

**IN THE INCOME TAX APPELLATE TRIBUNAL
'SMC' BANGALORE BENCH ' B '**

BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER

I.T. A. No.1254/Bang/2018
(Assessment Year : 2012-13)

Shri Dattu Hanumanthappa Mehtre,
Prop. Om Electricals, Mirza Complex,
Shop No.5, I Floor, Darge Road,
Basavakalyan, Bidar.
PAN AFOPM7058P

.... Appellant.

Vs.

Income Tax Officer,
Ward 1, Bidar.

..... Respondent.

Appellant By : Shri B.S. Balachandran, Advocate.
Respondent By : Shri Inder Solanki, JCIT (D.R)

Date of Hearing : 12.11.2018.
Date of Pronouncement : 27.11.2018.

O R D E R

Per Shri Jason P Boaz, A.M. :

This appeal by the assessee is directed against the order of
Commissioner of Income Tax (Appeals), Gulbarga dt.30.01.2018 for the
Assessment Year 2012-13.

2. Briefly stated, the facts of the case are as under :-

2.1 The assessee, Prop. Om Electricals is engaged in the business of trading in electrical items and as an electrical contractor. For Assessment Year 2012-13, the assessee filed the return of income on 30.08.2012 declaring income of Rs.9,36,770. The return was processed under Section 143(1) of the Income Tax Act, 1961 (in short 'the Act') and the case was subsequently taken up for scrutiny for this assessment year. The Assessing Officer after observing that the assessee either had not responded of the statutory notices issued under Section 143(2) and 142(1) of the Act calling for details to be filed or furnished only partial details proceeded to complete the assessment vide order dt.31.3.2015 wherein the assessee's income was determined at Rs.45,85,633. This was in view of the Assessing Officer making in an addition of Rs.36,49,863 on account of failure of the assessee to file confirmations on the increase / difference in the opening and closing balances of unsecured loan creditors in the year under consideration.

2.2 Aggrieved by the order of assessment dt.31.3.2015 for Assessment Year 2012-13, the assessee filed an appeal before the CIT (Appeals), Gulbarga. The CIT (Appeals) sought a Remand Report from

the Assessing Officer. The Assessing Officer in his Remand Report proposed (i) an enhancement of Rs.50,100 to the addition of Rs.36,49,863 made in the assessment order and (ii) a disallowance of Rs.1,74,315 under Section 40(a)(ia) of the Act; which were acted upon by the CIT (Appeals) to enhance the assessee's income to the extent proposed, and to dismiss the assessee's appeal vide order dt.30.01.2018.

3.1 The assessee, being aggrieved by the order of the CIT (Appeals), Gulbarga dt.30.01.2018 for Assessment Year 2012-13, the assessee preferred this appeal before the Tribunal, raising the following grounds :-

“1. On the facts and circumstances of the case and in law, the Hon'ble CIT (Appeals), Gulbarga has erred in confirming the addition of Rs.3649863 made by the Assessing Officer and Rs.50100 enhanced by the CIT (Appeals) on account of increasing unsecured loans, particularly without considering the explanation and details furnished by the assessee. It is prayed that the addition made by the Assessing Officer and as confirm by the CIT (Appeals) may kindly be deleted.

The assessee craves right to add, alter, amend, modify, delete the grounds of appeal and right to make details submissions, clarifications and explanations of the ground of appeals at the time of hearing.”

3.2.1 The learned Authorised Representative of the assessee was heard in support of the grounds raised and assailed the impugned order

of the CIT (Appeals) as being unsustainable both on facts and in law. According to the learned Authorised Representative, the assessee's accounts are audited under Section 44AB of the Act and perusal of financial statements of the assessee for Assessment Year 2011-12 placed at pages 6 to 13 of Paper Book (pages 1 to 38) shows that as on 1.4.2011, the assessee's opening balance of Sundry Creditors was Rs.28,48,100. Admittedly, as noted by the CIT (Appeals) at para 5.7 on page 4 of the Assessing Officer's Remand Report states that the total amount of loan outstanding as on 31.3.2012 is Rs.38,58,963 and after reducing (i) Op. Balance of rental advance of Rs.20,000 and (ii) Op. Balance of crop loan of Rs.1,20,000 therefrom, the net closing balance of Sundry Creditors is Rs.36,99,963. It is submitted by learned Authorised Representative that in these circumstances, it is clear that while making the addition of Rs.36,49,863 on account of increase in unexplained unsecured loans, the Assessing Officer has erroneously included therein the opening balance of unsecured loans of Rs.28,48,100 as on 1.4.2011. It is submitted that therefore the increase in unsecured loan balances from 1.4.2011 to 31.3.2012 is certainly not Rs.36,49,863 as made out by the authorities

below; but would be less than Rs.10 lakhs. It is submitted that in these factual circumstances and on this short point alone, the addition of Rs.36,49,863 made / sustained by the authorities below is factually unsustainable and ought to be set aside.

3.2.1 The learned Authorised Representative further contended that the enhancement made by the CIT (Appeals) based on the Assessing Officer's Remand Report is also unsustainable in law. Firstly, the CIT (Appeals) before making the foresaid enhancements of (i) Rs.50,100 to the figure of unsecured loan and (ii) of Rs.1,74,315 under Section 40(a)(ia) of the Act ought to have made available a copy of the Assessing Officer's Remand Report to the assessee for his rebuttal thereof. Secondly, the CIT (Appeals) was legally bound to issue notice of enhancement to the assessee under Section 251(2) of the Act affording him reasonable opportunity of being heard; but did not do so. It is contended by virtue of the failure of the CIT (Appeals) to follow the legal requirements, both these enhancements to the assessee's income are liable to be deleted at the threshold itself.

3.3 Per contra, the learned Departmental Representative supported the orders of the authorities below. However, on being queried by the Bench as to the correctness of the Assessing Officer's adopting of the figure of Rs.36,49,863 for addition as the unexplained increase in unsecured loan balances between 1.4.2011 to 31.3.2012 in the year under consideration, the learned Departmental Representative was not able to controvert the contentions of the learned Authorised Representative for the assessee. The D.R. also was not able to counter the assessee's claims that he was neither given a copy of the Assessing Officer's Remand Report for rebuttal nor served with notice of enhancement of income or afforded adequate opportunity of being heard in the matter. The learned Departmental Representative, however, prayed that in view of the prevailing confusion in the case on hand, the same may be restored to the file of the Assessing Officer for fresh adjudication in the light of new facts / details brought on record by the assessee.

3.4.1 I have heard the rival contentions, perused and carefully considered the material on record. From an appraisal of the record, it is

seen that while completing the order of assessment for Assessment Year 2012-13 vide order dt.31.3.2015, made an addition of Rs.36,49,863 as being the increase in the balances of unsecured loan creditors from the opening balance as on 1.4.2011 to the closing balance thereof on 31.3.2012. How this figure of Rs.36,49,863 was determined has not been explained by Revenue before the Bench. While admittedly; at para 5.7 of the impugned order of the CIT (Appeals), the authorities below have taken the figure of net balance of unsecured loans outstanding as on 31.3.2012 at Rs.36,99,963, the assessee has placed on record financial statements of the immediately preceding year ending 31.3.2011, which establish that the opening balance of unsecured loans as on 1.4.2011 would be Rs.28,48,100. This, prima facie, give some credence to the averment of the learned Authorised Representative that, while making the aforesaid addition of Rs.36,49,863 as unexplained increase in opening balances of unsecured loans for the year under consideration, the Assessing Officer has included therein the entire opening balance of unsecured loans amounting to Rs.28,48,100. On being queried in this regard, the learned Departmental Representative for Revenue was

unable to controvert the aforesaid averments of the assessee that the Assessing Officer has included the opening balance of Unsecured Loan Creditors amounting to R.28,48,100 in the addition of R.36,49,863 which is said to be the difference / increase in unsecured loans balance in the year from 1.4.2011 to 31.3.2012. As the net closing balance thereof, as computed by the Assessing Officer and referred to at para 5.7 of the impugned order, is only Rs.36,99,963, the increase in balance of unsecured loan balance in the year under consideration, prima facie, could not have been Rs.36,49,963.

3.4.2 In these factual circumstances of the case on hand, as discussed above, I am of the view that the aforesaid addition on account of unexplained increase in unsecured loan balances of Rs.36,49,863 is unsustainable in the present situation. In this view of the matter and taking into account the interest of substantial justice, I set aside the addition of Rs.36,49,863 made on account of the unexplained increase in unsecured loan balance between 1.4.2011 to 31.3.2012 by the authorities below and set aside the matter to the file of the Assessing Officer for fresh examination and de novo adjudication after affording

the assessee adequate opportunities of being heard and to file details / submissions / evidences required, which shall be considered before deciding this issue. I hold and direct accordingly. Consequently, this ground is treated as allowed for statistical purposes.

3.5 In respect of the enhancement made to the assessee's income by the CIT (Appeals) in the impugned order, based on the Assessing Officer's Remand Report (i) of Rs.50,100 to the figure of unsecured loans and (ii) disallowance of Rs.1,74,315 under Section 40(a)(ia) of the Act, I find that as contended by the learned Authorised Representative of the assessee, the record shows neither was the Assessing Officer's Remand Report made available by the CIT (Appeals) to the assessee for his rebuttal nor was the legal requirement of notice of enhancement under Section 251(2) of the Act was issued to the assessee affording him reasonable and adequate opportunity of being heard in the matter. Revenue was not able to controvert these contentions of the assessee with any material evidence. In these legal and factual circumstances, I am constrained to delete the aforesaid enhancements to the assessee's income for failure on the part of the CIT (Appeals) to issue the legally

mandated notice under Section 251(2) of the Act to the assessee and provide him reasonable opportunity of being heard in the matter before making enhancement of (i) Rs.50,100 on account of unsecured loans and (ii) the disallowance of Rs.1,74,315 under Section 40(a)(ia) of the Act.

4. In the result, the assessee's appeal for Assessment Year 2012-13 is allowed for statistical purposes.

Order pronounced in the open court on the 27th day of Nov.,2018.

Sd/-

(JASON P BOAZ)
ACCOUNTANT MEMBER

Bangalore,
Dt.27.11.2018.

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Copy to :

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

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Asst. Registrar
Income Tax Appellate Tribunal
Bangalore.