

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI A.K. GARODIA, ACCOUNTANT MEMBER

ITA No.190/Bang/2014
Assessment year : 2005-06

Smt. Anita Karuturi, No.204, Embassy Centre, No.11, Crescent Road, Bangalore – 560 001. PAN: ABGPR 1575E	Vs.	The Assistant Commissioner of Income Tax, Circle 11(5), Bangalore.
APPELLANT		RESPONDENT

ITA No.213/Bang/2014
Assessment year : 2005-06

The Assistant Commissioner of Income Tax, Circle 11(5), Bangalore.	Vs.	Smt. Anita Karuturi, Bangalore – 560 001. PAN: ABGPR 1575E
APPELLANT		RESPONDENT

Assessee by	:	Shri B.K. Manjunath, CA
Revenue by	:	Shri A.R.V. Sreenivasan, Jt. CIT(DR)

Date of hearing	:	01.08.2016
Date of Pronouncement	:	18.10.2016

ORDER

Per A.K. Garodia, Accountant Member

These are cross appeals filed by the assessee and the revenue against the order of CIT (Appeals)-I, Bangalore dated 21.10.2013 for the assessment year 2005-06.

2. The grounds raised by the assessee are as under:-

“1. That the orders of the AO/CIT(A) in so far as it is against the appellant is against the law, facts, circumstances, natural justice, equity, without jurisdiction, bad in law and all other known principles of law.

2. That the total income and total tax liability computed is hereby disputed.

3. That the reassessment proceedings were initiated for a particular reason/issue whereas the assessment has been completed on different issues/reasons.

4. That the learned CIT (A) erred in upholding the reassessment proceedings which were on the issues other than what was recorded in the reasons.

5. The learned AO/CIT (A) erred in treating agricultural income of Rs. 3,20,000/- as income u/s 68 of the Act.

6. The learned AO/CIT(A) erred in upholding the addition made with respect to hand loan amounting to Rs. 10,00,000, overlooking the details submitted by the appellant.

7. The learned AO/CIT(A) erred in bringing to tax credit card payments amounting to Rs. 2,92,313/-.

8. The appellant denies liability for interest u/s 234A, 234B and 234C of the Act. Further, interest if any has to be levied only on returned income.

9. Without prejudice to the appellant's right of seeking waiver before appropriate authority the appellant begs for consequential relief in the levy of interest u/s. 234A, 234B and 234C of the Act.

10. For the above and other grounds and reasons which may be submitted during the course of hearing of this appeal, the assessee requests that the appeal be allowed as prayed and justice be rendered.”

3. The grounds raised by the revenue are as under:-

“1. The order of the Learned CIT (Appeals) is opposed to law and the facts and circumstances of the case.

2. The CIT(A) erred in holding that as the transaction was through cheque and transfer from an account to another account, the cash credit of Rs 10,00,000 dated 09/03/2005 stands explained without appreciating that the assessee has neither explained the nature of credit either before the AO or the CIT(A).

3. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT (A) be reversed and that of the Assessing Officer be restored.

4. The appellate craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of the appeal.”

4. It was submitted by the Id. AR of assessee that reopening in the present case is bad in law and in support of this contention, he placed reliance on the Tribunal's order rendered in the case of *Shri Ashwani Kumar v. ITO in ITA No.129/Asr/2015 dated 23.2.2016*. He submitted a copy of the Tribunal's order. It was also submitted that the reasons recorded by the AO in the present case for reopening are available at page 81 of the paperbook (PB).

5. The Id. DR supported the assessment order.

6. We have considered the rival submissions. First of all, we reproduce the reasons recorded by the AO for reopening which is available at page 81 of the PB. This is as follows:-

“ As per the discussion had with your Authorised Representative & as per your request the reasons recorded for the re-opening of the Assessment u/s 147 for the AY: 2005-06 is as follows:-

“Information gathered in this office in the above mentioned case for the financial year 1.04.2004 to 31.03.2005 relevant for the assessment year 2005-06, is as under:

Credit Card Payment Rs.3,54,843/-”

The above mentioned person has not filed return of income for the A.Y. 2005-06 relevant to the financial year 2004-05. As such I have reason to believe that income chargeable to tax has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961.”

7. Now we reproduce the relevant para Nos.4 and 7 to 9 of the Tribunal's order cited before us. This is as under:-

“4. The AO recorded reasons for issuance of notice u/s 148 of the I. T. Act, 1961, to believe escapement of income. These reasons are as follows:

“Reasons for issuance of notice u/s 148 of the I. T. Act, 1961. As per information available from the Annual Information Return (AIR) relating to the financial year 2004-05 relevant to the assessment year 2005-06, the above mentioned person has deposited Rs.11,60,000/- in cash in SB account. However, the aforesaid person has not given 'Permanent Account Number (PAN)' to the AIR filer and even the information has been received as 'AIR data without PAN' from the concerned AIR filer. It is thus established that the above mentioned person is not assessed to tax. Since, the amount of investment exceeds the maximum amount which is not chargeable to tax, I have reasons to believe that the income to the tune of Rs.11,60,000/- has escaped assessment by reason of the failure on the part of the assessee to make a return u/s 139 or in response to a notice issued

under sub-section (1) of section 142 of the Income Tax Act, 1961.

Accordingly, I have reason to believe that the income of Rs.11,60,000/- of the assessee has escaped assessment, besides any other income chargeable to tax which would have escaped assessment and would come to notice subsequently in the course of assessment proceedings under this section, within the meaning of section 147 of the I.T. Act.

Sd/-

Dated: 20.03.2012

(Dr. Tarundeep Kaur)
Asstt. Commr. of Income Tax,
Circle-1, Bathinda.”

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7. The facts are not disputed. A bare perusal of the reasons recorded for issuance of notice u/s 148 of the Act, shows that the only material available before the AO was the AIR information of the assessee having deposited an amount of Rs.11.60 lakhs in his savings bank account. Remarkably, the reasons recorded did not even mention the bank in which such savings bank account was maintained. The assessee, as available from the first page of the assessment order, was issued a notice u/s 148 of the Act, in pursuance to the aforesaid reasons. The assessment order under section 143(3) of the Act is dated 25.03.2013. The assessee had filed the return of income on 05.10.2005 and it had been stated in response to the notice u/s 148 of the Act that this return be treated as having been filed in response to this notice. In ‘Bir Bahadur Singh Sijwali’ (supra), like in the present case, the reasons recorded indicated that cash deposits had been made in the bank account of the assessee. The Tribunal held that the mere fact that the deposits having been made in a bank account does not indicate that these deposits constitute an income which has escaped assessment. It was observed that the reasons recorded did not make out a case that the assessee was engaged in some business and the income from such a business had not been returned by the assessee. In the case at hand also, the reasons recorded do not contain any such recital. The Tribunal held that the factum per se, of deposits in the bank account of the assessee

could not be made the basis for holding the view that income had escaped assessment, over-looking that the sources of the deposits need not necessarily be the income of the assessee; and that as such, the reasons recorded were not sufficient to believe escapement of income; that rather, they were reasons to suspect escapement of income, which was not enough for issuance of a notice u/s 148 of the Act.

8. 'Bir Bahadur Singh Sijwali' (supra), as discussed, is clearly applicable to the present case. No decision to the contrary has been cited before me.

9. In view of the above, finding merit in the grievance raised by the assessee by way of Ground no.1, the reasons recorded by the AO for issuance of notice u/s 148 of the Act are held to be invalid, being reasons not sufficient to believe escapement of income, based on vague information. All the proceedings pursuant thereto, including the assessment order dated 25.03.2013 and the impugned order dated 29.01.2015 are thus annulled and cancelled. Accordingly, all the other issues on merits are rendered academic and infructuous."

8. It is seen that in that case also, reopening was on the basis of AIR only and in the present case also, the reopening is merely on the basis of AIR. In that case, it was stated in the reasons recorded by the AO that, that person is not assessed to tax because he has not quoted his PAN to the AIR filer. In the present case, the AO says that since the present assessee has not filed return of income for the AY 2005-06, he has reason to believe that income has escaped assessment. In our considered opinion, the facts in the present case are similar if not identical to that case, wherein the Tribunal held that the reasons recorded by the AO for issuance of notice u/s. 148 of the I.T. Act are not valid being reasons were not sufficient to believe escapement of income.

9. Respectfully following this Tribunal's order, we hold that in the present case also, the assessment is not valid because the reasons recorded by the AO for issuance of notice u/s. 148 of the Act are invalid, because these reasons are not sufficient to believe escapement of income. Hence the present assessment order is annulled and cancelled.

10. In view of our decision, no adjudication is called for regarding the other grounds raised by the assessee and in respect of the appeal filed by the revenue.

11. In the result, the appeal of the assessee is allowed and appeal of the revenue is dismissed.

Pronounced in the open court on this 18th day of October, 2016.

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Sd/-
(A.K. GARODIA)
Accountant Member

Bangalore,
Dated, the 18-10-2016.
/D S/

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.