

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'SMC-A', BANGALORE
BEFORE SHRI A.K.GARODIA, ACCOUNTANT MEMBER

ITA No.2815 (Bang) 2017
(Assessment year : 2009 – 10)

Shri B. Sundara Prakash,
#10/3, 66th Cross. 17th 'E' Main,
Rajajinagar, 5th Block,
Bangalore – 560010.
PAN. ADKPP8667P

Appellant

Vs

The Income Tax Officer,
Ward – 15 (3), Now Ward - 3 (3) (3),
Bengaluru.

Respondent

Assessee by : Shri V. Srinivasan, Advocate
Revenue by : Dr. Shankar Prasad .K, JDIT (DR)

Date of hearing : 19-02-2018
Date of pronouncement : 23-02-2018

ORDER

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

This appeal is filed by the assessee which is directed against the order of CIT (A) – 3 Bangalore dated 04.12.2017 for A. Y. 2009 – 10.

2. The assessee has raised as many as 6 grounds. But the effective grievances are only two. First is regarding confirmation of the addition of Rs. 10,07,400/- u/s 68 and second issue is regarding addition of interest on saving account and FD with bank not offered to tax Rs. 19,629/-.
3. Learned AR of the assessee submitted that it is noted by the AO on page 2 of the assessment order that the assessee has explained that an amount of Rs. 4 Lacs was received by the assessee from his mother Smt. B. Rathamma on 18.10.2008 and another Rs. 3.5 Lacs was received from brother Mr. B. Viswabhat on 29.10.2008 and another Rs. 1.50 lacs was received from brother in law Mr. T. R. Krishna Kumar on 21.05.2008. He further submitted that on the

same page of the assessment order, the AO has noted this also that the assessee has filed confirmations from those persons from whom the money is said to have been received by the assessee. He submitted that the AO has stated this also in the same Para but next page of the assessment order that Bank Account statements of these persons from whom the money is said to have been received by the assessee were also submitted and this is the only objection of the AO that there was no cash withdrawal of such money by any of these persons and source of money is not explained by these persons. Thereafter, he submitted that copy of written submission filed before CIT (A) is available on pages 31 to 35 of the paper book along with the copy of the confirmation in vernacular and English and also the additional evidence produced before CIT (A) being copy of sale deed claiming that his mother, brother and sister had jointly agreed to sell certain ancestral agricultural land and had received an advance of Rs. 5 lacs by cash in July 2008 as Annexure – 1 on pages 36 to 49 of the paper book. He drawn my attention to Para 4.1 of the order of CIT (A) and submitted that it is noted by CIT (A) in this Para that the assessee has filed the copies of sale deed claiming that his mother, brother and sister had jointly agreed to sell certain ancestral agricultural land and had received an advance of Rs. 5 lacs by cash in July 2008 and it was submitted that these documents may be admitted as additional evidence. He submitted that the additional evidence was not admitted by CIT (A) but it should have been admitted particularly in view of this fact that the assessee is salaried individual and not fully aware about the need to file proper documents before the AO only failing which it cannot be filed before CIT (A). He also submitted that since the assessee has established the identity of the lenders and filed their confirmations, then even if the source of lender is not considered as explained, addition may be made in the hands of the lender but not in the hands of the borrower. In support of this contention, he placed reliance on the judgment of Hon'ble Gauhati High Court rendered in the case of Nemi Chand Kothari vs. CIT as reported in 264 ITR 254. Learned DR of the revenue supported the orders of the authorities below.

4. I have considered the rival submissions. I find that the only objection of the AO is this that the source of cash in the hands of the so called lenders is not established. The identity of lenders is established as they are relatives of the assessee. Their confirmation is also filed. Under these facts, this judgment of Hon'ble Gauhati High Court is applicable to some extent but there is a major difference in facts that in the present case, loan is received in cash but in that case, it is by cheque. Hence, I hold that the assessee does not get any help from this judgment but considering the facts of the present case in its entirety, I feel it proper to restore this matter back to CIT (A) for a fresh decision after admitting the additional evidence brought on record before him but not admitted by him because it will not cause any prejudice to the revenue and an individual salaried assessee should not be punished simply because he did not produce an evidence before the AO which may be because of his ignorance. Hence, this issue is restored back to CIT (A) for fresh decision after admitting additional evidence.
5. Regarding the second issue i.e. addition of Rs. 19,629/- regarding addition of interest on saving account and FD with bank not offered to tax, no argument was advanced by the learned AR of the assessee before me. Before CIT (A) also, no argument was advanced on this issue as noted by CIT (A) in Para 5.0 of his order. Hence, I decline to interfere in the order of CIT (A) on this issue.
6. In the result, the appeal of the assessee is partly 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

Dated: 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.