

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

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

ITA No.736/Bang/2016
(Assessment year: 2010-11)

P.Gouthamchand (HUF),
C/o M/s.M.P.Jewellers,
1st Cross, Robersonpet,
KGF-563122 ... Appellant
PAN: AADHG0869E

Vs.

Deputy Commissioner of Income-tax,
Central Circle 2(1),
Bangalore. ... Respondent

Appellant by : Shri H.N.Khincha, CA.
Respondent by : Shri Sanjay Kumar, CIT(DR)

Date of hearing : 13/07/2016
Date of pronouncement : 26/08/2016

O R D E R

Per INTURI RAMA RAO, AM :

This is an appeal filed by the assessee directed against the order of the CIT(A)-11, Bangalore, dated 26/02/2016 for the assessment year 2010-11.

2. The assessee raised the following grounds of appeal:

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1. The learned Assessing Officer had erred in passing the order in the manner passed by him and the learned Commissioner of Income tax (Appeals) has erred in confirming the same. The order passed being bad in law and are liable to be quashed.
2. In any case, the learned Assessing Officer had erred in assuming jurisdiction U/s. 153C of the I.T. Act and the learned Commissioner of Income tax (Appeals) has erred in confirming the same. The orders as passed lack proper jurisdiction and same are liable to be quashed.
3. In any case and without prejudice, the learned Assessing Officer had erred in making an addition of Rs. 75,12,096/- to the income of the appellant on account of difference in stock and the learned Commissioner of Income tax (Appeals) has erred in confirming the same. On the facts and circumstances of the case and the law applicable, the addition as made/confirmed being erroneous is to be deleted.
4. The lower authorities have erred in holding that the claim of the appellant is neither reflected either in the books of accounts of the appellant not in the income tax returns filed by the lenders;

The above conclusion is not correct on the facts of case.
5. On proper appreciation of explanation offered by the appellant, the addition as made and sustained is to be deleted.
6. In any case and without further prejudice, the inclusion of Income tax in the year and period being not right, the addition as made/sustained is to be deleted.
7. The appellant denies the liability to pay interest. The interest having been levied erroneously is to be deleted.
8. In view of the above and other grounds to be adduced at the time of hearing it is requested that the impugned order be quashed or atleast the addition as made sustained be deleted and the interest levied be also deleted.

2. Briefly facts of the case are that the assessee is an HUF engaged in the business of dealing in gold and jewellery. A search and seizure operations under the provisions of section 132 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] were conducted in the case of M/s.Mangalchand Banthia and others on 12/03/2012. It was stated that certain documents belonging to the assessee were found during the

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course of search and seizure operations. Consequently, notice u/s 153C of the Act dated 01/10/2013 was issued and served on the assessee. In response to same, assessee submitted that the original return of income filed on 20/03/2012 declaring a total income of Rs.14,49,970/- be treated as return in response to notice u/s 153C of the Act. Subsequently, notice u/s 143(2) dated 20/9/2013 was issued and served on the assessee and the assessment was completed u/s 143(3) r.w.s. 153C of the Act vide order dated 28/03/2014. While doing so, the Assessing Officer (AO) made addition of Rs.75,12,096/- on account of difference in stock of gold as per stock register and details in report of Form 3CD. The AO noticed that as per registered impounded on 12/03/2012 as per annexure MPJ/S-4, opening stock as per the stock register as on 1/4/2011 was 18,355.370 gms whereas as per report in Form 3CD, opening stock as on 01/04/2011 was 13,295.370 gms and the difference of 5060 gms between the stock register and the details as per Form 3CD, was brought to tax by adopting the rate of Rs.1632 per gm. When the assessee was called upon to explain the difference in stock, it was submitted that difference in stock of 4603 gms was on account of gold taken as advance under MP Deposit Scheme (MPDS) from various family members numbering to 22. The above explanation tendered by the assessee in support of difference in stock of 4603 gms was rejected by the AO on the following grounds:

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- 1). It is seen from the seized books of account that the first entry of gold as per seized material Annexed MPJ/S-7 ledger is period F.Y 2009-10 and second entry is in F.Y 2011-12. Copy of page 27 of Annexure A/MPJ/S-7 dated 12.03.2012 is enclosed as (Annexure-1 to this order). The Annexure A/MPJ/S-7 consists of the books of account for the period 01.04.2009 to 31.03.2010. The same is roughly reproduced in English as under;
Parties had deposited 4603 grams of gold under Shri MP Gold Deposit Scheme.
This evidence proves that the entry relating to the MP Gold Deposit scheme was made for the first time in the books of account during FY 2009-10 pertaining to AY 2010-11.
- 2) It is seen from the stock statements filed alongwith the Form 3CD reports that the above entry is not part of the financial statements filed alongwith the returns of income for AY 2010-11 or earlier years.
- 3) The assessee claimed such entry of 4603 grams was under M.P. Gold deposit scheme in which gold was deposited from 26 persons who happen to be his relatives. There are no agreements with the alleged depositors of MP Gold Deposit Scheme.
- 4) The financial statements of the assessee such as Balance sheet were examined. It is found such deposits are no where reflected in the financial statements.
- 5) As per the claim of assessee, he has accepted the deposits from the said 26 persons. Then as per the accounting standards, same should be reflected as 'Liability' in the statements. But there is no such reflection in the assessee's balance sheet for AY 2010-11 or earlier years.
- 6). The financial statements of the depositors were also verified. One such depositor is Mr. Gauthamchand (Individual), who is also assessed in this circle. The financial statements of the depositor Mr. Gauthamchand (Individual) are also is silent about the alleged gold deposited with the assessee. There is nothing pertaining to this transaction in the financial statements of Mr. Gauthamchand (Individual).

7). The assessee also claims no monetary benefit such as any 'Interest' or 'Profit' is given to the depositors.

8) The confirmation letters points such deposits were made in year 1999. On examination of the facts, it is seen without any form of monetary benefit or any form of reciprocation, the depositors have deposited their assets in the form of gold to the assessee. This means there was no return on the alleged gold deposits by investors for more than thirteen years. This is highly improbable.

9). The assessee claims to have received M.P.Deposits in the form of gold from the depositors. During the Search no such gold bullion was found. 2

10) The assessee claims that the same gold bullion is converted into jewellery. The stock register does not contain details of such gold jewellery pertaining to the alleged MP Deposit scheme. The assessee nowhere has maintained any separate column or working in the stock register. There is no evidence to segregate the (jewellery) in normal stock from the jewellery alleged to have been made out of M.P.Deposits scheme.

The difference amount was brought to tax as unexplained investment.

3. Being aggrieved, an appeal was filed before the CIT(A) who vide impugned order, dismissed the appeal. It was, *inter alia*, contended that there was no satisfaction recorded by the AO of the person searched and therefore, the proceedings initiated u/s 153C were not valid in law. This contention was negated by the CIT(A) after verifying from the assessment record that the AO has recorded a satisfaction note dated

01/10/2013 and the satisfaction note was reproduced by the CIT(A) as under:

"During the course of search action u/s 132 dated 12.03.2012 in the case of Sri Gouthamchand Banthia, the assessee has made declaration of Rs.70,00,000/- for A.Y.2011-12 and Rs.80,00,000/- for A.Y.2012-13 in hands of Shri.Gouthamchand (HUF). The same needs to be assessed. Hence, please put up notices u/s 153C for A.Y. 2006-07 to 2012-13."

As regards merits of the addition, the CIT(A) confirmed the addition.

4. Being aggrieved, assessee is before us in the present appeal.

4.1 Learned AR of the assessee submitted that the original notice u/s 153A dated 01/10/2013 was issued to the assessee. However, the assessment came to be completed u/s 143(3) r.w.s. 153C of the Act. He further submitted that the notice u/s 143(2) issued against original return of income, not against return filed in response to notice issued u/s 153C of the Act. He further contended that no satisfaction as required u/s 153C was recorded by the AO. In support of this contention, he relied on the following decisions:

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- ACIT v. Global Estate (2013) 142 ITD 740(Agra)(Trib.)
- Ingram Micro (India) Exports Pvt. Ltd. v. Dy. DIT (Mum.)(Trib.) ITA Nos.8133, 8137,8138,8136, 8135 & 8132/Mum/2010 Assessment years: 2002-03 to 2007-08
- V. K. Fiscal Services Pvt. Ltd. v. DCIT (Delhi)(Trib.) ITA nos. 5460,5461, 5462, 5463, 5464 and 5465/Del/2012 AYs 2004-05 to 2009-10
- DSL Properties (P.) Ltd. v. Dy. CIT (2013) 60 SOT 88 (URO)(Delhi)(Trib.)
- ACIT .v. Inlay Marketing Pvt. Ltd(2015) 167 TTJ 273 (Delhi)(Trib.)
- Pepsi Foods P. Ltd. .v. ACIT (2014) 367 ITR 112 (Delhi)(HC)
- CIT .v. Gopi Apartment (2014) 365 ITR 411 (All.)(HC)
- DCIT.v. Akash Arogya Mindir P.Ltd. (2015) 167 TTJ 578/ 114 DTR 61 (Delhi)(Trib.)
- CIT v. Sinhgad Technical Education Society (2015) 378 ITR 84/ 278 CTR 144 (Bom.)(HC)
- CIT v. Mechmen (MP)(HC) AYs 2000-01 to 2006-07 I.T.A. No.44/2011, I.T.A. No.45/2011
- DCIT .v. Aakash Arogya Mindir (P) Ltd. (2015) 167 TTJ 578 (Delhi)(Trib.)

As regards merits of the addition, he submitted that the explanation offered by the assessee that difference in the quantity of stock as per stock register and the report in Form 3CD is only account of receipt of jewellery under the scheme called MP Deposit Scheme. He submitted that even confirmation letter from the depositors have been filed. Thus, he submitted that no addition is called for in the circumstances of the case.

4.2 On the other hand, Id.CIT(DR) submitted that the assessee having participated in the assessment proceedings without raising any objection as to the validity of the notice

issued u/s 153C, he cannot raise objection at this stage. Relying upon the provisions of section 292B, he submitted that notice issued was valid in law. As regards recording of satisfaction, Id.CIT(DR) submitted that when the AO of the searched person and the assessee are same, there was no need of recording of separate satisfaction and in this connection, he relied on the decision of the Hon'ble Allahabad High Court in the case of *TVS Securities & Finance (P) Ltd vs. CIT* (42 taxmann.com 441)(All) and the decision of the Hon'ble Kerala High Court *CIT vs. Dr. T.M.Kuriachan* (32 taxmann.com 165)(Ker). He further submitted that the proceedings u/s 153C were validly initiated as the kartha of the assessee had declared undisclosed income u/s 132(4) of the Act in the hands of P.Gouthamchand, HUF. On the merits of the issue, Id.CIT(DR) submitted that the AO was justified in rejecting the explanation, as no corroborative evidence was filed to establish that the assessee had received gold under MP Deposit Scheme. Doubts raised by the AO, as mentioned in the assessment order, had remained unsubstantiated. In the circumstances, the addition should be confirmed.

5. We heard rival submissions and perused material on record. At the first instance, we shall deal with validity of the notice u/s 153C of the Act. It is a matter of record that kartha of the assessee i.e. P.Gouthamchand had given a statement u/s 132(4) of the Act offering income of Rs.80 lakhs in the hands of

the present assessee. Veracity of the statement is not under challenge. Needless to mention that statement given in the course of search and seizure proceedings u/s 132(4) constitutes material or document sufficient to give rise to jurisdiction u/s 153C of the Act. Admittedly as there was no warrant of search against the appellant, provisions of the Act do not authorize the AO to issue notice u/s 153A of the Act. However, in this case, though the notice was issued u/s 153A of the Act, the assessee filed return in response to same and participated in the assessment proceedings. Thus, the assessee has participated in the assessment proceedings and filed certain details and explanation before the AO and the same was considered by the AO at the time of framing the assessment order. Therefore, it cannot be said that any prejudice is caused to the assessee by mere wrong provision of law in the notice issued to him. The Parliament has enacted section 292B to cover this kind of situation. The provisions of section 292B are extracted below:

Return of income, etc., not to be invalid on certain grounds.

292B. No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

The above provisions clearly provide that no return of income, assessment or notice, summons, other proceedings under the Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission if in substance and effect, it is in conformity with or according to the intent and purpose of the Act. The Hon'ble Andhra Pradesh High Court in the case of *Bharathi Cement Corporation vs. CIT* (356 ITR 74) had interpreted the provisions of section 292B of the Act as under:

".....It may however be noted that Section 292B of the Act enacts no assessment, notice, summons or other proceedings taken by the authorities under the Act shall be invalid by reason of any mistake, defect or omission if such notice or proceedings or assessment is otherwise valid under the Act. This provision enacts the principle that mere non-mention or mention of a wrong provision of law in a proceeding or order cannot be a ground to invalidate it if that is otherwise permissible and valid under law..... "

Thus having regard to the provisions of section 292B of the Act, we hold that mere mention of wrong section in the notice does not vitiate the validity of the very notice issued for filing return of income. Thus, the contention of the assessee that notice issued requiring assessee to file return of income is invalid, cannot be accepted. As regards recording of satisfaction, the CIT(A) had observed that the AO has recorded a satisfaction note and the satisfaction note was also recorded in his order. As regards the contention of the assessee that satisfaction note has to be recorded again by the AO of the assessee who has

jurisdiction over him, no material was produced before us that no such satisfaction was recorded by his AO. In absence of material on record, we are unable to appreciate the contention of the assessee. Thus, in our considered opinion, the proceedings are validly initiated u/s 153C of the Act.

6. As regards merits of the addition, the AO has raised certain questions doubting the veracity of the explanation offered by the assessee as per paragraph 7 of the assessment order, which are reproduced supra. The doubts raised by the AO remain unsubstantiated and the assessee had made no effort to controvert the above findings of the AO. As the assessee has failed to prove his claim, we have no option but to confirm the addition.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on this 26th August, 2016

sd/-

(VIJAY PAL RAO)
JUDICIAL MEMBER

Place : Bangalore
D a t e d : 26/08/2016
srinivasulu, sps

Copy to :

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

sd/-

(INTURI RAMA RAO)
ACCOUNTANT MEMBER

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore