

IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU BENCH 'C', BENGALURUBEFORE SHRI. VIJAY PAL RAO, JUDICIAL MEMBER
AND

SHRI. S. JAYARAMAN, ACCOUNTANT MEMBER

I.T.A No.1771/Bang/2013
(Assessment Year : 2008-09)

Smt. B. Sreelatha,
W/o. B. V. Sreenivasa Reddy,
Opp. Taj Bar & Restaurant,
Welcome gate, Bhuvanagiri Colony,
Bellary
PAN : BDLPS7641N

.. Appellant

v.

Deputy Commissioner of Income Tax,
Central Circle -1 (3), Bengaluru

.. Respondent

Assessee by : Shri. Suresh Muthukrishnan, CA
Revenue by : Shri. Vijay Kumar N, Addl. CIT

Heard on : 14.09.2016
Pronounced on : 04.11.2016

ORDER**PER S. JAYARAMAN, ACCOUNTANT MEMBER :**

This is an appeal filed by the assessee against the order of the CIT (A), Mysuru, dt.12.07.2013, for the assessment year 2008-09.

02. The assessee, an individual, having income from transport contract business & as a partner of a firm known as SVR Minerals and Sri Minerals, consequent to search & Seizure operation at her residence filed a return, electronically admitting a total income at Rs.1,25,14,330/- which included

Rs.1,00,00,000/-, income declared under income tax search . During the assessment , the AO found that the assessee has introduced cash of Rs.2,63,000/- between 01.4.2007 & 21.4.2007 and a cash loans of Rs.8,60,000/, on a single day ie on 01.5.2007, from 35 persons ranging between Rs.19,000/-& 19,500/- per person which were squared up on 31.03.2007(sic should be 31.03.2008). Since she could not satisfactorily explain the nature, source and genuineness etc of these credits to him, the AO added them as unexplained & unaccounted income, respectively. Aggrieved, she filed an appeal before the CIT(A) and he confirmed those additions. The assessee filed this appeal with the following grounds of appeal.

1. The order of the Commissioner of Income Tax Appeals (CIT (A)) is opposed to the facts of the case and law and it is prejudicial to the interest of the appellant assessee.
2. The CIT (A) ought to have appreciated that there was no incriminating materials seized belonging to the assessee and therefore, the proceeding initiated u/s 153C R.W.S 143(3) are bad in law and liable to be quashed.
3. The CIT(A) ought to have appreciated that in order to assume jurisdiction u/s 153C under the law it is condition precedent that there must be seized material indicating undisclosed income and not any material which was not incriminating.
4. The (CIT (A)) erred in upholding the addition made by the AO that the credits of Rs. 2,63,000/- appearing in the cash book was appellant's un-explained cash credit as per Section 68 of the Act.
5. The (CIT (A)) erred in upholding the addition made by the AO that the appellant has borrowed cash loan aggregating to Rs. 8,60,000/-
6. The (CIT (A)) failed to take into account the facts and circumstances of the case and the submissions made, before coming to an erroneous conclusion that the loans of Rs. 8,60,000/- are not explained.
7. The (CIT (A)) ought to have held that the declaration of income made during the course of Search proceedings was at the behest of search party and in any event cannot be relied upon to frame an assessment, especially when it is not based on any seized material that is not incriminating.
8. The (CIT (A)) erred in charging interest u/s 234A, 234B and 234C of the Income Tax Act. In any event the levy of interest under the aforesaid provisions is not in accordance with law.

03. We heard the rival submissions. Since the assessee filed the return on her own, paid the self assessment taxes etc, the issue boils down to the above two additions which are covered in the appeal ground nos 4, 5 & 6 only. The AO dealt them as under :

"Analysis of Cash Book

A. Cash Credits: *On a scrutiny of the Cash Book produced it is seen that cash of Rs.2,63,000/- has been introduced between 01/04/2007 to 21/04/2007. The assessee has not furnished any explanation with regard to such cash credits appearing. In the absence of satisfactory explanation, considering the fact that she had no income her own for earlier years and that the cash credits appearing in her bank accounts and assessed for earlier years have been utilised for other purposes as per the entries appearing in the bank accounts, I am to hold that the cash credits to the extent of Rs.2,63,000/- are unexplained and subjected to tax u/s 68 of the Act.*

B. Squared up Cash Loans: *In the cash book on 01/05/2007 the assessee has introduced cash loans of Rs.19,000 to 19,500/- from 35 persons aggregating to Rs.8,60,000/-. Such cash loans shown at a figure of Rs.20,000/-, on each occasion, has been squared up as on 31/03/2007 and therefore do not appear in the accounts. Against the cash credit, only the name of the person is shown without having a separate ledger for each transaction. However, a ledger account under the heading Loans is opened on 01/05/2007 for a sum of Rs.8,60,000/- which is squared up before March 2007(sic should be 2008).*

At the time of hearing, the assessee was unable to furnish the names and address of the parties and also was not able to establish the genuineness of the cash loan transaction and the creditworthiness of the parties. Each cash loan of less than Rs.20,000/- introduced on one day shows that the assessee to overcome the provisions of section 269SS has brought in cash of Rs.8,60,000/- in the names of various persons and squared up such loans at the end of the year so that such transactions will not come to light in the form of loans in the financial statements. It is only when the cash book is verified such entries are noticed. Therefore, I hold that such cash loans introduced represent assessee's unaccounted income and bring it to tax u/s 68 of the Act."

Further the AO also held in his order that the assessee has filed an audited balance sheet wherein under assets, under the sub head "Gold, Jewellery and other assets" she has shown an amount of Rs.1,04,00,000/- which is matched by the amount of Rs.1 Crore credited to her capital account with the narration income declared under income tax search-Gold and Jewellery. From this , it is evident that the closing capital shown at Rs.1,54,73,456/- as on 31/03/2008 has been arrived at after considering the disclosure of Rs.1 Cr made. Since, the assessee has considered such disclosure of Rs.1 Cr in her books of account under the head Gold, Jewellery and other assets, got such books audited from a Chartered Accountant, obtained an audit report and filed subsequently, she cannot now account under the heading Loans is opened on 01/05/2007 for a sum of Rs. 8,60,000/- which is squared up before March 2007(sic, should be 2008)."

04. This being so, the assessee pleaded that since she has offered an income of Rs.1,00,00,000/-, voluntarily at the time of search and seizure operations, although she did not have any other worthwhile assets she has honoured it by filing the return etc and hence these additions may be telescoped. In this regard relied on the ratio reported in CIT v K S M Guruswamy Nadar & Sons in 149 ITR 127 Madras. We have considered the assessee's above plea and the AO's above view. The AO found that the cash of Rs.2,63,000/- has been introduced between 01/04/2007 & 21/04/2007 and the cash loans of Rs.19,000 to 19,500/- from 35 persons aggregating to Rs.8,60,000/- was introduced on 01/05/2007 which has been squared up as on 31/03/2007 (sic, should be 31.03.2008) and therefore do not appear in the accounts. The Search and Seizure operations happened on 26.10.2007 and the assessee voluntarily declared Rs. 1 crore as undisclosed income on

23.11.2007. Since the AO has not pointed out any other undisclosed income other than the impugned credits, the credits which appeared in the books before the search and seizure operations and squared thereafter have to be regarded as part and parcel of the undisclosed income of Rs.1 crore voluntarily offered by the assessee and hence we direct the AO to delete the impugned additions.

05. In the result, the appeal ground nos 4, 5 & 6 are treated as allowed.

Order pronounced in the open court on 4th day of November, 2016.

Sd/-

(VIJAY PAL RAO)
JUDICIAL MEMBER

Sd/-

(S. JAYARAMAN)
ACCOUNTANT MEMBER

MCN*

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income Tax
4. The Commissioner of Income Tax (A)
5. DR
6. GF, ITAT, Bangalore

By Order

Assistant Registrar