

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

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| ITA No.2506/Bang/2017 |
| Assessment Year :2014-15 |

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| Shri K.N. Mahesh Kumar, Kalligowdanadoddi, Mullahalli Post, UyyamballiHobli, Kanakapura Taluk, Ramanagar District – 562 119. PAN: AJIPM 6194L | Vs. | The Income Tax Officer, Ward – 1, Ramanagar. |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Shri Venkatesh Kumar, Advocate |
| Respondent by | : | Shri Vimal Anand, Addl. CIT (DR) |

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| Date of hearing | : | 18.01.2018 |
| Date of Pronouncement | : | 24.01.2018 |

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee which is directed against the order of Id. CIT(A) – 3, Bangalore dated 25.09.2017 for Assessment Year 2014-15.

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

“1. The order of the learned CIT(A) insofar as it is prejudicial to the interest of the appellant, is bad and unsustainable in the eyes of law.

2. Without prejudice, the learned CIT(A) ought to have provided the appellant a fair opportunity to explain his position on the additions/disallowances in accordance with the principles of natural justice.

3. The learned CIT(A) ought to have appreciated that total contract receipts appearing in the bank accounts of appellant was Rs.59,74,948/- as against Rs.29,27,388/- declared by the appellant in his return of income, and the difference of Rs.30,47,560/- represents contract receipts pertaining to the previous year FY 2012-13 and it had been declared in tax returns filed for the relevant year 2013-14.

4. The learned CIT(A) has not justified in sustaining the addition of

Rs.10,51,380/- being credit from different parties as unexplained credit u/s.68 of the Act on the ground that a sum of Rs.4,35,180/- represents Hire charges received on the leasing of JCB 86 the balance of Rs.6,16,000/- being maturity proceeds of EMD's which were given at the time of allotment of PWD works from the State Governments.

5. The learned CIT(A) has not justified in sustaining the addition of Rs.11,88,125/- being cash deposit into the bank a/c. as unexplained cash credit u/s.68 of the Act, on the ground that a sum of Rs.5,88,125/- represents the hire charges received on the leasing of JCB, and the balance of Rs.6,00,000/- represents agricultural income received from appellant mother as cassessee share of income' in the joint family.

6. Without prejudice, the learned CIT(A) ought to have appreciated that for the purpose of Sec.68 of the Act, it is the amount/ sum credited in the books of accounts and not pass book as held by various courts; and hence the addition was bad in law.

7. Without prejudice, the learned CIT(A) ought to have appreciated that the entire amount of cash deposit of Rs.11,88,125/- in the bank a/c. cannot be said to be unexplained because after deposit of the cash amount, there were withdrawals, and hence only peak credit should be considered.

8. Without prejudice, the CIT(A) ought to have appreciated that decision of the co-ordinate bench of the ITAT, Bangalore dated 08.09.2016 in the case of Mrs. Farha Kausar Vs. ITO in ITA No.1059/Bang/2016, has held that Sec.68 can be invoked only in the case of cash credit in the books of accounts. And the pass book cannot be treated as books of accounts and therefore no addition can be made u/s.68 of the Act.

9. For these and such other grounds that may be urged at the time of hearing, the appellant prays that appeal may be allowed.”

3. At the very outset, it was submitted by Id. AR of assessee that the Id. CIT(A) has provided only one opportunity to the assessee and therefore, in the interest of justice, the matter may be restored back to the file of CIT(A) for fresh decision after providing adequate opportunity of being heard to the assessee. The Id. DR of revenue submitted that as per Para no. 3 of the order of CIT(A), the case was fixed by CIT(A) for hearing and when the Id. AR of assessee appeared before CIT(A) on 12.09.2017 for seeking adjournment, the case was adjourned to 21.09.2017 but nobody appeared on that date and no written submissions was made. Therefore, the assessee does not deserve any further opportunity.

4. I have considered the rival submissions. I find that the Id. AR of assessee has duly appeared before CIT(A) on 12.09.2017 and sought for adjournment and the case was adjourned to 21.09.2017. This is a fact that nobody appeared on 21.09.2017 and therefore, the order was passed by CIT (A) on 25.09.2017. In my considered opinion, the assessee's AR should have appeared before CIT(A) even if he was not prepared he would have requested for adjournment. But still I feel that in the interest of justice, one more opportunity may be provided to assessee because it will not cause any prejudice to the revenue and hence, I set aside the order of CIT(A) and restore the matter back to the file of CIT(A) for fresh decision after providing adequate opportunity of being heard to both sides. I order accordingly. In view of this decision, no decision is called for in respect of the merit of the case and I make no comment on the merit of the case.
5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

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

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 24th January, 2018.
/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.