

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

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER  
AND  
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

**ITA No.208(B)/2013  
(Assessment year : 2009-10)**

ShriK. Kiran Shetty,  
Prop: Manipal Packaging Industries  
Shivali Industrial Area,  
Manipal, Udupi District.  
**PAN No.AAHTPS5952R**

Appellant

**Vs**

The Deputy Commissioner of Income-tax,  
Circle-1,  
Udupi

Respondent

**Assessee by : Smt. R. Pratibha, Advocate  
Revenue by : Dr. P.K.Srihari, Addl.CIT**

**Date of hearing : 14-03-2016**

**Date of pronouncement : 24-03-2016**

**ORDER**

**PER SHRI VIJAY PAL RAO, JM:**

This appeal by the assessee is directed against the order dated 18-10-2012 of the CIT(A), Mysore for the assessment year: 2009-10.

2. The assessee has filed an application for the condonation of delay supported by an affidavit.

2.1 We have heard the learned AR as well as learned DR on the point of condonation of delay. It has been explained that after receiving the impugned order of the CIT(A), assessee could not file the appeal within the

time prescribed because the assessee was facing serious problem in the business regarding shortage of materials, labour shortage, as well as financial problem with the bankers which led to the total dislocation of business of the assessee. Thus, the assessee had to concentrate in reorganization of business and in the process, there was a delay of 4 days in filing of this appeal.

3. Having considered the reasons explained by the assessee, we are satisfied that the assessee was having reasonable cause for not filing the present appeal within the period of limitation. Accordingly, we condone the delay of 4 days in filing of this appeal.

3.1 The assessee in its appeal has raised the following grounds;

*“1. On the facts and circumstances of the case, the ld. CIT(A) erred in making the addition in the manner which he did.*

*2. The ld.CIT(A) erred in confirming a sum of Rs.80,442/- as interest on an amount advanced two persons who were the key associates of the assessee in business. The CIT(A) ought to have appreciated that in business, the loans have to be granted with an aim of increasing as sales and goodwill.*

*3. The ld.CIT(A) grossly erred in confirming a sum of Rs.23,57,000/- out of agricultural income declared to tax. The CIT(A) ought to have appreciated the fact that the estate owned by the assessee had reached peak production levels*

*and also prices of coffee and the agricultural products had increased 3 folds during the year. Thus, the said addition made is to be deleted.*

*4. The ld. CIT(A) erred in confirming a sum of Rs.8,30,613/- towards interest paid, without appreciating the fact that the interest was on the loan borrowed during assessee course of business for investment in the sister concern. .*

*5. Without prejudice, the learned CIT(A) grossly erred in confirming the additions as unexplained credit by invoking sec.68 of the IT Act.. Thus, the impugned addition as made was liable to be quashed.*

*6. Without learned assessing officer erred in levying the interest u/s 234B of Rs.3,07,738/- and u/s 234C of Rs.54,279/- of the Act.*

*7. For these and such other grounds that may be urged at the time of hearing of the appeal the assessee prays that he appeal may be allowed.*

4. Ground no.1 is general in nature and does not require any specific adjudication.

5. Ground no.2 is regarding disallowance of interest of Rs.80,422/- on an amount advanced to two persons. During the course of assessment proceedings, the AO noted that the assessee has made interest free advances to the following two persons;

a) *Sudhir Kodgi* Rs.4,50,000

b) *Sanjay Samanth* Rs.2,81,111

6. The AO further noted that these advances were given in the earlier year and the opening balance continued till the end of the year. Therefore, the AO proposed to disallow the interest at the rate of 11% on the interest free advances. The AO worked out the total interest on these advances at Rs.80,422/- and noted that similar disallowance was made in the earlier assessment year 2006-07 which has been upheld by the CIT(A). The assessee challenged the action of the AO before the CIT(A). However, the CIT(A) had confirmed the addition made by the AO, by recording reasons that the assessee has not furnished any supporting arguments/materials to establish that how the interest free loans helped in increasing the sale and goodwill of the business.

7. Before us learned AR of the assessee submitted that one of these two persons is the relative of the assessee, who is helping the assessee in his business activity. Therefore, when the assessee is not paying any remuneration to the relative, the interest free advance given by the assessee on account of services of assisting the assessee in his business activity. Thus, the learned AR submitted that when the advance was given to the person who is actively participating in the business activity of the assessee, then the disallowance of interest made by the AO is not justified.

As regards the other loan/advance the learned AR submitted that it was given for purchase of machinery and shown in the ledger account of the said person. Thus, the learned AR submitted that the advance given for purchase of machinery does not attract the disallowance of interest.

8. On the other hand, learned DR submitted that the assessee has not produced any evidence to show that the interest free advances were given by the assessee for the purpose of business of the assessee. Therefore, the advance given for other than the purpose of business of the assessee without charging interest attracts disallowance of interest expenditure. He has further submitted that disallowance made by the AO and confirmed by the CIT(A) for the earlier assessment years has been accepted by the assessee.

9. We have considered the rival submissions as well as the relevant material on record. There is no dispute that the assessee has made advance from interest bearing funds to these two persons without charging any interest. The assessee has not brought any evidence on record to show that the advances were given for the business activity or for the purpose of the business of the assessee. Though, the assessee had claimed that one of the two persons is a relative of the assessee and participating in the business activity of the assessee and the other amount is paid as an advance for the purpose of machinery. However, we find that there is no machinery which was ultimately acquired or purchased through this

advance. As regards the advance to the relative who was allegedly assisting the assessee in the business activity, the assessee has not produced any evidence regarding the role of the said relative. In the absence of any record, to indicate that the assessee indeed advanced the said amount in question was for the purpose of business and further an identical disallowance was made by the AO for the assessment year 2006-07, which was been upheld by the CIT(A) has been accepted by the assessee. Therefore, in the facts and circumstances of the case, we do not find any error or illegality in the orders of the authorities below on this issue.

10. Ground no.3 regarding the addition made on account of agricultural income. The assessee has credited in its capital account a sum of Rs.29,57,000/- as agricultural income. The AO noted that the assessee has not claimed any expenditure for earning the agricultural income in the ledger and cash book and the assessee has recorded the amount as net agricultural income without showing any corresponding expenses. Thus, the AO doubted the claim of agricultural income and asked the assessee to furnish complete details of agricultural income with supporting evidence. The AO issued notice u/s 142(1) of the IT Act, 1961 for furnishing all details of agricultural income with proof of sale of agricultural produce. In response, the assessee submitted that the assessee is having 20.43 acres of agricultural land having coffee, pepper, paddy, orange, ginger crops. The assessee has filed copies of RTC in support of the holding of agricultural

land. The AO did not accept the claim of assessee and noted that for the assessment year 2008-09, assessee claimed agricultural income at Rs. 27,85,000/- was not accepted in toto and the claim was restricted to Rs.5.50 lakhs. Even in the earlier assessment year 2004-05, the claim of assessee of agricultural income of Rs.7.00 lakhs was restricted to 4.50 lakhs. Accordingly, the AO restricted the claim of agricultural income at Rs.6.00 lakhs and consequently, made an addition of Rs.23.57 lakhs. The AO was of the view that the assessee has not furnished the details of the person to whom the agricultural produce were sold and the area under the coffee cultivation and other crops. Therefore, in the absence of supporting evidence/materials in respect of sale of agricultural produce and expenses involved, but mere production of ledger extracts and copy of RCT could not prove the claim of agricultural income. The assessee challenged the action of the AO before the CIT(A), but could not succeed.

11. Before us, learned AR of the assessee submitted that the assessee produced the copies of RCT as well as the ledger account showing the land holding and receipt of agricultural income, though the assessee is not maintaining books of accounts for recording expenses incurred for earning the agricultural income. The learned AR has relied upon the decision dated 27-06-2014 of this Tribunal in the case of K.V.Renukaprasad (HUF) Vs ITO in ITA No.1206(B)/2012 for the assessment year 2009-10 and submitted that in the said case, the Tribunal

has estimated a net agricultural income at Rs.90,000/- per acre for the assessment year 2009-10. Whereas the AO has restricted the agricultural income from 20.43 acres only at Rs.6.00 lakhs. Thus, the learned AR submitted that when the assessee has proved the holding of agricultural land than even if the agricultural income is estimated at Rs.90,000/- per acre, it would be amounting to Rs.19.00 lakhs.

12. On the other hand, learned DR submitted that the assessee has failed to produce the primary details of crops and produce of various crops as well as any evidence to support the sale of agricultural produce. Therefore, in the absence of details of the area of land which was under coffee cultivation and produce of the coffee, the decision relied upon by the assessee cannot be applied to the case of the assessee. Hence, he has relied upon the orders of the authorities below.

13. We have considered the rival submissions as well as the material available on record. There is no dispute that except the copies of RCT the assessee has not produced any other evidence in support of the agricultural income. Further, the assessee has recorded only the agricultural income without showing any expenditure incurred for the purpose of agricultural operations, if any, carried out by the assessee. Even from the copies of RCT, we find that the land holding is not in the name of the assessee, but it is in the name of HUF and therefore, question arises whether the agricultural income from the land holding in question is

solely accrued to the assessee and belongs to the assessee. The assessee has not furnished any details of the area of the land which was under coffee cultivation as well as other crops. The assessee himself had claimed that the agricultural land in question was under cultivation of various crops. Therefore, in the absence of exact area of cultivation under each crop, the estimation of agricultural income as estimated by the Co-ordinate Bench of this Tribunal, in the case of K.V.Renukapsad (HUF) cannot be applied in the case of the assessee. In the absence of relevant details as well as material this issue cannot be conclusively decided. Accordingly, in the facts and circumstances of the case, we set aside this issue to the record of the AO to conduct a proper verification/enquiry regarding the land holding as well as area under cultivation of various crops and then decide the same.

14. Ground no.4 regarding disallowance of interest made on account of investment in sister concern. During the year, the assessee had made an investment of Rs.87,46,442/- in one of its group concern M/s Kiv Sansho Packaging Pvt.Ltd., a new company incorporated on 14-01-2008. For this purpose assessee has utilized the interest bearing working capital demand loan of Rs.1.40 Crores availed from Syndicate Bank. The AO found that the said funds were drawn from loan account and transferred to the current account through which cheques were issued to the sister concern.

The AO stated in the assessment order that the AR of the assessee conceded the diversion of interest bearing funds to non-business purpose and agreed to the proposed disallowance. Accordingly, the AO made a disallowance of Rs.8,30,613/-.

15. On appeal, the CIT(A) has confirmed the disallowance made by the AO on the ground that the assessee agreed to the addition.

16. Before us, learned AR of the assessee submitted that the assessee has made an investment in the sister concern, which is in the same line of business therefore, the investment was made for commercial expediency. The learned AR of the assessee contended that even if the borrowed funds are utilized for investment for commercial expediency no disallowance is called for on account of such investment. In support of his contention, he has relied upon the judgment of the Hon'ble Supreme Court in the case of S.A.Builders Vs CIT 288 ITR 1.

17. On the other hand, learned DR has submitted that when the assessee has admitted the disallowance before the AO, there was no opportunity and scope of making other enquiry or examination of the claim of the assessee. The assessee raised this issue first time before this Tribunal that the investment in sister concern was made for commercial expediency. He has relied upon the orders of the authorities below.

18. We have considered the rival submissions as well as the material on record. We find that undisputedly the assessee has used the borrowed funds for the purpose of investment in the sister concern. During the course of assessment proceedings the assessee agreed to the disallowance proposed by the AO on this account. However, the assessee challenged the action of the AO before the CIT(A), but could not succeed, as the CIT(A) has confirmed the disallowance made by the AO, on the ground that the borrowed funds were used for non-business purposes and assessee agreed to the addition. Nothing has been produced before us, by the assessee to show that the assessee is having any potential business with the said sister concern. Therefore, the concept of commercial expediency cannot be invoked in the case of the assessee in the absence of business interest of the assessee in its sister concern. In the facts and circumstances of the case, when the assessee has failed to produce any material or supporting evidence to establish the commercial expediency in making the investment in the sister concern, we do not find any error or illegality in the impugned order of the CIT(A), hence this ground of appeal of the assessee is dismissed.

19. The next ground is regarding levy of interest u/s 234B and 234C of the IT Act, 1961 which is mandatory and consequential.

20. With the above observation, the appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on this 24<sup>th</sup> day of March, 2016.

**Sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

D a t e d : 24-03-2016

Place: Bangalore

**am\***

**Copy to :**

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

**Sd/-**  
**(VIJAY PAL RAO)**  
**JUDICIAL MEMBER**

By order

AR, ITAT, Bangalore