

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.1608/Bang/2017
Assessment Year :2007-08

Shri S. Nataraja, PWD Contractor, Bannanje, Udupi – 576 101.  <b>PAN: ADPPN 9464K</b>	Vs.	The Income Tax Officer, Ward – 1, Udupi.
APPELLANT		RESPONDENT

Appellant by	:	Shri C. Sandeep, CA
Respondent by	:	Shri Vimal Anand, Addl. CIT (DR)

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), Mangalore dated 23.05.2017 for Assessment Year 2007-08.

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 making an addition of Rs.75,000/- towards low drawings.*

*3. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in making an addition of Rs.4,86,000/- u/s. 68 of the Act.*

*4. Without prejudice to the above ground no. 3, the learned Commissioner of Income Tax (Appeals) ought to have added only peak credit.*

*5. That the learned Commissioner of Income Tax (Appeals) erred in law and facts in making an adhoc disallowance of 5% of the labour charges and material purchases from unregistered dealers.*

*Additional Ground*

*6. That the learned lower authorities ought to have allowed the claim of the appellant towards deduction of Rs. 74,363/- u/s. 80C of the Act since the evidences for the claim are available.*

*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 no. 1 is general. Regarding ground no. 2, he submitted that as per para 6 of the assessment order, it is stated by the AO that in the present year, the assessee has shown drawing of Rs. 1,37,062/- and, after considering LIC and NSC payments, only an amount of Rs. 45,000/- is left for the house hold expenses of the present year which is very low and it is unbelievable and unacceptable that this amount of drawing for personal expenses of the assessee is sufficient considering the size of the family and the standard of living of the assessee. The AO has estimated that Rs. 10,000/- per month is reasonable amount of drawing. Thereafter, he submitted that before the CIT(A), it was submitted by assessee that the assessee lived in a Hindu Undivided Family with 14 members including brothers, mother and children. He also submitted that the assessee has a son and daughter and during the present year, the son and daughter of the assessee were students. It is also noted by CIT(A) in para no. 5.4.2 of his order that in the relevant year i.e. Assessment Year 2007-08, the HUF had agricultural income of Rs. 6,00,000/- p.a. and Dairy income of Rs. 1,00,000/- p.a. and it was the claim of the assessee that HUF income was used for Household expenses. He submitted that this aspect is overlooked by CIT(A) while deciding this issue in 5.4.3 of his order and therefore, the addition made by the AO and confirmed by the CIT(A) is not justified. The Id. DR of revenue supported the orders of authorities below.

4. I have considered the rival submissions. First of all, I reproduce Para nos. 5.4.2 and 5.4.3 from the order of CIT(A) for ready reference.

*“5.4.2 The appellant submitted vide letter dated 17.5.2017 that he lived in a Hindu Undivided Family with about 14 members including Brothers, Mother and Children. The appellant has a Son and a Daughter. During the Assessment Year 2007-08 they were students. Presently, the Daughter got married and Son has completed his MBA. During the Assessment Year 2007-08, HUF had Agricultural Income of Rs. 6,00,000/- p.a. and Dairy income of Rs.1,00,000/- p.a. The HUF Income was being used for House hold maintenance expenses.*

*5.4.3 The appellant in its submissions in support of loan from Shantaraj (HUF) submitted that. the family income is Rs. 4 to 5 lakhs based on a village accountant certificate. Where as in support of his drawings, he claimed that family income is 6 lakhs. The family income figures submitted were fluctuating with every submission. The appellant has not furnished the details of the entire family expenditure with regard to each member's activity, food, clothing, electricity, telephone, medical, travel, petrol, conveyance and education expenses etc. The appellant is a PWD contractor. The monthly withdrawal of Rs 3750/- for a family of four is very very low. Even the daily wage labourer and BPL family would be spending more than Rs.3750/- per month. I am of the view that the appellant failed to justify the low withdrawal. In the absence of complete details of family expenditure, taking into consideration, the status of the appellant, the addition made by the AO is found to be reasonable and **the action of the AO is hereby upheld. Ground no.7 is rejected.**”*

5. From the above paras of the order of CIT(A), it is seen that it is noted by CIT(A) in para no. 5.4.3 of his order that in support of loan from Shantaraj (HUF), the assessee has submitted that the family income is Rs. 4 to 5 lakhs based on a village accountant certificate. But in support of his drawings, he claimed that the family income is Rs. 6 Lakhs. Because of this difference in these two figures of family income, the CIT(A) has totally disregarded this aspect of the matter and confirmed the addition made by the AO. In my considered opinion, he should have given a finding as to how much of family income is acceptable in the facts of the present case and how much amount of total drawings including the personal drawings of all family members is met out of the family income and whether the family income and personal drawings shown by the present assessee and other family members is reasonable to take care of the personal expenses of all the family members and after that, the issue should have been

decided as to whether any addition is called for in respect of alleged low withdrawing or whether any amount is available out of family income as explanation of loan from family. Since this was not done, I feel it proper to restore the matter back to the file of CIT(A) for fresh decision in the light of above discussion after providing adequate opportunity of being heard to both sides. Ground no. 2 is allowed for statistical purposes.

6. Regarding ground nos. 3 and 4 in respect of confirming the addition of Rs. 4,86,000/- u/s. 68 of IT Act, he submitted that on this account also, it was the explanation of the assessee that loan received from the father of the assessee was financed by the income of the HUF and hence, this addition made by the AO and confirmed by the CIT(A) is also not justified for the same reason. The Id. DR of revenue supported the orders of authorities below.
7. I have considered the rival submissions. I find that it is noted by CIT(A) in para no. 5.5.5 of his order that it was the explanation of the assessee that the HUF had agricultural income of Rs. 6,00,000/- p.a. and Dairy income of Rs. 1,00,000/- p.a. Thereafter in para no. 5.5.6 of its order, it is noted by CIT(A) that the HUF consisted of 14 members who lived together. Thereafter the CIT(A) proceeded on this basis that the HUF might have given loans to other members also. The assessee in all its submissions merely relied on the agricultural holding rather than submitting HUF income details based on books and evidence. The books of accounts of HUF were never produced. The assessee himself submitted that the HUF income was being used for household maintenance expenses. On this basis, the CIT(A) has rejected the assessee's claim in respect of credit worthiness of the HUF by holding that the assessee failed to prove the credit worthiness of the HUF that it is still left with funds to lend periodically to the assessee after meeting the daily requirements of such a big family. But there is no categorical finding given as to how much is the income of the HUF, how much is expenses of various members of HUF, how much of loan was given by the HUF to the present assessee and other family members of HUF and it is seen that even the expenses has not been accepted as explained out of the income of HUF. Hence I feel it proper to

restore this matter also back the file of CIT(A) for fresh decision simultaneously with the decision in respect of addition on account of low withdrawal with a categorical finding as to how much is the income of the HUF and other family members of the HUF, how much is the personal expenses, how much loan was given to other family members if any and then he should decide as to whether the loan claimed to have been received from HUF is acceptable or not in the facts of the present case. He should pass a reasoned order after providing adequate opportunity of being heard to both sides. Ground nos. 3 and 4 are also allowed for statistical purposes.

8. Regarding ground no. 5, he submitted that this adhoc disallowance made by the AO and confirmed by CIT(A) is not justified. The Id. DR of revenue supported the orders of authorities below.
9. I have considered the rival submissions. I find that in para no. 5 of the assessment order, it is stated by the AO that the assessee has admitted income at only 4.55% of the gross receipts which is unacceptable and it is seen that the entire claim of the contract expenses to the tune of Rs. 55,74,371/- and material purchase of Rs. 26,86,782/- is not supported by documentary evidences and entire payments are made in cash. On the basis of this reasoning, the AO made disallowance to the extent of 5% of expenses by holding that these expenses are not cross verifiable and hence, treated as inflated expenses. In this manner, disallowance is made of Rs. 4,13,057/-. I find that a clear finding is given by CIT(A) in para no. 5.6.6 of his order that out of total purchase of materials in the present year of Rs. 26,86,782/-, an amount of Rs. 22,96,181/- is supported by proper bills and only Rs. 3,90,601/- for purchase of jelly and sand were from unregistered dealers and supported by only debit vouchers. In para no. 5.6.7 of his order, it is noted by CIT(A) that for labour payments of Rs. 55,74,371/-, there are no bills maintained these are supported by the debit slips only. The CIT(A) confirmed the disallowance of 5% in respect of Rs. 3,90,601/- being purchase of jelly and sand from unregistered dealers and Rs. 55,74,371/- being payment on labour charges and in this manner, he confirmed the disallowance of Rs. 2,98,248/- out of total

disallowance of Rs. 4,13,057/-. In my considered opinion, for this reason alone that purchase is from unregistered dealers and payment to labour is by way of self made vouchers, disallowance is not justified. It has to be seen as to whether such claim of the assessee is reasonable or not and for that, CIT(A) should have compared the expenses in the present year with that of the earlier years and if possible, such expenses by similar assessee may also be considered to examine the reasonableness of the assessee's claim and thereafter, the matter should be decided if it is found that claim of the assessee is excessive, unreasonable and unjustified and then only, reasonable disallowance can be made and not otherwise. Hence on this issue also, I set aside the order of CIT(A) and restore the matter back to his file for fresh decision in the light of above discussion after providing adequate opportunity of being heard to both sides. Ground no. 5 is also allowed for statistical purposes.

10. Regarding ground no. 6 being additional ground in respect of disallowance of deduction claimed of Rs. 74,363/- u/s. 80C of the Act, no argument was raised before me and no such ground was raised before CIT(A) and therefore, this issue does not arise out of the order of CIT(A). Hence this ground is rejected.
11. In the result, the appeal filed by the assessee is partly 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 24<sup>th</sup> 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.