IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU BENCH 'C', BENGALURU

BEFORE SHRI. INTURI RAMA RAO, ACCOUNTANT MEMBER

AND

SHRI. LALIT KUMAR, JUDICIAL, JUDICIAL MEMBER

I.T.A Nos.394 & 395/Bang/2015
(Assessment Years : 1994-95 & 1995-96)

Shri. H. G. Narayan (HUF),
Rep by H. N. Chetan Narayan,
No.48, Gangadhareswara Nilaya,
B. M. Road, Hassan .. Appellant
PAN : AABHH4328F

v.

Income-tax Officer,
Ward – 2, Hassan .. Respondent

Assessee by : Shri. K. Chandrasekhar, Advocate
Revenue by : Shri. M. K. Biju, JCIT

Heard on : 01.11.2017
Pronounced on : 21.11.2017

O R D E R

PER LALIT KUMAR, JUDICIAL MEMBER:

These are appeals by the Revenue, which are second round of litigation in respect of the addition made for the assessment years 1994-95 and 1995-96. The Revenue has raised the following grounds of appeal which are common for both the years :

1. The learned CIT(A) erred in allowing assessee's appeal despite the fact that on additional information was let in by the assessee before the Assessing Officer in compliance to the direction of the Hon'ble High Court. The learned CIT(A) ought to have appreciated that the assess not having produced any additional information whatsoever during the course of proceedings giving effect to the Hon'ble High Court order, the affidavits filed during the course of appellate proceedings were nothing but additional evidence.

2. The learned CIT(A) erred in admitting the additional evidence submitted by the assessee in the form of affidavits by its employees since there was no circumstances prescribed in Rule 46A(1) of the Income-tax Rules as per which the assessee could have filed the additional evidence.

3. The learned CIT(A), having erred in admitting the additional evidence, further erred in holding that the affidavits filed not only fulfils the minimum requirement as envisaged by the High Court but also lend credence to the explanation offered by the appellant.

4. The learned CIT(A) having admitted the additional evidence field by the assessee, erred in not allowing the Assessing Officer a reasonable opportunity to examine the evidence or document or to cross- examine the witness in terms of Rule 46A(2) of the Income-tax Rules.

5. The learned CIT(A) erred in holding that the AO has not shown any inherent weakness in the explanation offered by the assessee and there was no information in the possession of the AO which contradicted the assessee's explanation, without appreciating that there was clear direction by the Hon'ble High Court to the effect that the assessee has to let in additional information in support of its claim.

6. The learned CIT(A) erred in giving weightage and benefit of doubt to the assessee's claim that it has discontinued the very business before seven years. The learned CIT(A) ought to have ascertained the fact regarding the continuity of the HUF since, after the demise of Shri H.G Narayana, Kartha of the HUF in 2004, The HUF continued in the name of H.N Pruthvi Narayan (HUF) and the vendors were continued to be reflected as creditors.

02. The brief facts are as under. The Hon'ble jurisdictional High Court in ITA No.2635/2005, dt.02.03.2010, has passed the following directions :

"Under the circumstances, the Tribunal could not have straight away presumed that the deposits with the assessee were in fact made by various vendors through whom the respondent assessee sold the arrack. Under the circumstances, we are of the view that this is a case where the additional information has to be let in by the respondent assessee before the Assessing officer who would go into various details that would have furnished by the assessee and thereafter can come to a conclusion in accordance with law. For directing as above, the Hon'ble High Court stated that this was being done for another reason that it was incumbent upon the Assessing officer to process he assessment in time on the ground it would otherwise be barred by time and, therefore, the assessee might not have been given sufficient time to furnish the said information to the Assessing officer. Therefore, on this aspect of the matter, it would have to be remanded to the Assessing officer to take a decision in accordance with law."

03. After receiving the directions from the Hon'ble jurisdictional High Court, the AO has given an opportunity to the assessee to furnish the required additional evidence in support of the credits alleged to have been given amounting to Rs.70,00,000/- approximately. However, despite that no additional evidence was filled and Ld AR made the identical submissions made earlier and as such the AO has confirmed the additions in the order giving effect to, dt.30.03.2014. Feeling aggrieved by the order, the assessee filed an appeal before the CIT (A).

04. The CIT (A) had summarised the case of the assessee based on the affidavits filed by the assessee, to the following effect which is on record :

A. Y. 1994-95 :

In the back ground of the decisions of the Supreme Court in the above cited cases of Sreelekha Bannerjee, Parimisetti Seetharammamma, Durga Prasad More, LIC of India & Sumati Dayal, & the decision of the Madras High Court in the case of Hastimal, and keeping in mind the following undisputed facts namely;

(a) The appellant is regularly collecting security deposits from Vendors & this fact has been accepted by the assessing authorities in the earlier years ;
(b) The Security deposits are collected in Cash;
(c) The Appellant has collected Security Deposits to the extent of Rs 3.59 crores as on 01/04/1993 & the sum of Rs70,00,000/- is not the only amount collected by way of security deposit;
(d) The Appellant continues to show huge amounts outstanding liability by way of security deposits from vendors;
(e) The assessing officer has not found any discrepancy in the books of accounts maintained by the appellant even after extensive enquiry & scrutiny other than the fact that the appellant has received amounts in cash by way of security deposits. In other words the books of accounts are not rejected by the assessing officer;
(f) The assessing officer does not believe the explanations offered by the appellant & this has resulted in the addition;
(g) The explanation offered by the appellant is definitely a possibility & believable & not preposterous or unbelievable under the facts of the case;
(h) The affidavits filed not only fulfills the minimum requirement as envisaged by the High Court but also lend credence to the explanations offered by the appellant;
(i) The assessing officer has not shown any inherent weakness in the explanations so offered & nor is there any information in his possession which contradicts the explanation offered by the appellant;
(j) The Surrounding circumstances as well as the Human Probabilities actually support the case of the appellant & render the explanation offered not only as believable but make it more likely than unlikely.

I am of the opinion that it would only be just & fair to give the benefit of doubt to the appellant & delete the addition of Rs.70,00,000/- made for the A.Y. 1994-95

Similar logic was followed by the CIT (A) for the A. Y. 1995-96, as is clear from the following paragraph :

A. Y. 1995-96 :

The Income Tax department filed an appeal before the Hon'ble High Court of Karnataka challenging the order of the ITAT & the High Court in its order remitted the matter to the file of the assessing officer for the limited purpose of verifying the claim of the appellant that the peak of the credits amounting to Rs.43,08,000/- actually represented receipts by way of Vendor deposits.

The assessing officer after affording necessary opportunities to the appellant to substantiate its claim that these receipts are received from Vendors by way of Deposits, being not satisfied with the explanations offered, has treated the sum of Rs.43,08,000/- as income of the appellant.

The appellant aggrieved by the addition is now in appeal.

The sum & substance of the submissions made by the appellant are similar to what has been made for the A.Y. 1994-95. In fact for the assessment year 1995-96, the appellant had an opening credit of Rs. 3,60,,95,955 as on 01/04/1994 under the head Security deposit from Vendors & a Closing Balance of Rs.3,32,63,955/- as on 31/03/1995. In other words the balance has come down by Rs. 28,32,000/- as against a net addition of Rs.1,50,000/- for the A.Y. 1994-95.

It is submitted that considering that the facts & circumstances of the case being similar to that of A.Y. 1994-95, the arguments for the A.Y. 1994-95 as well as the case laws relied upon therein holds good for this impugned assessment year also.

In view of the fact that I have already decided to delete the addition made in the very same issue for the A.Y. 1994-95, I also delete the addition of Rs.43,08,000/- made for the A.Y. 1995-96 relying upon the reasons given in my order for the A.Y. 1994-95.

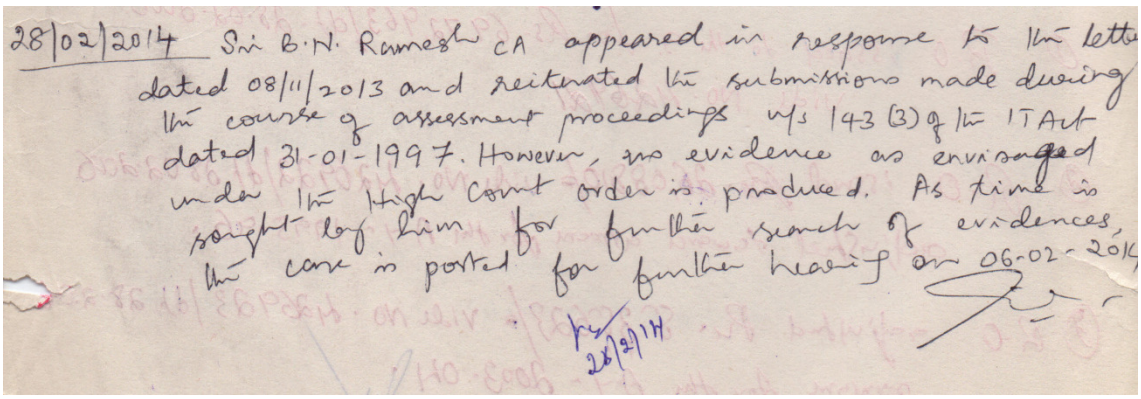
Aggrieved by the above finding of the CIT (A) for the two years, the Revenue is in appeal before us, on various grounds mentioned herein above.

05. We will take up the ground in relation to section 46A, which was only ground argued by revenue taken before us. It was submitted that the CIT (A) has relied upon the affidavit dt.03.12.2014 for granting the relief to the assessee and it was the case of the Revenue that these documents were not forming part and parcel of the assessment order at the time of giving effect, as is discernible from the assessment orders.

06. It was the case of the assessee before us that the affidavits were placed on record prior to 06.02.2014, which was the last date granted by the AO to file the evidence before him. However the AO has failed to consider these evidences while passing order giving effect to the order of the Hon'ble jurisdictional High Court.

07. On an earlier occasion the bench has directed the DR to produce the entire remand proceedings record including affidavits sought to be relied upon by the CIT (A), if they were on record. The Ld. DR has produced the assessment records before us. We have looked into the record filed by the assessee before the AO. From a perusal of the record, it is clear that copies of the affidavit dt.03.02.2014 are on record along with the covering letter dt.04.02.2014.

08. The AO on the noting sheet has recorded on 28.02.2014, as under :


28/02/2014 Sri B.N. Ramesh CA appeared in response to the letter dated 08/11/2013 and reiterated the submissions made during the course of assessment proceedings u/s 143 (3) of the IT Act dated 31-01-1997. However, no evidence as envisaged under the High Court order is produced. As time is sought by him for further search of evidences, the case is posted for further hearing on 06-02-2014

28/2/14

The above noting was recorded by the AO on 28.02.2014 and it was also signed by Shri. B. N. Ramesh on 28.02.2014. However in the

above noting, the next date of hearing is mentioned as 06.02.2014. The order was finally passed by the AO on 30.03.2014 and the copy of the order was received by the assessee on 02.04.2014. Thus, from the order sheet, it is clear that the AO, instead of signing the order date of 28.01.2014 has wrongly recorded the date as 28.02.2014 and this mistake was also committed by the Ld. AR for the assessee. Therefore the noting in the order sheet dt.28.02.2014 is required to be read as 28.01.2014.

Further there is no order sheet entry after 28.01.2014, either of 06.02.2014 or the date of passing of the order giving effect to, i.e., 30.03.2014 in the assessment record.

09. We have gone through the record and heard the rival contentions. Prima facie we are of the opinion that the AO should have written the order sheet on 06.02.2014 i.e., the next date of hearing given on 28.01.2014 and order sheet on 30.3.2014. However there is no order sheet entry on 06.02.2014/30.3.2014. Moreover affidavits filed prior to 06.02.2014 i.e on 4.2.2014 are on record and were perused by us. In any case, the CIT (A) by relying upon these affidavits has deleted the additions made by the AO.

In our considered opinion, no new document or record was relied upon by the CIT (A) while passing the order hence the objection of revenue for violation of rule 46 is without any merit.

10. Further from a bare perusal of the directions given in the jurisdictional High Court's order (supra), it is clear that the assessee was required to give the details of the deposits received from the persons through his employees / agents. The assessee has given the affidavits contains the details of the persons from whom the deposits were received by the employee/ agent of the assessee therefore there is compliance of the order of Hon'ble High court.

11. In view of the affidavit filed by way of evidence before the AO, which were not considered by AO, the CIT (A) in appellate proceedings had deleted the addition as the AO failed to bring on record any contradictory evidence or document, after following the record filed before AO. Therefore the objection raised by the Revenue are not sustainable as the basic objection raised by the Revenue in ground nos.1 to 5 were with regard to violation of Rule 46A(1) of the IT Rules. In the result we do not find any reason to interfere with the conclusion drawn by the CIT (A) in para 4 (supra) for both the years. In view thereof, we dismiss the appeal.

12. In the result, appeals of the Revenue are dismissed.

Order pronounced in the open court on 21st day of November, 2017.

Sd/-	Sd/-
(INTURI RAMA RAO)	(LALIT KUMAR)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Bengaluru
Dated : 21st November, 2017
MCN*

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order

SENIOR PROVATE SECRETARY