stand covered by the said income offered by the appellant and hence, there was no need to make a separate addition on this score.
4. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies herself liable to be charged to interest u/s. 234-B of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.
5. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

ITA No.733/Bang/2015:

1. The orders of the authorities below in so far as levying penalty u/s 271[1][c] of the Act against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.
2. The learned CIT[A] is not justified in sustaining the penalty u/s 271[1][c] of the Act in respect of the addition of Rs.30,01,100/- sustained in the appellate order in respect of the cash deposit made in the bank account of the appellant under the facts and in the circumstances of the appellant's case.

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3. The authorities below failed to appreciate that the appellant has neither concealed any income nor furnished inaccurate particulars of income to warrant levy of penalty and therefore, the penalty levied u/s.271[1][c] of the Act requires to be cancelled.

4. Without prejudice to the above, the penalty levied is highly excessive and liable to be reduced substantially.

5. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

3. Briefly facts of the case are as under: The appellant is an individual deriving income under the head 'profession' as a doctor. Return of income for the assessment year 2009-10 was filed on 29/07/2009 declaring a total income of Rs.1,92,220/-. After processing the said return of income u/s 143(1) of the Income-tax Act,1961 ['the Act' for short], the assessment came to be completed u/s 144 of the Act vide order dated 30/12/2011 by the ITO, Ward 5(4), Bangalore, at a total income of Rs.2,28,54,250/-. While doing so, the Assessing Officer [AO] made addition on account of unexplained cash deposits of Rs.110.50 lakhs u/s 68 of the Act and made addition of Rs.116 lakhs on account of unexplained investment in plant and machinery u/s 69 of the Act.

4. Being aggrieved, an appeal was preferred before the CIT(A) who, vide impugned order, had deleted addition on account of unexplained investment of Rs.116 lakhs and in respect

of unexplained cash deposits after calling for remand report from the AO reduced addition to the extent of Rs.30,01,000/-.

5. Being aggrieved by this addition, appellant is in appeal before us in the present appeal.

5.1 Learned counsel for assessee vehemently contended that the CIT(A) ought to have telescoped this addition against miscellaneous income reported of Rs.45 lakhs disclosed by the appellant.

5.2 On the other hand, learned Departmental Representative placed reliance on the orders of the lower authorities.

6. We heard rival submissions and perused material on record. When the appellant has reported miscellaneous income of Rs.45 lakhs, same can be deemed to have been deposited in bank. Thus cash deposit to the extent of Rs.30,01,000/- should be treated as explained. The fact that returned income is lower is only Rs.1,92,220/- does not suggest that there was no source for making deposit of cash in bank out of known source of income. Returned income can be lower for many reasons which does not involve outflow of cash such as depreciation. Thus, the appeal is treated as allowed.

7. The appeal bearing ITA No.733/Bang/2015 is filed challenging the direction of the CIT(A) confirming levy of penalty on the addition sustained of Rs.30,01,000/-. In the appeal filed by the

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assessee viz. ITA No.732/Bang/2015 we have quashed addition and hence, the question of levy of penalty does not arise. As such, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 14th October, 2016

sd/-
(ASHA VIJAYARAGHAVAN)
JUDICIAL MEMBER

sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Place : Bangalore
D a t e d : 14/10/2016
srinivasulu, sps

Copy to :

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

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore