

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-B” BENCH : BANGALORE

BEFORESHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.835/Bang/2018
Assessment Year :2006-07

Sri Panduranga Shetty, Prop: M/s. Guru Raghavendra Traders, Hospet Road, Tiptur – 572 201. PAN: AFBPP0383H	Vs.	The Income Tax Officer, Ward – 1, Tiptur.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ravishankar, Advocate
Respondent by	:	Shri Guruprasad, Addl. CIT (DR)

Date of hearing	:	10.04.2018
Date of Pronouncement	:	13.04.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

This is an assessee's appeal directed against the order of Id. CIT(A)-7, Bangalore dated 19.02.2018 for Assessment Year 2006-07.

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

“1. That the learned Commissioner of Income Tax (Appeals)-7, Bengaluru has erred both in law and on facts in re-opening the case in the absence of the conditions for re-opening being present.

2. That the learned Commissioner of Income Tax (Appeals)-7, Bengaluru has erred both in law and on facts by relying on the sworn statement given by an unrelated third party with a pre-conceived mindset that the appellant was involved in conversion of black money without giving any opportunity to verify the statement or maker of the statement nor being given an opportunity to cross examine the same.

3. That the learned Commissioner of Income Tax (Appeals)-7, Bengaluru has further failed to appreciate the Assessee has invested in the stock market through his broker in good faith and bona fide belief.

4. That the learned Commissioner of Income Tax (Appeal)-7 has further failed to appreciate the genuineness of the evidence that the Assessee has placed on record which include, amongst others, Contract notes, DEMAT statement.

5. That the learned Commissioner of Income Tax (Appeal)-7 has failed to appreciate that the sale of shares happened through normal process of market rolling settlement and by a registered depository participant viz. BGSE Financials, which clearly evidenced that the transaction was a genuine one.

6. That the learned Commissioner of Income Tax (Appeal)-7 has failed to appreciate that the sale proceeds were received by the Assessee to the bank account of the Assessee in the course of normal course of banking transaction which at no stretch of imagination could be construed as a bogus transaction.

7. That the various adverse findings recorded by the learned Commissioner of Income Tax (Appeals) are contrary to record and law and thus unsustainable It is therefore prayed that the above addition may please be deleted as learned members of the tribunal may deem it proper.

8. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal.”

2. The Id. AR of assessee was heard and it was noted that in this case, the issue was decided against the assessee on the basis of the statement of Shri Mukesh Chooks, key person of M/s. Mahasagar group of cases as per which it was stated by him that he is providing accommodation entries and it is noted by the AO in the assessment order that the assessee is one of the beneficiaries of such accommodation entries. This Tribunal is taking a consistent view by following the Tribunal order rendered in the case of Shri Mukesh Kumar Solanki vs. ITO in ITA NO. 2168/Bang/2016 dated 17.03.2017 and the Tribunal has restored the matter back to the file of AO for fresh decision with the same directions as were given by Hon'ble Karnataka High Court in a judgment rendered in the case of Chandra Devi Kothari in Writ Petition No. 39370/2014 dated 02.02.2015. The Id. DR of revenue supported the orders of authorities below.

3. I have considered the rival submissions. I reproduce paras 5 and 6 of this Tribunal order rendered in the case of Shri Mukesh Kumar Solanki vs. ITO (supra). The same read 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 Id 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 Id 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.”

4. Respectfully following this Tribunal order, I decide this issue in the present case also on similar line and restore this matter back to the file of AO for fresh decision with the same directions as were given by Hon'ble Karnataka High Court in the case of Chandra Devi Kothari(supra) as per para 8 of the judgment which is reproduced above. In view of this decision, no adjudication is called for regarding merit of the addition at this stage.

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 13th April, 2018.
/MS/

Copy to:

- | | |
|---------------|------------------------|
| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.