

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

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER  
AND SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

ITA No.1154/Bang/2013
Assessment year : 2005-06

Smt. Harini M. Shetty, No.816, 13 <sup>th</sup> Main, 3 <sup>rd</sup> Block, Koramangala, Bangalore – 560 034. <b>PAN: AJEPS 2617J</b>	Vs.	The Assistant Commissioner of Income Tax, Circle 7(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Narendra Sharma, Advocate
Respondent by	:	Dr. K. Shankar Prasad, Jt. CIT(DR)

Date of hearing	:	18.02.2015
Date of Pronouncement	:	27.02.2015

**ORDER**

*Per N.V. Vasudevan, Judicial Member*

This appeal by the assessee is against the order dated 03.05.2013 of the CIT(Appeals), LTU, Bangalore relating to assessment year 2005-06.

2. The assessee is an individual. She derives income from house property, capital gains and other sources in the nature of interest, dividend, etc. She also receives share income from partnership firm M/s. Akkayya

Consultancy Services and M/s. Satyanarayana Plantations. In the course of assessment proceedings, the AO noticed that five deposits of Rs.45,000 each was appearing in the bank statement of the assessee as on 1.3.05, 12.03.04 and 29.12.04. Thus in all, there were total deposits in this pattern of Rs.6,75,000. The AO called upon the assessee to furnish names and addresses of the persons from whom the aforesaid amounts were received, the nature of the transaction and why amounts have been paid through different cheques on the same date.

3. The assessee, in response to the query of the AO submitted that the aforesaid payments are loans repaid by one Mr. Umesh Kumar through DDs. The assessee also submitted that that a total loan of Rs.12,50,000 was given by the assessee to Shri Umesh Kumar on 1.6.2000. Out of the aforesaid loan, a sum of Rs.12,50,000, Rs.10 lakhs was received in the form of DDs and a sum of Rs.2,50,000 was outstanding as on 31.3.2005. The said outstanding was already paid by Mr. Umesh Kumar in the month of May, 2005. The AO called upon the assessee to produce Mr. Umesh Kumar. The assessee expressed her inability to produce Umesh Kumar and also to furnish his complete postal address. Therefore, the AO issued summons to the assessee u/s. 131 of the Act for her appearance so as to verify the genuineness of the transaction. The assessee did not respond to the summons issued by the AO. In the circumstances, the AO held that the assessee has failed to discharge her obligation to explain satisfactorily the credits in her bank account. Accordingly, a sum of Rs.6,75,000 was

treated as unexplained credit and added to the total income of the assessee u/s. 68 of the Act.

4. The assessee, aggrieved by the aforesaid order of the AO, filed an appeal before the CIT(Appeals). Even before the CIT(A), she neither filed confirmation of Umesh Kumar nor produced him for examination. The assessee submitted before the CIT(A) that Umesh Kumar was known to the assessee's husband and on his recommendation, a loan of Rs.12,50,000 was given on 1.6.2000 by a cheque drawn on Scotia Bank. It was also pointed out that the loan of Rs.12.50 lakhs was shown on the assets side of her statement of affairs from A.Ys. 2001-02 till 2004-05. The assessee contended that the disclosure of the loan amount in the balance sheet and receipt of repayment of loan in the form of DDs was sufficient to explain the credit satisfactorily. It was also argued that the assessee cannot be called upon to explain the source of source.

5. The CIT(A), however, did not agree with the aforesaid claim of the assessee. She held that the assessee failed to discharge the identity and capacity of the creditor and genuineness of the transaction. The CIT(A) was of the view that in the absence of even a confirmation, the AO was precluded from making any enquiry with regard to the explanation offered by the assessee. The CIT(A) also held that the fact that loan was shown in the balance sheet will not be sufficient to explain satisfactorily the credit in question. She also drew adverse inference for the failure of the assessee

to appear before the AO in response to summons issued u/s. 131 of the Act.

6. Aggrieved by the order of CIT(Appeals), the assessee has filed the present appeal before the Tribunal.

7. The Id. counsel for the assessee reiterated the submissions as were made before the CIT(A). He further submitted that in the matter of making addition u/s. 68 or 69 of the Act, the AO has a discretion not to make an addition even in the absence of satisfactory explanation and in this regard drew our attention to the Hon'ble Supreme Court decision in *Smt. P.K. Noorjahan, 237 ITR 570 (SC)*. According to the Id. counsel, the circumstances pointed out by the assessee before the CIT(A) viz., disbursement of the loan by the assessee in the form of cheques, disclosure of the loan in the balance sheet and repayment of the loan in the form of DDs should have been taken note of by the revenue authorities and they should not have exercised discretion in making the addition u/s. 68 of the Act.

8. We have considered the submissions of the Id. counsel for the assessee and are of the view that the same is without any basis. It is no doubt true that the AO has discretion in not making addition u/s. 68 even in the absence of satisfactory explanation offered by the assessee with regard to the credit appearing in the books of account. In the present case, however, the assessee has not even furnished a complete postal address

of the creditor. In the absence of the same or confirmation from the creditor, the AO was precluded from making enquiry with regard to the genuineness of the transaction as well as creditworthiness of the creditor. The AO wanted to examine the assessee on the above two aspects, but the assessee failed to appear in response to summons issued by the AO. In the given circumstances, we are of the view that the addition made u/s. 68 of the Act was justified. We do not find any grounds to interfere with the order of the CIT(Appeals). Accordingly, the appeal by the assessee is dismissed.

9. In the result the appeal by the Assessee is dismissed.

Pronounced in the open court on this 27<sup>th</sup> day of February, 2015.

Sd/-

( JASON P. BOAZ )  
Accountant Member

Sd/-

( N.V. VASUDEVAN )  
Judicial Member

Bangalore,  
Dated, the 27<sup>th</sup> February, 2015.

/D S/

Copy to:

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

By order

Assistant Registrar /  
Senior Private Secretary  
ITAT, Bangalore.