

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH " B "**

**BEFORE SHRI VIJAYPAL RAO, JUDICIAL MEMBER AND
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER**

I.T.A. No.626/Bang/2013 (Assessment Year : 2008-09)		
Dy. Commissioner of Income Tax, Central Circle 1(3), Bangalore.	Vs.	Smt. Lakshmi Aruna, No.8, Ashok Nagar, Havambhavi, Bellary. PAN AFJPA 5974P
Appellant		Respondent.

C.O. No.104/Bang/2014
(Assessment Year : 2008-09)
(By Assessee)

Assessee/C.O. By : Shri B.S. Balachandran, Advocate.
Respondent By : Shri Anurag Sahay,CIT (D.R)

Date of Hearing : 31.7.2015.
Date of Pronouncement : 14.08.2015.

O R D E R

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

This appeal by Revenue is directed against the order of the Commissioner of Income Tax (Appeals), Mysore dt.14.12.2012 for Assessment Year 2008-09. The assessee has also preferred Cross Objections (C.O.) in the matter.

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

2.1 The assessee filed a return of income for Assessment Year 2008-09 on 30.9.2008 declaring income of Rs.19,62,85,960. Pursuant to search action under Section 132 of the Income Tax Act, 1961 (in short 'the Act') being conducted in this group on 26.10.2007, proceedings were initiated under Section 153A of the Act and in response

thereto, the assessee filed a return of income declaring income of Rs.21,07,24,880. In this return filed in response to notice under Section 153A of the Act, the assessee disclosed additional income of Rs.1,35,00,000 as per admission of undisclosed income. This admission of undisclosed income included Rs.90,60,000 on account of the difference of consideration made in the purchase of property on 4.2.2006 in the period relevant to Assessment Year 2006-07 and an amount of Rs.35 lakhs towards the unexplained cash seized in the course of search. The case was taken up for scrutiny and the assessment was concluded under Section 143(3) rws 153A of the Act vide order dt.31.12.2009, wherein the income of the assessee was determined at Rs.20,16,64,880.

2.2 Aggrieved by the order of assessment for Assessment Year 2008-09 dt.31.12.2009, the assessee preferred an appeal before the CIT (Appeals), Mysore. The learned CIT (Appeals) disposed of the matter vide order dt.14.12.2012 allowing the assessee's appeal. The sole issue for consideration before the learned CIT (Appeals) was regarding the addition of Rs.35,00,000 made on account of unexplained cash seized in the course of search. The learned CIT (Appeals) deleted the addition holding as under at paras 5.1 to 5.3 of the impugned order :-

"5.1 I have considered the rival contentions carefully. From the date of search on 26.10.2007 till reconfirmation before ADIT on 22.12.2007 and 24.12.2007 there is almost 2 months gap which is enough time which shows that the declaration given after 2 months of date of search is well thought of one. The new argument of the appellant after substantial time lapse appears to be clearly an afterthought for the reasons mentioned by the A.O.

5.2 Another interesting feature is that the amount of Rs.35,000 is already admitted by the appellant in her return. Subsequently during the course of assessment proceedings, it was requested to exclude that income on the reasoning that it belongs to M/s. Ennoble India Savings & Investment Company

also clearly shows that even at the time of filing the return in the hands of the appellant admitting this income this explanation was not there and the new argument is only an afterthought. I have considered the case law cited by the appellant in 143 TTJ 322 (Mumbai). However, the facts are distinguishable in as much as the fresh claim should be made in the return in the search assessment under Section 153A.

5.3 However considering the fact that Sri G. Janardhan Reddy is the key person I find it more appropriate to tax this excess cash found in the hands of the appellant's husband. Accordingly I agree with the argument of the appellant that same income cannot be taxed twice and for these reasons direct the Assessing Officer to delete the addition in the hands of the appellant."

3.1 Aggrieved by the order of the CIT (Appeals), Mysore dt.14.12.2012 for Assessment Year 2008-09, Revenue is in appeal before the Tribunal raising the following ground :-

" Ground No.1 : The learned CIT (Appeals) erred in law and in fact in directing the Assessing Officer to delete the addition of Rs.35,00,000 ignoring the fact that the amount was included in the return of income filed under Section 153A of the Income Tax Act."

The Id. D.R. was heard in support of the grounds raised.

3.2.1 The learned Authorised Representative supported the decision in the impugned order of the learned CIT (Appeals) in directing the Assessing Officer to delete the addition of Rs35,00,000 made on account of unaccounted cash found and seized in the course of search on 26.10.2007. According to the Id. A.R., in the course of search on 26.10.2007 cash of Rs.36,16,500 was found. On the day of search the assessee stated that the said cash belonged to Obulapuram Mining Company and since the books of account of this firm was incomplete and no proper explanation in respect of the cash was forth coming, an amount of Rs.35,00,000 was seized.

3.2.2 The learned Authorised Representative submitted that in the return of income filed on 20.7.2009 in response to notice under Section 153A of the Act, declaring

Rs.21,07,24,880, additional income amounting to Rs.1,35,00,000 was disclosed which comprised, inter alia, of Rs.90,60,000 pertaining to unexplained investment in property purchased on 4.2.2006 and cash seized amounting to Rs.35,00,000. It is further submitted by the learned Authorised Representative, that in the course of assessment proceedings it was pointed out to the Assessing Officer that the investment of Rs.90,60,000 in the purchase of property on 4.2.2006 had already been admitted by the assessee and taxed in the assessee's hands in the Assessment Year 2006-07 in the order of assessment passed pursuant to notice under Section 153A and therefore the additional income offered to this extent be deleted. The Assessing Officer on verification of the relevant records of assessment found and accepted the assessee's averments to be correct and accordingly deleted this amount of Rs.90,60,000 from her income.

3.3.2 It is submitted by the learned Authorised Representative that in respect of the seized cash amounting to Rs.35,00,000 which was offered for taxation in the assessee's hands, the explanation put forth before the Assessing Officer and again before the Id. CIT(A) was not accepted. The learned Authorised Representative submitted that on appeal, the learned CIT (Appeals) deleted this amount of Rs.35,00,000 pertaining to excess cash in the assessee's hands as he found that the same seized cash of Rs.35 lakhs was already brought to tax in the hands of the assessee's husband Sri G. Janardhan Reddy's hands, in view of the fact that the same income cannot be taxed twice. According to the learned Authorised Representative for the assessee, the order of the learned CIT (Appeals), deleting the amount of seized

cash of Rs.35 lakhs in the assessee's hands, is to be confirmed as the addition of the same seized cash of Rs.35 lakhs in the case of her husband Sri G. Janardhan Reddy has been upheld by the learned CIT (Appeals) and further no further appeal has been preferred by the assessee's husband in the matter. The learned Authorised Representative has filed an Affidavit dt.8.7.2015 sworn to by Sri G. Janardhan Reddy to this effect.

3.3.1 We have heard both parties and perused and carefully considered the material on record. The sole issue for consideration before us, in Revenue's appeal, is regarding the treatment of cash of Rs.35 lakhs, seized in the course of search on 26.10.2007, in the case on hand. Admittedly, this amount was disclosed by the assessee in the income returned pursuant to the search. The assessee, inter alia, put forth the explanation before the Assessing Officer and the learned CIT (Appeals) that the very same amount of income of Rs.35 lakhs on account of cash seized on the date of search had already been offered to tax in the hands of her husband, Sri G. Janardhan Reddy for Assessment Year 2008-09. We find that, as contended by the learned Authorised Representative, seized cash of Rs.35 lakhs has also been brought to tax in the hands of the assessee's husband for Assessment Year 2008-09 by the very same Assessing Officer, as the one in the case on hand. A copy of that order of assessment dt.31.12.2009 has been placed on record. It is also seen from the impugned order of the learned CIT (Appeals), at para 5.3 thereof, that the learned CIT (Appeals) while deleting the addition of Rs.35 lakhs on account of seized cash in the assessee's hands had mentioned confirming the same addition in the case of the

assessee's husband Sri G. Janardhan Reddy for Assessment Year 2008-09 holding that :-

“ 5.3 However considering the fact that Sri g. Janardhan Reddy is the key person, I find it more appropriate to tax this excess cash found in the hands of the appellant's husband. Accordingly, I agree with the argument of the appellant that the same income cannot be taxed twice and for these reasons direct the Assessing Officer to delete the addition in the hands of the appellant.”

3.3.2 The above finding of the learned CIT (Appeals) establishes that since the same income being already brought to tax in the hands of Sri G. Janardhan Reddy and the same being upheld by him as such, the income cannot be taxed twice, i.e. once again in the assessee's hands and he therefore deleted the same addition in the case on hand. In confirmation of the averments of the learned Authorised Representative for the assessee that the assessee's husband Sri G. Janardhan Reddy has accepted the order of the learned CIT (Appeals) to tax the unexplained seized cash of Rs.35 lakhs in his hands, and has filed an Affidavit dt.8.7.2015 sworn to by Sri G. Janardhan Reddy, the relevant portion of which reads as under :-

“

AFFIDAVIT

Sri G. Janardhana Reddy, Son of Late Sri G. Chenga Reddy aged about 48 years resident of Bellary (presently residing at No.1, Race Course Road, Bangalore) do hereby solemnly affirm and state as under :

1. *I am assessed to tax on the file of DCIT, Central Circle 1(3), Bangalore.*
2. *I am filing this affidavit in connection with the appeal proceedings in the case of Smt. G. Lakshmi Aruna (wife) in ITA No.626/Bang/2013 (Revenue Appeal) CO 104/Bang/2014 (by Assessee) for the assessment year 2008-09 before the ITAT, Bangalore.*
3. *That an amount of Rs.35,00,000 was offered to tax in the return of income filed by Smt. G. Lakshmi Aruna, however the Id. Assessing Officer took the view that the amount is assessable as income in my hands and was assessed as such.*
4. *That this issue was taken up in the appeal before the CIT (Appeals), Mysore in both the cases of G. Lakshmi Aruna and my case.*
5. *That the learned CIT (Appeals) was pleased to delete the amount of Rs.35,00,000 in the case of G. Lakshmi Aruna on the grounds of double taxation*

but upheld the addition of Rs.35,00,000 in my case. And I have not preferred appeal on this issue to the ITAT, Bangalore or any other forum. And thus the additions have become final.”

3.3.3 In the light of facts and circumstances of the case as discussed from para 3.1 to 3.3.2 above, we concur with the finding of the Id. CIT(A) in the impugned order (supra), that the unexplained income arising out of Rs.35,00,000 having been brought to tax in the hands of the assessee's husband, Sri G. Janardhan Reddy, the addition in the hands of the assessee is the case on hand is to be deleted as the same income cannot be taxed twice. In coming to this finding, we are bolstered in our view by the Affidavit sworn to by Sri G. Janardhan Reddy (supra) to confirm that the same addition is accepted by him in his case and that no further appeal has been preferred in the matter. Consequently Ground No.1 raised by Revenue is dismissed.

4. In the result, Revenue's appeal for Assessment Year 2008-09 is dismissed.

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5. Since Revenue's appeal is dismissed and the assessee's C.O. being supportive of the impugned order of the learned CIT (Appeals), the C.O. is rendered infructuous and is consequently dismissed.

6. In the result, both Revenue's appeal for Assessment Year 2008-09 and the assessee's Cross Objections are dismissed.

Order pronounced in the open court on 14th Aug., 2015.

Sd/-
(VIJAYPAL RAO)
Judicial Member

Sd/-
(JASON P BOAZ)
Accountant Member

*Reddy gp