

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

**BEFORE SMT ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER  
AND  
SHRI ABRAHAM P GEORGE, ACCOUNTANT MEMBER**

**ITA No.1275(B)/2013  
(Assessment year : 2009-2010)**

The Income-tax Officer,  
Ward-3,  
Mandya

Appellant

**Vs**

Shri Vikas B Jadhav,  
M/s RB Bankers, MG Road,  
Channapatna  
**PAN No.AJOPJ2076Q**

Appellant

**Revenue by : Dr. P.K.Srihari, Addl.CIT  
Assessee by : Shri V. Srinivasan, CA**

**Date of hearing : 30-09-2015  
Date of pronouncement : 08-10-2015**

**ORDER**

**PER SHRI ABRAHAM P GEORGE, AM:**

In this appeal filed by the revenue directed against an order dated 04-01-2013 of CIT(A), Mysore. It has altogether raised six grounds of which ground no. 6 is general in nature, needing no specific adjudication.

2. Vide its ground no.1, grievance raised by the revenue is that CIT(A) deleted addition made by the AO for a claim of interest and salary dues.

3. Facts apropos are that the assessee a Pawn Broker had filed his return for the impugned assessment year declaring an income of Rs.4,59,759/-. There was a survey u/s 133A of the IT Act, 1961 on 11-02-2010 in the premises of the assessee. Assessee was carrying on the business of pawn broking along with his family members from the very same premises. A sworn statement of the assessee was recorded on 20-12-2011 and 21-12-2011 in which the AO put questions to the assessee on various additions proposed by him. Thereafter, assessee was required to furnish documents in support of its claim. Since such documents were not forthcoming, the assessment was completed u/s 144 of the IT Act. In such assessment, AO disallowed a claim of interest of Rs.2,63,880/- and salary of Rs.1,24,000/- shown as payable. As per the AO, assessee had in the sworn statement stated that he was following cash system of accounting. Therefore, as per the AO, outstanding expenses could not be claimed. Both the claims viz. interest as well as salary were disallowed.

4. Assessee moved in appeal before the CIT(A) and submitted that in the return filed for the impugned assessment year, it had declared the method of accounting as mercantile. Therefore, as per the assessee merely based on an oral statement the claim ought not have been disallowed. Learned CIT(A) was appreciative of this. He deleted the addition.

5. Now before us, learned DR strongly assailing the order of the CIT(A) submitted that in cash system of accounting outstanding expenditure could not be claimed.

6. Per contra, learned AR submitted that a similar issue had come up before this Tribunal in the case of assessee's brother Shri Santhosh Jadhav, which was also subject to a similar assessment pursuant to the same survey proceedings. According to him, this Tribunal in its order dated 09-04-2015 in ITA No.1271 to 1273(B)/2014 at para-7 & 8 upheld the order of the learned CIT(A) deleting a similar disallowance.

7. We have perused the orders and heard the rival contentions. Assessee had clearly mentioned in its return of income that he was following mercantile system of accounting. A system of accounting followed by the assessee cannot be changed simply based on an oral statement. We are of the opinion, that once the books of accounts are maintained in mercantile system of accounting, claim of outstanding expenditure if its correct, cannot be disallowed. AO also had not doubted the genuineness of the claim. In the circumstances, we are of the opinion, that CIT(A) was justified in deleting the addition. Ground no.1 of the revenue stands dismissed.

8. In its ground no.2 grievance raised by the revenue is that an addition for difference in capital account was deleted by the CIT(A). Learned DR submitted that no evidence was produced by the assessee to show or reconcile the difference in capital.

9. Per contra, learned AR submitted that directions given by the CIT(A) was only to verify and thereafter allow the claim. According to him, no prejudice was caused to the revenue by such directions.

10. We have perused the order and heard the rival contentions. Learned CIT(A) had directed the AO to verify whether the opening balance as on 01-04-2008 was the same as the closing balance as on 31-03-2008. The direction was to verify the claim and allow it, if found correct. We do not find any reason to interfere with such direction. Ground no.2 of the revenue stands dismissed.

11. Vide its ground no.3 grievance raised by the revenue is that learned CIT(A) deleted additions made by the AO, for unsecured loans. AO had found that assessee had shown unsecured loans from the following family members;

Sl.No	Name	Amount(Rs.)
1	Smt Smita Jadhav	6,00,000
2	Smt Sheela Jadhav	6,00,000
3	Smt Shakuntala Jadhav	5,60,900
4	Ramdas Jadhav	5,57,690

In an oath statement given, assessee stated that he was not having confirmation from the above loan creditors. Accordingly, he made an addition of Rs.23,18,590/-. In its appeal before the CIT(A), assessee argued that creditors were family members who were assessed by the very same AO. As per the assessee Pan Nos. of these creditors were also available. Hence, as per the assessee the additions were not justified. Learned CIT(A) was appreciative of these contentions. He deleted the additions.

12. Now before us, learned DR strongly assailing the order of the CIT(A) submitted that assessee had not given any confirmation or any other details during the course of assessment proceedings. The CIT(A), as per the learned DR ought to have verified the claim of the assessee before allowing the ground raised in this regard.

13. Per contra, learned AR strongly supported the order of the CIT(A).

14. We have perused the order and heard the rival contentions. Assessee in his reply to a question raised during the course of his examination had stated that he was not having any confirmation from the loan creditors. The CIT(A) had given relief to the assessee with a finding that the Pan Nos. of the creditors were available and they were assessed by the very same AO. May be this is true. However, there cannot be any dispute that it required a verification by the AO. Just because the creditors were assessed by the same AO, would not be a reason to say that assessee had no duty to furnish a confirmation letter from the creditors. Confirmation letters can also throw light on the nature of the underlying transactions. We are of the opinion, that the issue requires a fresh look by the AO. We therefore, set aside the orders of the lower authorities in this regard and remit the issue regarding the addition for unsecured loans back to the file of the AO for consideration afresh in accordance with law. Ground no.3 of the revenue is allowed for statistical purposes.

15. Vide its ground no.4 grievance of the revenue is that relief was given by CIT(A) even for admitted drawings. AO had estimated assessee's drawings at Rs.1,20,000/-and made an addition of Rs.1,01,286/- for the deficit in source. The CIT(A), on appeal had considered the fact that assessee belonged to a group of individuals all of whom were assessed and located in Mandya. He held that an addition of Rs.50,000/- would be fair, considering the fact that other family members of the assessee were also being assessed. We are of the opinion that the CIT(A) was justified in giving relief to the assessee. We do not find any reason to interfere. Ground no.4 of the revenue stands dismissed.

16. Vide its ground no.5 grievance raised by the revenue is that the addition of Rs.1,02,000/- made for agricultural income was deleted by the CIT(A). We find that the CIT(A) had deleted the addition for a reason that assessee was owning 3 acres and 2 guntas of land situated at Devanagar, Dist. Maharashtra. No doubt, learned DR argued that mere ownership of the agricultural land would not be sufficient to accept a claim of agricultural income. However, this argument can be considered only where the agricultural income claimed is of a higher order. It is admitted position that the holding of the assessee was at Sangli, which is a rich sugar belt area in Devanagar. Assessee had also given the details of the agricultural crops which are being raised by it. In such circumstances, on a preponderance of probability, the CIT(A) had allowed the claim. We

do not find any reason to interfere with the order of the CIT(A). Ground no.5 of the revenue stands dismissed.

17. In the result, the appeal of the revenue is partly allowed for statistical purposes.

Order pronounced in the open Court on the 8<sup>th</sup> October, 2015.

**Sd/-**  
**(ASHA VIJYARAGHAVAN)**  
**JUDICIAL MEMBER**

Place : Bangalore  
Dated : 08-10-2015

**am\***

**Copy to :**

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

**Sd/-**  
**(ABRAHAM P GEORGE)**  
**ACCOUNTANT MEMBER**

By order

AR, ITAT, Bangalore