

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

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER AND
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER**

I.T. A. No.550/Bang/2011
(Assessment Year : 2009-10)

Shri C.K. Ramakrishna,
No.525/B, 9th Cross,
7th Block West, Jayanagar,
Bangalore-560 082
PAN AAPPR 3523E

õ . Appellant.

Vs.

Income Tax Officer,
Ward 14(4), Bangalore.

õ .. Respondent.

Appellant By : Shri Raghavendra Chakravarthi, C.A.
Respondent By : Shri O.P. Yadav, CIT (D.R)

Date of Hearing : 25.6.2015.
Date of Pronouncement : 30.7.2015.

O R D E R

Per Shri Jason P. Boaz, A.M. :

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), LTU, Bangalore dt.20.3.2014 for Assessment Year 2009-10.

2. The facts of the case, briefly, are as under :-

2.1 The assessee, an individual employed at Satyam Computers Services Ltd., Bangalore, filed his return of income for Assessment Year 2009-10 on 24.7.2009 declaring income of Rs.8,31,390. On the basis of AIR information that the assessee had made cash deposits in his bank account maintained at ICICI Bank, Jayanagar, Bangalore to the extent of Rs.23,91,000, the case was taken up for scrutiny. As per the details on record, the Assessing Officer granted the assessee a number of opportunities to explain the source of the aforesaid deposits in his bank accounts. The assessee furnished a cash flow statement claiming that the said deposits were out of withdrawals made by the assessee earlier, which were redeposited. It was submitted that the assessee was in the process of acquiring a property for

which he had withdrawn money, kept the same at his house and later redeposited the same in his bank account when the intended property transaction did not materialize. The explanation put forth by the assessee was not found to be satisfactory by the Assessing Officer. He proceeded to invoke the provisions of section 68 of the Income Tax Act, 1961 (in short 'the Act'), rejected the assessee's explanation that the withdrawals from the same bank were the source for the deposits and brought the amount of cash deposits amounting to Rs.23,91,000 to tax in the assessee's hands as unexplained cash deposits. The order of assessment was completed under Section 143(3) of the Act vide order dt.20.11.2011 where the income of the assessee was determined at Rs.32,22,390.

2.2 Aggrieved by the order of assessment dt.20.11.2011 for Assessment Year 2009-10, the assessee preferred an appeal before the CIT (Appeals), LTU, Bangalore. The learned CIT (Appeals) upheld the order of the Assessing Officer relying on the decision of a co-ordinate bench of this Tribunal in the case of P.V. Ajay Narayanan V ITO wherein it was held that where the assessee had not maintained the books of accounts, the addition may not be possible under Section 68 of the Act, the same could be considered u/s.69 of the Act. The learned CIT (Appeals) also rendered a finding on merits of the matter that the explanation rendered by the assessee was not satisfactory as there was no cogent evidence to establish his claim.

3. Aggrieved by the order of the CIT (Appeals), LTU, Bangalore, the assessee has preferred this appeal raising the following grounds :-

- “ 1. The order of the learned CIT (Appeals), LTU, Bangalore in so far as it is against the appellant is opposed to law, weight of evidence, facts and circumstances of the case.*
- 2. Appellant denies himself liable to be assessed on a total income of Rs.32,22,390 as against returned income of Rs.8,31,390 under the facts and circumstances of the case.*
- 3. The learned CIT (Appeals), LTU, Bangalore is not justified in upholding the addition of Rs.23,91,000 representing the deposits made into the bank account under the facts and circumstances of the case.*
- 4. The learned CIT (Appeals), LTU, Bangalore is not justified in upholding the addition made under Section 68 of the Act, in as much as the said section applies only in the case where an assessee maintains books of account and not otherwise and accordingly upholding the addition is unwarranted and against the intention of the legislature as laid down under Section 68 of the Act.*
- 5. Without prejudice to the above the learned CIT (Appeals), LTU, Bangalore is not justified in upholding the addition under Section 69, as against, the same addition made under Section 68*

of the Act by the Id. Assessing Officer without providing the appellant an opportunity of being heard to change the nomenclature of the addition from section 68 to section 69 of the Act.

6. Without prejudice to the above the learned CIT (Appeals), LTU, Bangalore is not justified in confirming the addition confining herself only to human probabilities instead of appreciating the submissions and evidences produced.

7. The appellant denies himself liable to be charged interest u/s. 234B & 234C of the Act under the facts and circumstances of the case.

8. For the above and such other grounds that may be raised, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice.”

4. The Grounds raised at S.Nos.1, 2 and 8 are general in nature and not being specifically urged before us, are rendered infructuous and are accordingly dismissed.

5. In Ground No.7, the assessee denies itself liable to be charged interest under Section 234B and 234C of the Act. The charging of interest is consequential and mandatory and the Assessing Officer has no discretion in the matter. This proposition has been upheld by the Hon'ble Apex Court in the case of Anjum H Ghaswala (252 ITR 1) and we, therefore, uphold the action of the Assessing Officer in charging the said interest. The Assessing Officer is, however, directed to recompute the interest chargeable u/s. 234B and 234C of the Act, if any, while giving effect to this order.

6.1.1 In Grounds at S.Nos. 3 to 6, the assessee challenges the order of the learned CIT (Appeals) in confirming the addition of Rs.23,91,000 under Section 68 of the Act and holding that the same can be taxed as per the provisions of section 69 of the Act.

6.1.2 The learned Authorised Representative of the assessee submitted that the assessee being a salaried employee having only income from salary and income from other sources which were declared in the return of income, did not have any other income chargeable to tax. It was contended that in order to invoke the provisions of Section 68 of the Act, it must first be established beyond doubt that any sum which is found credited in the books of the assessee and for which the assessee gives no explanation or the explanation given by the assessee is not to the satisfaction of the Assessing Officer, then the amount may be brought to tax as unexplained cash credits in the hands of the assessee. It is submitted by the learned Authorised Representative that in case on hand the assessee is not maintaining any books of account and therefore the Assessing Officer cannot invoke

the provisions of section 68 of the Act on the basis of the deposits made in the assessee's bank account, as it is against the basic principles laid down in Section 68 of the Act and such additions would be against the legislative intent. As such, the contention of the learned Authorised Representative is that the Assessing Officer cannot make the addition as unexplained cash credits in the absence of maintenance of books of account. In support of the above proposition, the learned Authorised Representative placed reliance on the decision of the Lucknow bench of the ITAT in the case of ITO V Kamal Kumar Mishra reported in 143 ITR 686 wherein it was held that the provisions of section 68 of the Act can be invoked only where any sum is found credited in the books of account of an assessee maintained for any previous year and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not satisfactory in the opinion of the Income Tax Officer.

6.1.3 The learned Authorised Representative further submitted that, without prejudice to the above arguments, the pass book issued by the Bank to the assessee cannot be considered as books of account. In support of this proposition, the learned Authorised Representative placed reliance on the following judicial pronouncements :-

(i) CIT V Bhaichand H Gandhi reported in 147 ITR 67 (Bom)

(ii) Baladev Ram V CIT reported in 71 ITR 427 (SC).

(iii) Anand Ram Raiane V CIT in 223 ITR 544 (Gau.)

6.1.4 On the merits of the case, the learned Authorised Representative submitted that as per the return of income filed for Assessment Year 2009-10, accompanied by the computation of income, the assessee derives income from salary from employment with M/s. Satyam Computer Services Ltd. as per salary certificate submitted. It is contended that the Assessing Officer had grossly erred in making the addition of Rs.23,91,000 to the assessee's returned income, in respect of the cash deposits in the assessee's bank account as unexplained cash credits, when the Assessing Officer himself at page 1 of the assessment order has stated that the assessee is deriving income from salary. It is further contended that both the Assessing Officer and the learned CIT (Appeals) had failed to examine the

previous balances available with the assessee in the said bank account from which money were withdrawn and excess money were redeposited therein. The learned Authorised Representative submitted that the assessee intended to purchase a property in Jayanagar, Bangalore, for which the assessee frequently withdrew cash from the bank and kept the same with him, but since the assessee was transferred to USA on work, he could not complete the property transaction and the said cash withdrawals were redeposited into the said bank account. It is contended that the authorities below ought to have appreciated the fact that the assessee had enough balance in the bank account from which the money was withdrawn on various dates and was redeposited as the property transaction was cancelled. It is contended that the learned CIT (Appeals), without giving proper and cogent reasons, had not accepted the legal ground raised in so far as the addition as made under Section 68 of the Act, but rather relied on the decision of the co-ordinate bench in the case of P.V. Ajay Narayan (supra) without providing any opportunity to the assessee and thereby also violating the provisions laid down in section 251 of the Act. It was prayed by the learned Authorised Representative that in view of the circumstances of the matter as laid out above, the addition of Rs.23,91,000 requires to be deleted.

6.2.1 Per contra, the learned Departmental Representative vehemently opposed the arguments put forth by the learned Authorised Representative of the assessee; submitting that it is not the case of the assessee that the explanation offered by the assessee was to the satisfaction of the Assessing Officer or supported by material evidence to prove the assessee's claims. It is further submitted that though the addition was made under Section 68 and not under Section 69 of the Act by the Assessing Officer, the addition of Rs.23,91,000 is sustainable as at no stage of either in the assessment or appellate proceedings could the assessee establish the source for the deposits found in the bank account of the assessee. In support of this view, the learned Departmental Representative placed reliance on the decision of the co-ordinate bench of this Tribunal in the case of P.V.Ajay Narayan V ITO (supra) in which it was held that mentioning the wrong section is not fatal to the assessment.

6.2.2 The learned Departmental Representative submitted that on merits also the submissions made by the assessee that he was in the process of acquiring a property for which the money was

withdrawn, kept at his home and redeposited is merely a self-serving story devoid of any merit and corroborative evidence as has been rightly pointed out by the learned CIT (Appeals) while confirming the addition in the impugned order. The learned Departmental Representative further submitted that the onus was always on the assessee to establish the source for the investment or deposits and when the same has not been satisfactorily explained, the Assessing Officer is duty bound to tax the same as unexplained income of the assessee. It was contended that since the assessee had not established the source with material evidence, the argument put forth about the mentioning of the wrong section does not dis-entitle the Assessing Officer for taxing it or rather it will not amount to assessee putting forth a satisfactory explanation. In this regard, the learned Departmental Representative placed reliance on the decision of the Special Bench of the ITAT, Delhi in the case of Manoj Agarwal V DCIT, Central Circle-3, Delhi reported in (113 ITD 377 in which it was held that it is the responsibility of the assessee to explain the nature and source of money for the deposits with material evidence. The learned Departmental Representative submitted that the additions made were in accordance with the provisions of the Act and therefore fully justified and in this view of the matter, prayed that the impugned order of the learned CIT (Appeals) be upheld.

6.3.1 We have heard both parties and perused and carefully considered the material on record; including the judicial pronouncements cited. There is no dispute with regard to the fact that the Assessing Officer, on examination of the assessee's bank account with ICICI Bank, found that there were a number of cash deposits therein and bringing to tax in the assessee's hands an amount of Rs.23,91,000 as unexplained cash credits since the assessee failed to furnish material evidence and a satisfactory explanation regarding the source thereof. We find that before the learned CIT (Appeals), the assessee submitted that the said cash deposits are nothing but redeposit of the withdrawals done by the assessee from the same bank account, withdrawn for the purpose of purchasing a property, which transaction had not materialised. It is seen that the learned CIT (Appeals), after a detailed examination of the veracity of the assessee's claims and submissions, observing that as no fool proof evidence was produced to prove the assessee's claim satisfactorily, held that the theory put forth by

the assessee was beyond human probabilities considering the scenario of the assessee's stay outside India, the wife keeping the cash so withdrawn from time to time and the same being redeposited in the assessee's bank account. We also find that the assessee has failed to adduce any evidence/details, before either the authorities below or us, in respect of the so called property transactions, like the details of the property in question, the party or agents details with or through whom the assessee was dealing in the matter, advances paid in that regard from out of the withdrawn amounts, receipts issued in this regard, refunds received on non-materialisation of the alleged property transaction, etc. Before us also, apart from reiterating the claims made, the assessee could not furnish any evidence to prove the claims put forth that the source of deposits in his bank account was out of earlier withdrawals from the very same bank account.

6.3.2 As rightly pointed out by the learned Departmental Representative, the assessee at no stage could categorically prove with material evidence the claims put forth. In the case of P.V Ajay Narayan (1997) 57 TTJ 159 (Bang) a co-ordinate bench of the ITAT, Bangalore held that mentioning the wrong section is not fatal to the assessment. In that case also, the assessee was not maintaining any books of account and the addition was made under Section 68 instead of Section 69 of the Act which addition was confirmed by the CIT (Appeals). The co-ordinate bench of the Tribunal while upholding the said addition at para 8 of its order held as under :-

“ 8. It is further contended by the learned counsel for the assessee that the addition cannot be made under s. 68 because the assessee has not been maintaining regular books of account. It is contended that only in cases where regular books are maintained the provisions of s. 68 would be applicable. But the learned Departmental Representative, on the other hand, submitted that misquoting of a section is not fatal to the case of the Revenue. For this proposition, he relied on the following case law :

(i) CIT vs. Gilbert and Barker Manufacture Inc. Co. U.S.A. 1977 CTR (Bom) 347 : (1978) 111 ITR 529 (Bom).

(ii) Steel Containers Ltd. vs. CIT (1978) 112 ITR 995 (Cal), and

(iii) D.M. Neterwalla vs. CIT (1980) 122 ITR 880 (Bom).

The above decisions point out to one thing that the Tribunal has power to allow the Revenue to raise a ground for the first time before it. It is also held therein that the Tribunal can uphold

disallowance under another section. In the light of the above decisions we hold that mentioning of a wrong section is not fatal to making an assessment under any other section.”

6.3.3. In the case of Manoj Agarwal V DCIT (2008) 113 ITD 377 (Del) (SB), the Special Bench of the ITAT, Delhi held that :-

“ 26. The argument advanced on behalf of the assessee before us was that the assessee was not maintaining any books of account and the deposits were found only in the assessee’s bank statement which cannot be considered as the books of account of the assessee and, therefore, s. 68 was not applicable. Our attention was drawn to the confirmation letters placed at pp. 159 and 160 of the paper book. We are however unable to accept the argument. Though s. 68 of the Act may not be strictly applicable since the assessee was not maintaining any books of account and the bank statement cannot be considered as the assessee’s books of account, on the basis of the judgment of the Supreme Court in the case of A. Govindarajulu Mudaliar vs. CIT (1958) 34 ITR 807 (SC), it is the onus of the assessee to explain the cash received by him and if there is no explanation or acceptable evidence to prove the nature and source of the receipt, the amount may be added as the assessee’s income on general principles and it is not necessary to invoke s. 68, nor is it necessary for the IT authorities to point out the source of the monies received. Even if section 68 is not applicable, the cash deposit in the bank can be asked to be explained by the assessee under s. 69 or s. 69B of the Act. No doubt the assessee had tried to file additional evidence before the CIT(A) in the form of confirmation letters and IT returns but these were not admitted by the CIT(A) and no reasons have been shown before us as to why they should have been admitted. In the absence of any clinching evidence to show the nature and source of the monies deposited into the bank account which belongs to the assessee, the AO was justified in adding the amount of Rs. 15 lacs as the assessee’s unexplained income.”

6.3.4 Considering the facts and circumstances of the case on hand as discussed from paras 6.1 to 6.3.3 (supra), we are of the considered view that the assessee has not been able to discharge the onus upon him to prove with any corroborative evidence, the source of the cash deposits amounting to Rs.23,91,000 in his bank account with ICICI Bank, Jayanagar, Bangalore in the year under consideration. Following the ratio of the decisions of the aforementioned cases of the ITAT, Bangalore in the case of P.V. Ajay Narayan (supra) and of the Special Bench of the ITAT in the case of Manoj Agarwal (supra), which are clearly applicable to the issues before us in this appeal, we find no reason to interfere with the findings in the impugned order of the learned CIT (Appeals). Before we part, we

must mention that we have perused the decisions cited by the learned Authorised Representative, but are of the view that they are distinguishable and would not come to the assessee's rescue. Consequently, the grounds raised by the assessee at S.Nos.3 to 6 are dismissed.

7. In the result, the assessee's appeal for Assessment Year 2009-10 is dismissed.

Order pronounced in the open court on 30th July, 2015.

Sd/-
(P. MADHAVI DEVI)
Judicial Member

Sd/-
(JASON P BOAZ)
Accountant Member

*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, ITAT, Bangalore.
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(True copy)

By Order

Asst. Registrar, ITAT, Bangalore