

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

BEFORE SHRI. VIJAY PAL RAO, JUDICIAL MEMBER

AND

SHRI. INTURI RAMA RAO, ACCOUNTANT MEMBER

I.T.A No.612/Bang/2014
(Assessment Year : 2009-10)

Shri. R. Nagendra,
No.6, Opp Road to Peniel School, Swathantra Nagar Main Road,
Ayyapanagar, K. R. Puram,
Bangalore 560 036 .. Appellant
PAN : ADTPN5718L

v.

Income-tax Officer,
Ward – 8(1), Bangalore .. Respondent

Assessee by : Shri. R. Krishna Murthy, Advocate
Revenue by : Dr. P. K. Srihari, Addl. CIT

Heard on : 14.03.2016
Pronounced on : 29.04.2016

ORDER

PER VIJAY PAL RAO, JUDICIAL MEMBER:

This appeal of the assessee is directed against an order dt.28.02.2014
of CIT (A)- LTU, Bengaluru, for the assessment year 2009-10. Assessee
has raised the following grounds :

11. *The orders of the Assessing Authority and CIT (A) are contrary to law and they failed to appreciate the facts and weight of evidence on record.*
12. *The orders of the Assessing Authority and CIT (A) are against the principles of legitimate expectations entitled by the Appellant.*
13. *The AO and the First Appellant Authority have failed to appreciate the confirmation given by the mother-in-law who has given that amount which amount is arrived from the sale proceedings of the agriculture land. The mother-in-law received the said amount through the agreement to sell as well as the execution of sale deed from the purchaser.*
14. *The First Appellant Authority has failed to appreciate transaction of the agricultural land belonged the family of the mother-in-law consisted of her husband and children. The wife of the Appellant is one of the daughter of the family of Sint. Rajamma and good intention of the family of Rajamma were given the amount from the sale of the agricultural land was given to the Appellant for purchase of site, which is not undisclosed investment of the Appellant.*
15. *The First Appellate Authority has failed to appreciate bank transaction, which was not in date wise, which is unjust and arbitrary. Thus the order is not sustainable in law.*
16. *The First Appellate Authority and Assessing Authority have failed appreciate and gave a finding based on the accounts of the Assessee which was not audited balance sheet. By oversight, in the balance sheet as well as in the written submissions, the amount of Rs. 7 lakhs was mentioned as loan taken from the mother-in-law of the Assessee. Therefore there no contradictory statement or fact given by the Assessee. The amount of Rs. 7 lakhs was gifted by Smt. Rajamma, the mother in law of the Assessee, which statement was confirmed by Smt. Rajamma and their family by given their declarations.*
17. *The Appellant craves leave to file additional grounds at the time of hearing.*

2. During the year under consideration assessee has purchased a property bearing site No.6 at Basavanapura, for a consideration of Rs.20 lakhs + Rs.1,88,310/- as cost of registration and stamp duty, total amounting to Rs.21,88,310/-. Assessee has explained the source of the said amount being loan from Dewan Housing Finance Ltd ('DHFL' in short) of Rs.14,76,360/- and a sum of Rs.7,11,915/- as cash gift from his mother-in-law. During the course of assessment proceedings, the AO noted that there was a cash deposit in the bank account of the assessee with Axis Bank to the tune of Rs.18,28,200/-. AO treated the said cash transaction as unexplained cash credit u/s.68 of the Act and further the amount of Rs.7,11,950/- claimed to be cash / gift from mother-in-law was treated as unexplained investment in the property u/s.69 of the Act.

3. Assessee challenged the action of the AO before the CIT (A), but could not succeed as the CIT (A) has confirmed the addition made by the AO.

4. Before us, Ld. AR of the assessee has submitted that the amount of Rs.18,28,200/- considered as unexplained cash credit which forms part of the income declared by the assessee from its business activity as received from Studio, gross income of Rs.17,00,0420/- , out of which assessee has

declared a net income of Rs.3,02,400/-. Ld. AR has submitted that the AO as well as the CIT (A) has ignored this aspect that the deposits in the bank are made from the business receipts of the assessee. As regards the amount claimed to have been received as a gift from mother-in-law, Ld. AR has submitted that due to over sight the assessee has mentioned the said amount of Rs.7,11,950/- as loan taken from his mother-in-law. However the said amount is in fact a gift received from the mother-in-law. He has further submitted that assessee has explained the source of the said amount in the hands of the mother-in-law, the sale consideration of the agricultural land as well as the agricultural income. He has further submitted that in support of the assessee's claim he has produced the sale deed and confirmation / declaration from the mother-in-law of the assessee. Thus the assessee has discharged its onus by producing the sale deed as well as the confirmation / declaration by the mother-in-law, whereby the source of the said amount of Rs.7 lakhs has been explained. He has further contended that when the AO has accepted the business income of the assessee and the gross receipt, then the addition made on account of the cash deposit in the bank account is not justified without considering the gross receipts available with the assessee. Thus he has pleaded that the addition made by the authorities below may be deleted.

5. On the other hand, Ld. DR has strongly relied upon the orders of the authorities below and submitted that the explanation of the assessee is very vague which is not supported by any tangible evidence. Therefore the explanation of the assessee is an after-thought when the AO has asked the assessee to explain the source of the consideration of purchase of the property being, site no.6 and further the source of cash deposit in the bank. He has further contended that the AO as well as the CIT (A) has examined the relevant record and given a finding that the assessee failed to establish the source of the cash deposit in the bank as well as the purchase consideration to the extent of Rs.7,11,000/-.

6. We have considered the rival submissions and relevant material on record. There is no dispute as far as the cost of acquisition of the site no.6 at Basavanapura, amounting to Rs.21,88,310/- the assessee explained the source of the purchase consideration partly by availing loan of Rs.17,46,360/- from DHFL., which has been accepted by the AO. The dispute is only with respect of the balance amount of Rs.7,11,950/- which has been claimed by the assessee as received from his mother-in-law. AO rejected the explanation of the source of the purchase consideration being loan from mother-in-law and further the addition of unexplained cash credit

of Rs.18,28,200/- was made by the AO u/s.68 of the Act. Source of cash deposit has been explained by the assessee as business receipt, but it was not accepted by the AO. It is pertinent to note that the AO considered only deposit side of the bank account without considering the withdrawal. Further when the AO accepted the gross receipt from the business of studio, then to that extent the deposit in bank account can be considered as explained source if the expenditure incurred by the assessee from the corresponding withdrawal from the bank. Therefore this aspect of deposit and withdrawal in the bank account has not been examined by the authorities below. Accordingly we set aside this issue to the record of AO to examine the same afresh by considering the deposit as well as explaining the withdrawals by matching the same with the business receipts and business expenditure of the assessee.

7. As regards the gift received from the mother-in-law, it is found that the source was explained as sale of agricultural land for a consideration of Rs.10 lakhs. However, in the sale deed the consideration is stated to be only Rs.2,20,000/-. Though the assessee produced confirmation of the purchaser of the agricultural land regarding the consideration of Rs.10 lakhs vide agreement dt.21.01.2008, the said confirmation was not accepted by the

CIT (A) on the ground that it was not produced before the AO. Apart from the confirmation of the purchaser of the agricultural land, the assessee also produced the declaration of the mother-in-law, father-in-law and other relatives regarding the gift of Rs.7 lakhs given by the mother-in-law. Genuineness of the agreement has not been examined by the AO. Further the AO has also not examined the parties to the transaction to verify the claim of the assessee and rejected the claim at the threshold. Therefore in the facts and circumstances of the case, this issue is set aside to the record of the AO to conduct a proper enquiry and verification by examining the concerned parties to the transaction and then decide the issue after giving an opportunity of hearing to the assessee.

8. In the result appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 29th day of April, 2016.

Sd/-

(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-

(VIJAY PAL RAO)
JUDICIAL MEMBER

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