

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 413/Bang/2018
Assessment Year : 2012-13

Shri Pannalal Pukraj, Prop: M/s. Sumangali Jewellers, #2, I Floor, Ellora Mansion, Nagarthpet, Bangalore – 560 002. PAN: ANFPP1774N	vs.	The Assistant Commissioner of Income-Tax, Circle – 5 [2] [2], Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri T.N.C. Sridhar, Advocate
Respondent by	:	Shri C.H. Sundar Rao, CIT (DR)

Date of hearing	:	28.01.2019
Date of Pronouncement	:	30.01.2019

ORDER

Per Shri Chandra Poojari, Accountant Member

This appeal by assessee is directed against the order of Id. CIT(A) dated 21.11.2017.

2. The first ground raised by the assessee is that the AO has no jurisdiction to issue notice u/s. 143(2) of IT Act.
3. The facts of the issue are that the assessee is in the business of trading Gold and Silver Bullion. For Assessment Year 2012-13, the assessee filed return of income on 29.12.2012 electronically declaring total income of Rs. 14,68,606/-. The Assessing Officer issued notice u/s. 143(2) of IT Act calling for the books of accounts and various other details. The first notice u/s. 143(2) was issued on 11.09.2013 which was duly served on the assessee on 16.09.2013. As there

was no response, notice u/s. 142(1) was issued on 24.12.2013 to assessee to appear on 06.01.2014. Further, notices were issued on 15.09.2014, 07.10.2014 and 01.01.2015. In response to the above notices, assessee filed letter dated 19.01.2015 requesting the Assessing Officer to transfer the file to Bangalore as the place of his business has been shifted to Bangalore from Tirupathur, Tamil Nadu. However the file was not transferred to Bangalore and the assessment proceedings were continued. On 24.02.2015 Shri Dattatreya Dharwad, Chartered Accountant, assessee's authorized representative along with Shri P. Jayachand, S/o. Shri Pannalal Pukraj appeared and had participated in the assessment proceedings before the AO and furnished financial statements, copy of 3CD Audit Report and copy of the VAT Return. Later the case was adjourned by AO requesting the assessee to furnish the books of account, confirmation letters for unsecured loan, details of creditors, purchase and sale bills. Once again the assessee produced the books of account and purchase and sale bills and same were examined by the AO and the Assessing Officer made addition towards suppression of sale value of gold bullion, cash advance received and difference in value of closing stock.

4. Now the contention of the Id. AR is that the assessee though obtained PAN in Tirupathur address, the assessee has not carried on any business at Tirupathur address shown in the PAN and he has filed the return of income upto Assessment Year 1997-98 in that address and thereafter he was a non-filer of Income-tax returns in Vellore District. The assessee migrated from Tirupathur to Bangalore in the year 2005-06. The assessee set up business under the name M/s. Sumangali Jewellers on 25.07.2009 at Bangalore and he has been regularly filing his return of income for Assessment Years 2010-11, 2011-12 and 2012-13 at Bangalore only. However, he has mentioned PAN No. which was allotted at Tirupathur address. According to Id. AR, assessee having no business connection at No. 2, Netaji Road, Tirupathur as there was no business carried on in that address under the name and style of M/s. Sumangali Jewellers. According to him the assessee not falling under the jurisdiction of AO, Tirupathur. On the other hand the assessee's business is located in Bangalore and the

Income-tax Officer concerned in Bangalore address is having jurisdiction on assessee to issue notice u/s. 143(2) of IT Act so as to frame the assessment.

5. He drew our attention to Affidavit regarding non-service of notice u/s. 143(2) dated 23.01.2019 stating as follows.

“I, PANNALAL PUKRAJ, son of Sri Pannalal, aged about 57 years, residing at #15/1, Model House Road, Basavangudi, BENGALURU - 560 004, do hereby solemnly affirming and state on oath as follows as something contrary to record is alleged by the authorities below in the order subject matter of appeal :-

- 1. That in the assessment order passed u/s.143[3] dated 31/03/2015, the learned ACIT, Circle-1, Vellore, states that notice u/s.143[2] dated 11/09/2013 was served on me on 16/09/2013.*
- 2. That I hereby state that I have not been served / received of the aforesaid notice u/s.143[2] dated 11/09/2013 issued by the learned ACIT, since, I had left the premises No.2, Nethaji Road, Tirupattur in the year 2005 itself and shifted to Bangalore.”*

6. According to the Id. AR the assessment based on such notice u/s. 143(2) is bad in law which has to be quashed. He also submitted that notice u/s. 143(2) is required to be served as per Rule 12 of the IPC so as to frame the assessment u/s. 143(2) of IT Act.

7. On the other hand, Id. DR submitted that the following notices was served to assessee.

- “1) Notice u/s.143(2) dt.11.09.2013 and ack. Dt.16.09.13.*
- 2) Notice u/s.142(1) dt.24.12,2013 and ack. Dt.28.12.13.*
- 3) Notice u/s.142(1) dt.15.09.2014 and ack.letter from assessee, dt.22-09-2014*
- 4) Notice u/s.142(1) dt.07.10.2014 and ack.letter from assessee, dt.13-10-2014*
- 5) Notice u/s.142(1) dt.1.1.2015 and ack.letter from assessee, dt.12-01-2015”*

8. According to Id. DR the assessee has duly participated in the assessment proceedings and assessment was framed u/s. 143(3) of IT Act. It is also submitted by Id. DR that in the following circumstances assessee cannot challenge the notice u/s. 143(2) of IT Act with regard to the jurisdiction of the Assessing Officer.

“Section 124 (3)

124 (3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer—

(a) where he has made a return under sub-section (1) of section 115WD or under sub-section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 142 or sub-section (2) of section 115WE or sub-section (2) of section 143 or after the completion of the assessment, whichever is earlier;

(b) where he has made no such return, after the expiry of the time allowed by the notice under sub-section (2) of section 115WD or sub-section (1) of section 142 or under sub-section (1) of section 115WH or under section 148 for the making of the return or by the notice under the first proviso to section 115WF or under the first proviso to section 144 to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier;

³⁴[(c) where an action has been taken under section 132 or section 132A, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 153A or sub-section (2) of section 153C or after the completion of the assessment, whichever is earlier.]”

9. Without prejudice to the above, he submitted that if there is any lapse in issue of notice, the provisions of section 292BB of IT Act, will cure such mistakes if any.

10. We have heard both the parties and perused the material on record. Now in the present case the Assessing Officer issued following notices to assessee.

“1) Notice u/s.143(2) dt.11.09.2013 and ack. Dt.16.09.13.

2) Notice u/s.142(1) dt.24.12,2013 and ack. Dt.28.12.13.

3) Notice u/s.142(1) dt.15.09.2014 and ack.letter from assessee, dt.22-09-2014

4) Notice u/s.142(1) dt.07.10.2014 and ack.letter from assessee, dt.13-10-2014

5) Notice u/s.142(1) dt.1.1.2015 and ack.letter from assessee, dt.12-01-2015”

10.1 On first occasion the assessee filed letter dated 19.01.2015 requesting the Assessing Officer to transfer his assessment file to Bangalore as the place of his business has been shifted to Bangalore but AO explained to the assessee his difficulty to transfer the file since time limit to complete the assessment is coming to end on 31.03.2015. Hence, he continued with the assessment proceedings. On 24.02.2015, assessee along with the authorized representative appeared before the AO and furnished the required details. Now the contention of the AR

is that the AO has no jurisdiction to issue notice u/s. 143(2) of IT Act so as to frame the assessment as per the IT Act. As the assessee is having no business at Tirupathur, the question, therefore, that arise for our consideration is whether the due requirement u/s. 143(2) of IT Act was met by the A.O. Though the assessee filed appeal stating that no notice u/s. 143(2) was issued on 11.09.2013, it was pleaded by Id. DR that notice was served to the assessee on 16.09.2013 and there was a response by the assessee by filing letter dated 19.01.2015 requesting the AO to transfer the file to Bangalore as the place of his business has been shifted to Bangalore. Further on 24.02.2015, assessee's son along with the Chartered Accountant of the assessee appeared before the Assessing Officer and furnished various details in connection with the assessee's assessment. Hence, the plea of the assessee that no notice u/s. 143(2) was served to assessee is not correct. In our considered view it is sufficient to draw inference of service of notice on the assessee as the assessee was participated in the assessment proceedings.

11. The next question for our consideration is whether the AO have the jurisdiction to issue notice to assessee u/s. 143(2) of IT Act. The assessee got PAN allotted at the address of Tirupathur, Tamil Nadu and that PAN was continued till the assessment order was passed. There was no material to show that the assessee has made any application to change the address in PAN Card. The contention of the assessee is that jurisdiction of AO is governed by the provisions of section 124 of the Act and not by the grant of the PAN by the AO. In the present case the assessee having participated in the assessment proceedings now the assessee cannot question the jurisdiction u/s. 124(3) of the Act. As per section 124(3) which stipulates a bar to any contention about lack of jurisdiction of an AO. It is not as if the provisions of the Act disable on assessee from contesting that in a given situations the AO lacks jurisdiction; rather section 124(3) limits the availability of those options at the threshold. The assessee upon receipt of notice of the kind mentioned in clause (a) and (b) of sub-section 3 of section 124 of IT Act has the option to urge the question of jurisdiction.

The two points of time specified in section 124(3)(a) are as under.

- i) Within one month from the date of service of notice or

ii) After completion of assessment whichever is earlier

In the present case the notice u/s. 143(2) was served on 16.09.2013. The assessment order was passed on 31.03.2015. Being so the time limit available to the assessee within this date 15.10.2013. Since the assessee has not questioned the jurisdiction of AO for issue of notice u/s. 143(2) or 142(1) within specified time as above and had questioned only before CIT(A) by way of additional ground on 17.09.2017 which is time barred. Further, we also take support from section 292BB of IT Act which was inserted by Finance Act, 2008 w.e.f. 01.04.2008. The assessment under appeal before us is related to Assessment Year 2012-13. Therefore the provisions of section 292BB of IT Act would apply in this case. As per records the notice u/s. 143(2) was served to the assessee within the limitation period. The assessee participated in the assessment proceedings by producing books of account and other details and assessee has not question the jurisdiction of Assessing Officer or validity of the notice issued u/s. 143(2) as provided u/s. 124(3) of IT Act. Being so, in this situation provisions of section 292BB are applicable. Accordingly, we do not find any merit in the argument of Id. AR. This ground of appeal of the assessee in ground nos. 2 and 3 are rejected.

12. The next ground no. 2 is with regard to sustaining the addition of Rs. 1,18,34,065/- towards unproved trade advances. The facts of this issue are that it was noticed by AO that assessee is said to have received following trade advances.

<i>Sl. No.</i>	<i>Name</i>	<i>Date</i>	<i>Amount in Rs.</i>
1	Arun	29.9.2011	5,00,000
2	Chetan	29.9.2011	5,00,000
3	Deepak	29.9.2011	4,97,500
4	Dilip Gadiya	29.9.2011	4,90,000
5	Dinesh Gupta	29.9.2011	4,98,000
6	Gagan Bhatiya	29.9.2011	4,96,000
7	Gowtham Sethiya	29.9.2011	4,98,000
8	Gowtham	29.9.2011	4,00,000
9	Gyanraj	29.9.2011	4,98,000
10	Heeralal	29.9.2011	5,00,000
11	Indarporgal	29.9.2011	4,95,000

12	<i>Ghunal</i>	29.9.2011	4,95,000
13	<i>Mahavir</i>	29.9.2011	4,97,000
14	<i>Mahaindar</i>	29.9.2011	4,92,000
15	<i>Neemi Chand</i>	29.9.2011	5,00,000
16	<i>Om Patel</i>	19.11.2011	4,98,065
17	<i>Prabhakar.S</i>	29.9.2011	4,98,000
18	<i>Prakash</i>	29.9.2011	5,00,000
19	<i>Punith</i>	29.9.2011	4,85,000
20	<i>Ram</i>	29.9.2011	4,98,000
21	<i>Sunil dharivel</i>	29.9.2011	4,98,000
22	<i>Tharun</i>	29.9.2011	5,00,000
23	<i>Vimal Marlecha</i>	29.9.2011	5,00,000
24	<i>Yashwant Ghadiya</i>	29.9.2011	5,00,000
	<i>Total</i>		1,18,34,065

13. The Assessing Officer asked the details of postal address of the above parties so as to prove the genuineness of credit. Before the AO, the assessee pleaded that it was sales advances against which subsequently sale were made. Since the address was not furnished by the assessee, same was treated as unexplained credit u/s. 68 of IT Act. On appeal, the CIT(A) confirmed it. Against this assessee is in appeal before us.
14. Before us Id. AR pleaded that it was trade advances received from various parties and later on it was culminated with sales. Being, it was the cash sales, who are the walk-in customers, the assessee did not collect their address. On the other hand, Id. DR submitted that the assessee manipulated the sale bills by selling less than 200 grams so that sale value will be less than Rs. 5 Lakhs. According to Id. DR, nobody will deposit the money with the assessee when the parties identity not known to the assessee. He submitted that it is quite surprise that each bill amount is ranging from Rs. 4,92,000 to Rs. 5,00,000/- and it is a made believable story.
15. We have heard both the parties and perused the material on record. We have carefully gone through the date of receipt of this amount. Except one transaction, all transactions took place on 29.09.2011 and amount ranging from Rs. 4,92,000/- to Rs. 5,00,000/-. Only one transaction took place on 19.11.2011. The Assessing Officer asked the address of these parties and assessee was unable to furnish the same. Further the assessee without knowing the address

of the parties collected such a huge amount from the parties on single day and from all the parties the amount was same which is unbelievable. Being so, the burden is on the assessee to discharge the same. The assessee failed to prove the transaction by furnishing the name and address of the parties. Hence in our considered opinion, the AO is justified in treating it as unexplained credit u/s. 68 and the same is confirmed. This ground of appeal of assessee is rejected.

16. The next ground is with regard to sustaining addition of Rs. 25,47,81,595/- for suppression of sale value of gold bullion. The facts of this issue are that it was noticed by the Assessing Officer that there was difference between rate charged to the bullion sales value received through RTGS and by cash which can be seen from the following table extracted from the assessment order:

<i>Sl. No.</i>	<i>Invoice No.</i>	<i>Date</i>	<i>Quantify in gms.</i>	<i>Invoice Amount excluding VAT (in Rs.)</i>	<i>Cash/ Credit</i>	<i>Rate per gram (in Rs.)</i>
<i>1</i>		<i>5.4.2011</i>	<i>2000</i>	<i>4473878</i>	<i>RTGS</i>	<i>2236.00</i>
		<i>5.4.2011</i>	<i>1000</i>	<i>2227931</i>	<i>Cash</i>	<i>2227.00</i>
<i>2</i>	<i>720</i>	<i>23.5.2011</i>	<i>5000</i>	<i>11075000</i>	<i>RTGS</i>	<i>2215.00</i>
	<i>721</i>	<i>23.5.2011</i>	<i>1000</i>	<i>2181693</i>	<i>Cash</i>	<i>2181.00</i>
<i>3</i>	<i>1232</i>	<i>22.6.2011</i>	<i>1764.92</i>	<i>4009901</i>	<i>RTGS</i>	<i>2272.00</i>
	<i>1233</i>	<i>23.6.2011</i>	<i>1000</i>	<i>2258300</i>	<i>Cash</i>	<i>2258.00</i>
<i>4</i>	<i>1449</i>	<i>24.6.2011</i>	<i>10000</i>	<i>22653465</i>	<i>RTGS</i>	<i>2265.00</i>
	<i>1251</i>	<i>25.6.2011</i>	<i>1000</i>	<i>2223663</i>	<i>Cash</i>	<i>2223.00</i>
<i>5</i>	<i>4408</i>	<i>3.9.2011</i>	<i>1000</i>	<i>2800356</i>	<i>RTGS</i>	<i>2800.00</i>
	<i>4407</i>	<i>3.9.2011</i>	<i>180.52</i>	<i>495025</i>	<i>Cash</i>	<i>2742.00</i>
<i>6</i>	<i>4507</i>	<i>7.9.2011</i>	<i>1000</i>	<i>2839604</i>	<i>RTGS</i>	<i>2839.00</i>
	<i>4508</i>	<i>7.9.2011</i>	<i>181.61</i>	<i>494703</i>	<i>Cash</i>	<i>2723.00</i>
<i>7</i>	<i>7257</i>	<i>28.10.2011</i>	<i>4163.77</i>	<i>11164708</i>	<i>RTGS</i>	<i>2681.00</i>
	<i>7260</i>	<i>28.10.2011</i>	<i>113.09</i>	<i>297030</i>	<i>Cash</i>	<i>2626.00</i>
<i>8</i>	<i>7368</i>	<i>2.11.2011</i>	<i>10000</i>	<i>27029703</i>	<i>RTGS</i>	<i>2702.00</i>
	<i>7366</i>	<i>2.11.2011</i>	<i>186.38</i>	<i>494396</i>	<i>Cash</i>	<i>2652.00</i>
<i>9</i>	<i>7385</i>	<i>2.11.2011</i>	<i>2000</i>	<i>5467574</i>	<i>RTGS</i>	<i>2733.00</i>
	<i>7384</i>	<i>2.11.2011</i>	<i>183.25</i>	<i>493891</i>	<i>Cash</i>	<i>2695.00</i>
<i>10</i>	<i>7676</i>	<i>7.12.2011</i>	<i>731.73</i>	<i>2029208</i>	<i>RTGS</i>	<i>2841.00</i>
	<i>7678</i>	<i>7.12.2011</i>	<i>175.13</i>	<i>494936</i>	<i>Cash</i>	<i>2826.00</i>
<i>11</i>	<i>7765</i>	<i>13.12.2011</i>	<i>190.26</i>	<i>544554</i>	<i>RTGS</i>	<i>2862.00</i>
	<i>7764</i>	<i>13.12.2011</i>	<i>175.51</i>	<i>494876</i>	<i>Cash</i>	<i>2819.00</i>
<i>12</i>	<i>8659</i>	<i>6.1.2012</i>	<i>213.31</i>	<i>557228</i>	<i>RTGS</i>	<i>2612.00</i>
	<i>8658</i>	<i>6.1.2012</i>	<i>189.73</i>	<i>494718</i>	<i>Cash</i>	<i>2607.00</i>
<i>13</i>	<i>9279</i>	<i>24.1.2012</i>	<i>255.63</i>	<i>693069</i>	<i>RTGS</i>	<i>2711.00</i>

	9280	24.1.2012	184.56	487262	Cash	2640.00
14	9578	3.2.2012	123.26	346532	RTGS	2811.00
	9581	3.2.2012	175.11	489980	Cash	2798.00
15	9973	18.2.2012	232.35	643564	RTGS	2769.00
	9974	21.2.2012	180.13	495000	Cash	2748.00
16	10190	2.3.2012	124.58	346535	RTGS	2781.00
	10188	2.3.2012	178.21	492653	Cash	2764.00
17	10909	21.3.2012	100	277822	RTGS	2778.00
	10906	21.3.2012	181.44	494535	Cash	2725.00

17. Hence the Assessing Officer computed the total quantity in gold sold through RTGS and its value and compared it with total quantity of golds sold by cash which is as follows.

	Quantity of gold bullion sold through RTGS	Quantity of gold bullion sold through cash
Weight in grams	1030358	1886293
Value (in Rs.)	2737334363	4756496230
Value per gram	Rs. 2656.68	Rs. 2521.61
Difference between value of RTGS sale and Cash sale per gram – Rs. 135.07		

The Assessing Officer computed the total consideration of cash sales as follows:

The quantity of gold sold by cash – 1886293 grams.

The difference between RTGS sale and cash sale value – Rs. 135.07

Suppression sales value – Rs. 25,47,81,595/-

18. Against this the assessee filed appeal before CIT(A) who has confirmed it. The Id. AR submitted that the Assessing Officer ultimately estimated suppression of sale value of bullion which is incorrect. According to him the assessee's books of accounts are duly audited and it could be verified as such there is no suppression of sales. On the other hand Id. DR relied on the order of lower authorities.
19. We have heard both the parties and perused the material on record. As seen from the tables reproduced in earlier para, the Assessing Officer clearly brought

on record the difference in prices charged through sale made by way of RTGS and sold by way of cash. There is difference of Rs. 135.07 per gram when it was compared between the sale value by way of RTGS and sale value by way of cash. The Assessing Officer rightly computed that difference of 1886293 gram worked out at Rs. 25,47,81,595/-. The assessee was not able to explain the reason for charging lower price on cash sales as compared to the sale by way of RTGS. The entries in books of account was properly made, however there was difference between prices charged when the bullion is sold by way of RTGS and sold by way of cash. Being so, the lower authorities rightly brought that difference into tax. Accordingly, we find no infirmity in the order of the lower authorities on this issue. The same is confirmed. This ground of appeal of the assessee is rejected.

20. The last ground of appeal is with regard to sustaining of addition of Rs. 4,31,347/- towards value of closing stock. The Assessing Officer ascertained the closing stock value by adopting the average value in last two bills of gold purchase at Rs. 2,825/- per gram and he computed the closing stock value at Rs. 4,31,347/-. The same was confirmed by CIT(A). Hence the assessee is in appeal before us.
21. We have heard both the parties and perused the material on record. There is no dispute that assessee is following the valuation of closing stock based on market price or cost price whichever is lower and this method is followed by assessee regularly and consistently. However the Assessing Officer changed the method of valuing the closing stock by adopting average value of last two bills of gold purchase. This methodology followed by AO have no legal sanction. Hence, we direct the AO to follow the method of valuation of closing stock followed by the assessee which is market price or cost price whichever is less. Accordingly, we find force in the arguments of the Id. AR and direct the AO accept the valuation of closing stock made by A.O. and accordingly we delete the additions made by the AO towards valuation of closing stock of Rs. 4,31,347/-. This ground of appeal of assessee is allowed.

22. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 30.01.2019.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(CHANDRA POOJARI)
Accountant Member

Bangalore,
Dated, the 30th January, 2019.
/MS/

Copy to:

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

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.