

IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SHRI GEORGE GEORGE K, JUDICIAL MEMBER

ITA No.1195/Bang/2017
Assessment Year :2009-10

Shri P. Vijayadeva Reddy, No. 9, Behind Sandhya Tent, Ventakeshwara Layout, Old Madiwala, Bangalore-560 068. PAN: ABLPR 5978C	Vs.	The Assistant Commissioner of Income Tax, Circle 4(3)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri S. Ramasubramanian, CA
Revenue by	:	Smt. Padma Meenakshi, JCIT (DR)

Date of hearing	:	02.11.2017
Date of Pronouncement	:	03.11.2017

ORDER

Per Shri A.K. Garodia, Accountant Member

This is an assessee's appeal directed against the order of Id. CIT(A)-4, Bangalore dated 24.02.2017 for Assessment Year 2009-10.

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

"1. That the order of the learned Commissioner of Income Tax (Appeals) in so far it is prejudicial to the interests of the appellant, is bad and erroneous in law and against the facts and circumstances of the case.

2. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in upholding the best judgment assessment u/s 144 of the Act even though the appellant had furnished the information on 4.11.2011.

3. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in adding a sum of Rs. 1 crore as un-explained investment even though the appellant had received the property under oral gift and this fact has been confirmed by the father.

4. Without prejudice to ground no. 5, the learned Commissioner of Income Tax (Appeals) erred in law and on facts in adding a sum of Rs. 1 crore as un-explained investment even though the property is not in the name of the appellant and the addition has been made merely on the basis of book entry without proving that the appellant had invested money in acquisition of an asset.

5. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the addition of Rs.22,79,730/- u/s. 68 of the Act.

6. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in adding a sum of Rs.22,79,730/- merely on the basis of remand report and without even establishing the dates on which the cash has been deposited in Banks which are alleged not to have been accounted.

7. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in adding a sum of Rs. 10 lakh u/s 68 of the Act in respect of un-secured loan.

8. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in adding a sum of Rs. 25,663/- even though the sum has been offered to tax in the return of income.

Each of the above grounds is without prejudice to one another and the appellant craves leave of the Hon'ble Income Tax Appellate Tribunal, Bangalore to add, delete, amend or otherwise modify one or more of the above grounds either before or at the time of hearing of this appeal."

3. It was submitted by Id. AR of assessee that ground nos. 1 and 2 are general and ground no. 8 is not pressed. Accordingly these grounds are rejected as not pressed.
4. Regarding ground nos. 3 and 4, he submitted that this issue is decided by CIT(A) as per remand report of the AO dated 29.10.2013 available on pages 1 to 9 of paper book and in particular ,our attention was drawn to pages 5 and 6 of the paper book and it was pointed out that as per remand report on this issue, this is the objection of the AO that during assessment proceedings, the assessee produced only declaration by the father of the assessee regarding receipt of the gift by the assessee from the father of the assessee and the AO did not consider it sufficient. He further pointed out that it is reported by the AO

in remand report when the assessee has produced the sale deed of the property as per which property is purchased by the assessee's father on 27.11.2004 along with co-owner named Shri Ramesh Reddy and the sale deed did not specifically mention the proportion of ownership between the joint owners and therefore, the ownership should be considered in the ratio of 50:50 and the property still continued to be owned by these two joint owners and as per the records, the gift deed is not registered. He drawn our attention to Para no. 2 of the assessment order and pointed out that as per the assessment order, this addition of Rs. 1 crore has been made on the basis that as per the balance sheet, the assessee has shown in capital account that the assessee has received a site at Thogur as gift from the father of the assessee of Rs. 1 crore and the same was added to capital account. He further submitted that the addition was made by the AO on this basis that no supporting evidence has been produced regarding gift except declaration by the father of the assessee and therefore, the source, credit worthiness and genuineness of the transaction remains unverified. He submitted that even if the gift of immovable property without registered gift deed is not valid, the assessee is not the owner of the property in question and therefore, no addition can be made on this account.

5. As against this, it is submitted by Id. DR of revenue that as per page no. 94 of paper book being depreciation schedule, it is shown that property of Rs. 1 crore has been received in gift being site at Thogur whereas as per the sale agreement copy available on pages 81 to 88 of paper book, at page no. 87, the detail of the property has been shown as land measuring 4.4 guntas situated at Doddathogur Village, BegurHobli. She submitted that the description of the both the land in question are different and therefore, the contention of the assessee that the amount credited in capital account is on account of this land received by the assessee from his father is not correct and therefore, the addition made by the AO should be upheld.
6. We have considered the rival submissions. We find that as per the assessment order, the AO has noted that an amount of Rs. 1 crore was credited by the assessee to his capital account on this account that he has received a gift of Rs. 1 crore from his father being a property gifted by his father. As per the

remand report dated 29.10.2013 available on page no. 5 of the paper book also, it is reported by the AO that the dispute is regarding credit of Rs. 1 crore in respect of alleged gift of property by father of the assessee and the assessee could not establish the gift because the property in question is purchased by the assessee's father jointly with Shri Ramesh Reddy on 27.11.2004 and gift deed is not reregistered and therefore, the claim of the gift is not acceptable because the same is not registered gift deed. To this extent, AO is correct that in the absence of registered gift deed, receipt of an immovable property by way of gift is not acceptable but in spite of this, addition is not justified because this is not the case of the AO that any property apart from the alleged to be property received by way of gift without valid gift deed received by the assessee for which the assessee is not able to explain the source. The only property in question is the same property which has been shown by the assessee as having been received as gift by him by way of gift from his father. In our considered opinion, whether the gift is valid or not, addition is not justified on this account because if the gift is valid then it cannot be said that the assessee has made unexplained investment and even if the purchase by the donor is explained by the donor, it has to be added in the hands of the donor in the year of purchase of the property by the donor. If the gift is invalid then the assessee is not even owner of any property and therefore, no question arises for making addition in the hands of the assessee in respect of that property which is not even owned by the assessee and in that case also, addition if any may be made in the hands of the donor if the donor is not able to explain the source of investment. In this view of the matter, we hold that the addition made by the AO and confirmed by the CIT (A) of Rs. 1 crore is not justified. We therefore, delete the same. These grounds are allowed.

7. Regarding ground nos. 5, 6 and 7 in which two issues are involved, it was submitted by Id. AR of assessee that in respect of these two issues, the matter may be restored back to the file of AO for fresh decision because the present order was passed by him u/s. 144 and because due to some unavoidable reasons, the assessee could not make proper compliance before the AO and although the assessee made some compliance before the CIT(A) but still the

assessee could not bring the complete material on record such as loan confirmation, in respect of loan of unsecured loan of Rs. 10 lakhs and for the alleged deposits in bank, for which, the addition of Rs. 22,79,730/- was made by the CIT(A) by way of enhancement. The Id. DR of revenue supported the orders of authorities below.

8. We have considered the rival submissions. We find that initially in assessment order, the AO made addition of Rs. 17.29 lakhs on this basis that there is unexplained cash credit being cash deposit of this amount in Karnataka Bank Ltd. As per the remand report dated 20.02.2014 available on pages 20 and 21 of paper book, it was reported by the AO that the said cash deposit of Rs. 17.29 lakhs is found explained but some other deposits of Rs. 22,79,730/- was not found explained and the Id. CIT(A) has made addition on this account by way of enhancement.
9. One more addition of Rs. 10 lakhs was made by the AO u/s. 68 in respect of unsecured loan from Krishnappa for which no confirmation was filed by the assessee before the AO or CIT (A). We feel it proper that in the interest of justice and in the facts of the present case, both these matters should be restored back to the file of AO for fresh decision after providing adequate opportunity of being heard to assessee. We order accordingly. We make it clear that the assessee should produce all the required details and evidence before the AO and if the assessee fails to do so, this addition may be repeated by the AO. Accordingly ground nos. 5, 6 and 7 are allowed for statistical purposes.
10. In the result, the appeal filed by the assessee stands allowed in the terms indicated above.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(GEORGE GEORGE K)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 03rd November, 2017.
/MS/

Copy to:

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

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.