

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND  
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.2591/Bang/2017
Assessment year : 2008-09

Smt. Jayshree Pawar, Flat No.S-14, Palace Garden Apartments, Palace Road, Rajamahal, Bangalore – 560 020. <b>PAN : AIQPP 1425 L</b>	Vs.	Commissioner of Income Tax (Appeals) – 3, 7 <sup>TH</sup> Floor, BMTC Building, Koramangala, Bangalore – 560 095.
APPELLANT		RESPONDENT

Assessee by	:	Shri. S. V. Ravishankar, Advocate
Revenue by	:	Shri. R. N. Siddappaji, Addl. CIT

Date of hearing	:	09.04.2019
Date of Pronouncement	:	26.04.2019

**ORDER**

***Per Shri Jason P Boaz, A.M. :***

This appeal by the assessee is directed against the order of CIT(A)-3, Bangalore, dated 28.09.2017 for Assessment Year 2008-09.

2. Briefly stated, the facts relevant for disposal of this appeal are as under:

2.1 The assessee filed her return of income for Assessment Year 2008-09 on 31.07.2008 declaring total income of Rs.6,79,810/-. She later filed a revised return on 31.01.2009 declaring income of Rs.9,25,810/-. The case was taken up for scrutiny

for this Assessment Year and the assessment was concluded ex-parte under section 144 of the Income Tax Act, 1961 (in short 'the Act') vide order dated 31.12.2010; wherein the assessee's income was determined at Rs.83,04,833/-. On appeal, the CIT(A), Mysore, vide order dated 03.01.2013 allowed the assessee partial relief.

2.2 The assessee, vide rectification application under section 154 of the Act dated 15.05.2013, filed before the CIT(A)-3, Bangalore, submitted that the CIT(A), Mysore, in his order dated 03.01.2013, while disposing off the assessee's claims in respect of cash credits in her bank account amounting to Rs.11,85,025/- at para 4.4 of his order, had upheld the additions in respect of cash deposit of Rs.1,06,491/- along with savings bank interest of Rs.87.39 and Rs.253.01, but had failed to discuss and adjudicate on the issue of the balance cash credit of Rs.10,78,193/- (dishonor of cheque); which was part of ground of appeal No.2 raised before him. The CIT(A), vide order dated 28.09.2017, dismissed the assessee's application under section 154 of the Act holding that there was no mistake apparent from record.

3.1 Aggrieved by the order of the CIT(A)-3, Bangalore, dated 28.09.2017 in rejecting her rectification application dated 15.05.2013 for Assessment Year 2008-09 has filed this appeal before the Tribunal, raising the following grounds:-

- 1. The impugned orders passed by the learned Commissioner of Income-Tax under the provisions of section 154 of the Act is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.*
- 2. Whether the learned CIT(A)-3, has justified in not rectifying the mistake apparent from record within the meaning of the provisions of section 154 of the Act under the facts and circumstances of the case.*
- 3. Whether the learned CIT(A)-3, is justified in holding that the appellate authority in its earlier order has given specific reasoning in dismissing the said ground, without*

*appreciating that the reasoning was absent under the facts and circumstances of the case?*

- 4. Whether the learned CIT(A)-3 justified in not appreciating that the addition made on account of rejection of cheque of Rs. Rs.10,78,193/-, was clearly evident from the bank statement of the appellant, which is a mistake apparent on record within the meaning of the provisions of section 154 of the Act under the facts and circumstances of the case?*
- 5. The Appellant craves leave to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.*
- 6. For these and other grounds that may be urged at the time of hearing of appeal, the written submission as prayed to be submitted during the course of hearing of the Appeal, the Appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.*

3.2.1 We have heard and considered the rival contentions and carefully perused the relevant material on record. The sum and substance of the assessee's contention is that in the order of CIT(A), Mysore, dated 03.10.2013 for Assessment Year 2008-09, ground No.2 raised in the assessee's appeal in respect of cash credits amounting to Rs.11,85,023/- has not been addressed to the extent of Rs.10,78,193/- (dishonoured cheque). The CIT(A), while adjudicating this ground at para 4.4 of his order has only addressed this issue to the extent of upholding addition of cash credits to the extent of Rs.1,06,491/- in bank account plus bank interest of Rs.87.39/- and Rs.253.01/-.

3.2.2 From a perusal of the order of CIT(A), Mysore, dated 03.10.2013, it is seen that the CIT(A) called for a remand report from the AO in respect of details / submissions filed before him in appellate proceedings. The AO, vide remand report dated 13.03.2012, in respect of the addition of Rs.11,85,025/- on account of unexplained cash credits, has at paras 2 to 4.1 thereof addressed this issue as under:

- "2) *In this case, the assessee had filed her return of income for the asst. ear 2008-09 through E-filing on 31.07.2008, admitting a total income of Rs.6,79,810/-, showing income only under the Head Salaries. Later a revised return of income was filed by the assessee on 31.01.2009, admitting a total income of Rs.9,25,810/- wherein apart from salary income, a long term capital gain of Rs.2,45,999/- was shown. The revised return was processed under section 143(1) of the Income-tax Act, 1961 dated 29.09.2009, which resulted in a demand of Rs.1,85,750/-. The case was selected for scrutiny through CASS and assessment was completed on 31.12.2010 u/s. 144 of the Income tax Act, 1961 with an addition of Rs.11,85,025/- being un explained cash credits and Rs.64,40,000/- being un explained sale consideration.*
- 3) *Being aggrieved by the above, the present appeal is filed.*
- 4) *The assessee was afforded an opportunity to substantiate her claim. The assessee appeared along with her representative and furnished statement of affairs as at 31.03.2008 with respect to the above cash credits. The assessee in her letter dated 20.07.2012 has submitted that the amount of Rs.10,78,193/- is the cheque issued by her in favor of ETA Constructions (I) Pvt Ltd., where the assessee has purchased an apartment, the cheque was issued as per the demand of ETA Construction and the same was returned on 07 January 2008 by the bank, as the balance amount in her account was insufficient as the assessee could not mobilize the funds for realizing the cheque.*
- 4.1) *In respect of other cash credits, the interest credits reflected in the statement of affairs and bank account extracts as on 30 June 2007 a sum of Rs. 87.39/- and as on 31 December 2007 a sum of Rs. 253.01/- were the interest credited with respect to the balance outstanding during the month of June and December by the bank. The balance cash credits amounting to Rs.1,06,491/-, the assessee has submitted that since she was s7ngle during the year and her expenses were very limited, frequently she was withdrawing the cash from ATM counter for her personal needs. Due to time factor she had not utilized the amount drawn and when the amount accumulated the same will be again deposited in the bank. It seems that the assessee has withdrawn very meager amount every time. If the assessee is not utilizing the amount already drawn for her personal needs which was getting*

*accumulating, there is no reason why she was repeatedly withdrawing the amount and accumulating to an extent of Rs.1,06,491/-. This amount of Rs. 1,06,491/- may kindly be sustained.”*

3.2.3 In this regard, the CIT(A)-Mysore at para 4.4 of his order has held as under:-

*“4.4 I have considered the rival contentions carefully. As could be seen from the remand report and the rejoinder, I am in agreement with the AO that the appellant had no proper explanation for the deposit of 1,06,491/- and the appellant is also liable to be taxed on interest income of 87.39/- and 253.01/- since this is a bank interest, the eligible deduction under Chapter VIA needs to be considered for this purpose. The balance addition is confirmed.”*

3.2.4 On a perusal of the relevant portion of remand report [extracted at para 3.2.2 (supra) and that of the CIT(A), Mysore (extracted at para 3.2.3 (supra)], we find that there is merit in the assessee's contentions, as it is evidently clear that the CIT(A) has not rendered a finding in respect of the balance cash credit of Rs.10,78,193/- (i.e., dishonoured cheque), but has only rendered a finding upholding the remaining cash credit in bank account of Rs.1,06,491/- plus bank interest. In this factual matrix of the case as discussed above, we remand this issue back to the file of CIT(A)-Mysore, with a direction to examine, consider ground No.2 of the assessee's appeal which was raised before him which is recorded in his order dated 03.10.2013 at page 2 & 3 as under:-

*“The learned Assessing Officer has seriously erred in adding a sum of Rs.11,85,025/- as cash credit found in bank account under other Sources without any basis just because this is a case for 144 of the Act. In fact this amount represents nothing but accumulation of salary. It is also not known from where the Assessing Officer found this figure.”*

The CIT(A) is directed to examine, consider and adjudicate this ground No.2 (supra) to the extent of Rs.10,78,193/- on which he has not recorded a finding at para 4.4 of his order dated 03.10.2013, after considering the relevant portion of the AO's remand report dated 13.08.2012 and affording the assessee adequate opportunity of being heard in the matter. We hold and direct accordingly.

6. In the result, the assessee's appeal for Assessment Year 2008-09 is allowed for statistical purposes.

*Order pronounced in the open court on this 26<sup>th</sup> day of April, 2019.*

Sd/-  
**(N. V. VASUDEVAN)**  
**Vice President**

Sd/-  
**(JASON P BOAZ)**  
**Accountant Member**

Bangalore.

Dated: 26<sup>th</sup> April, 2019.

/NS/\*

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|---------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT        | 4. CIT(A)     |
| 5. DR         | 6. Guard file |

By order

Assistant Registrar,  
ITAT, Bangalore.