

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'SMC-A', BANGALORE

BEFORE SHRI A.K.GARODIA, ACCOUNTANT MEMBER

ITA Nos.177 & 178 (Bang) 2018
(Assessment years : 2008 – 09 & 2009 – 10)

Smt. Vimala Devi,
No. 27, 7th Cross,
5th Main Road, S. R. Nagar,
Bangalore – 560027.
PAN. AGGPD9558M

Appellant

Vs

The ITO, Ward – 7 (2)(2),
Bangalore.

Respondent

&

ITA No.179(Bang) 2018
(Assessment year : 2008 – 09)

Smt. Lakshmi Devi,
No. 27, 7th Cross,
5th Main Road, S. R. Nagar,
Bangalore – 560027.
PAN. AEVDPD4488C

Appellant

Vs

The ITO, Ward – 7 (2)(2)
Bangalore.

Respondent

&

ITA No.180(Bang) 2018
(Assessment year : 2008 – 09)

Smt. Dai Devi,
No. 27, 7th Cross,
5th Main Road, S. R. Nagar,
Bangalore – 560027.
PAN. AEVDPD4489D

Appellant

Vs

The ITO, Ward – 7 (2)(2),
Bangalore.

Respondent

&
ITA No.181(Bang) 2018
(Assessment year : 2008 – 09)

Smt. Rangila Solanki,
No. 27, 7th Cross,
5th Main Road, S. R. Nagar,
Bangalore – 560027.
PAN. APHPS0961E

Appellant

Vs

The ITO, Ward – 7 (2)(2)
Bangalore.

Respondent

Assessee by : Shri B. Sudheendra, C. A.
Revenue by : Shri Shankar Prasad K, JDIT DR

Date of hearing : 21-02-2018
Date of pronouncement : 23-02-2018

ORDER

PER A. K. GARODIA, A.M.:

All these five appeals are filed by four different but connected assessees which are directed against five separate orders of CIT (A) – 7 Bangalore all dated 02.01.2018. Since the issue involved is common, all these appeals were heard together and are being disposed of by this common order for the sake of convenience.

2. The Ground No. 3 in all these appeals is identical and it reads as under:-

“In any case, neither the information received from CIT, Central – IV, Mumbai regarding accommodation entries nor the sworn statement recorded from Mr. Mukesh Choksi was provided to the assessee for rebuttal to the reassessment proceedings despite the assessee’s request before the assessing officer to provide the same. The assessee’s request for cross examining Mr. Mukesh Choksi was also not at all considered. Thus the reassessment proceedings and the order u/s 147 r.w.s. 143 (3) has been passed contrary to principles of natural justice and hence the impugned order passed should be quashed.”

3. Learned AR of the assessee submitted that similar issue was decided by the tribunal in the case of Shri Mukesh Kumar Solanki vs. ITO in ITA NO.

2168/Bang/2016 dated 17.03.2017. A copy of this tribunal order was submitted and it was pointed out that the tribunal has followed the judgment of Hon'ble Karnataka High Court rendered in the case of Chandra Devi Kothari in Writ Petition No. 39370/2014 dated 02.02.2015 and reproduced the relevant Para 8 of that judgment in Para 5 of this tribunal order and as per Para 6 of that tribunal order, the matter was restored to the file of the AO for fresh decision with the same directions as were given by the Hon'ble Karnataka High Court in that case as per Para 8 of that judgment. He submitted that in the present case also, the matter should be restored to the file of the AO for fresh decision with the same directions as were given by the Hon'ble Karnataka High Court in that case as per Para 8 of that judgment. Learned DR of the revenue supported the order of CIT (A). He also submitted that it is noted by CIT (A) in Para 8 of his identical orders that no request was made by the assessee specifically for the statement of Mr. Mukesh Choksi and therefore, the facts in the present cases are different. In rejoinder, Learned AR of the assessee submitted that copy of the reply dated 10.02.2014 filed with the AO on 19.02.2014 is available in the respective paper books and as per that letter, the AO was specifically requested to share with the assessee the details/evidences which are in the possession of the AO on the basis of which, it is alleged by the AO the transactions in question represented accommodation entries given by Mukesh Choksi Group and it was also requested that after getting the material, if required, the assessee will request for cross examination of Mr. Mukesh Choksi. It was submitted that there is no difference in facts.

4. I have considered the rival submissions. I find that there is no difference in facts in the present case and in the case of Shri Mukesh Kumar Solanki vs. ITO (Supra). In that case, the issue was decided as per Para 5 & 6 of that tribunal order and these paras of that tribunal order are reproduced here in below for ready reference. These are as under:-

“5. I have considered the rival submissions and first of all, I reproduce Para No.8 of the judgment of Hon'ble Karnataka High Court rendered in the case of M/s Chandra Devi Kothari (Supra) and this is as under:-

8. In the light of the facts and circumstances as adverted to above, and as the petitioner has been denied an opportunity of

fair hearing by providing copy of the statement and related details regarding the alleged share amount, I am of the view that the matter requires to be re-considered by the respondent by providing fair and reasonable opportunity of hearing to the petitioner and by furnishing the details/copy of the statement based on which the impugned assessment order has been passed."

6. From the above Para from the judgment of Hon'ble Karnataka High Court, it is seen that matter was restored back to the file of the AO for fresh decision after providing copy of the statement of Shri Mukesh Choksi. As per the facts noted by the High Court in the earlier paras of judgment and as per the facts of the present case, I find that the facts are similar and ld DR of the Revenue also could not point out any difference in facts and hence, by respectfully following this judgment of Karnataka High Court, I set aside the order of ld CIT(A) and restore the matter to the file of the AO for fresh decision with the same directions as were given by the Hon'ble Karnataka High Court in the case as per Para No.8 of the judgment reproduced above. In view of this decision, no adjudication is called for at this stage regarding the merit of the addition."

5. Respectfully following this tribunal order and in turn following the judgment of Hon'ble Karnataka High Court rendered in the case of Chandra Devi Kothari (Supra), I set aside the orders of CIT (A) in all the present cases and restore the matter back to AO for a fresh decision with same directions as were given by Hon'ble Karnataka High Court in that case as per Para No. 8 of that judgment reproduced above. In view of this decision, no adjudication is called for at this stage regarding the merit of the addition raised before me as per remaining grounds.
6. In the result, all the five appeals of the assessee are allowed for statistical purposes.

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

Sd/-
(A.K. GARODIA)
ACCOUNTANT MEMBER

Bangalore

D a t e d : 23.02.2018

/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.