

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

BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER

ITA No.216/Bang/2019
Assessment year : 2015-16

Shri. Shankarappa Ravichandra, No.5/1, KH Layout, Tavarekere, Bangalore – 560 028. PAN : AHDPR 4092 D	Vs.	Income Tax Officer, Ward – 7(3)(2), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri. H. Guruswamy, ITP
Revenue by	:	Shri. Karuppusamy S. R., Addl. CIT

Date of hearing	:	11.06.2019
Date of Pronouncement	:	12.07.2019

ORDER

This appeal by the assessee is directed against the order of CIT(A) - 7, Bangalore, dated 03.01.2019 for Assessment Year 2015-16.

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

2.1 The assessee, in the business of civil contract works, filed his return of income for Assessment Year 2015-16 on 20.01.2017 declaring income of Rs.3,67,090/-. The return was processed under section 143(1) of the Income Tax Act, 1961 (in short ‘the Act’) and the case was taken up for scrutiny for examining cash deposits in the assessee’s savings bank account with Federal Bank Ltd. The assessment was completed under section 143(3) of the Act vide

order dated 29.12.2017, wherein the assessee's income was determined at Rs.47,47,880/-, in view of an addition of Rs.44,50,000/- as the Assessing Officer (AO) found the assessee's explanation for this deposit in his savings bank account with Federal Bank to be unsatisfactory.

2.2 Aggrieved by the order of assessment dated 29.12.2017 for Assessment Year 2015-16, the assessee filed an appeal before the CIT(A)-7, Bangalore, raising various grounds and contentions assailing the addition of Rs.44.50 lakhs made by the AO as unexplained cash deposits in the assessee's savings bank account in Federal Bank Ltd. In the course of appellate proceedings, apart from filing written submissions to submit that the aforesaid cash deposit in his bank account was out of sale consideration arising out of sale of property, the assessee filed certain documents (16 pages) in support of the above explanation. The CIT(A) was of the view that the aforesaid documents were additional evidence and observing that the assessee has failed to provide any cause for not filing the said documents before the AO, refused to admit the same under Rule 46A of the Income Tax Rules, 1962 (in short 'the Rules'). In that view of the matter, the CIT(A) dismissed the assessee's appeal vide the impugned order dated 03.01.2019 observing that the assessee has failed to explain the cash deposit of Rs.44.50 lakhs.

3.1 Aggrieved by the order of CIT(A)-7, Bangalore, dated 03.01.2019 for Assessment Year 2015-16, the assessee has preferred this appeal before the Tribunal, wherein he has raised the following grounds:-

1.	The impugned Appellate order dated: 03-01-2019 passed by the Ld. CIT(A), Bangalore-7 is opposed to law, facts and circumstances of the case.
2.	The Ld. CIT(A) has erred in not accepting the evidence produced in the form of a copy of the Federal Bank Account and Sale Deed dtd: 29-11-2013 without appreciating the fact that the said evidence was secured by the Appellant on 05-12-2018 after the completion of Assessment.
3.	The Ld. CIT(A) ought to have appreciated the fact that the evidence produced before him was not available with the Appellant at the time of completion of the Assessment since the said evidence was secured on 05-12-2018 whereas the Assessment was completed on 29-12-2017.
4.	The Ld. CIT(A) ought to have obtained a report from the AO on the evidence produced before the CIT(A) as required under Rule 46A(3) of IT Rules without rejecting the evidence produced at the Appellate Stage.
5.	The Ld. CIT(A) ought to have considered the evidence as per Rule 46A(4) for the cause of substantial justice.
6.	The Appellant craves leave to add, alter, amend and delete any of the grounds at the time of hearing.

3.2 On a perusal of the grounds raised (supra), it is seen that the only issue raised by the assessee is the non-admission of additional evidence of 16 pages; furnished by the assessee before the CIT(A) to explain the cash deposit of Rs.44.50 lakhs in his bank account with Federal Bank Ltd. In support of the admission of 16 pages of additional evidence (placed at pages 10 to 25 of Paper Book) for explaining the said cash deposit in the assessee's bank account, the learned AR of the assessee has filed the following written submissions (copy placed at pages 1 to 4 of the Paper Book).

1. The Appellant begs to submit the following written submissions in support of the Appeal filed against the Appellate order.
2. The Appellant being a Civil Contractor and filed his return of income on 20-01-2017 declaring income of Rs. 3,67,090/-. The case was selected for scrutiny and a Scrutiny Assessment u/s. 143(3) of the Act dtd: 29-12-2017 was completed determining the total income at Rs. 47,74,880/- as against the declared income of Rs. 3,67,090/- inter-alia by making an addition of Rs. 44,50,000/- being the cash deposited into the Bank on 05-07-2014.
3. The Appellant has offered an explanation in respect of the cash deposits that he had sold a property on 29-11-2013 for a sum of Rs. 1,34,00,000/- out of which he has received a part of sale consideration of Rs. 24,00,000/- in addition to the following cash withdrawals from the Federal Bank on various dates as detailed below:-

Cash Received from Sale Deed dtd:29-11-2013		Rs. 24,00,000/-
Cash Withdrawals from the Bank on	05-12-2013	Rs. 1,90,000/-
	06-12-2013	Rs. 50,000/-
	07-12-2013	Rs. 2,00,000/-
	09-12-2013	Rs. 2,50,000/-
	09-12-2013	Rs. 50,000/-
	11-12-2013	Rs. 50,000/-
	16-12-2013	Rs. 6,00,000/-
	24-12-2013	Rs. 2,00,000/-
	01-01-2014	Rs. 2,00,000/-
	20-01-2014	Rs. 2,00,000/-
	25-01-2014	Rs. 5,00,000/-
	24-02-2014	Rs. 1,00,000/-
	23-06-2014	<u>Rs. 30,000/-</u>
Total cash available		<u>Rs. 50,20,000/-</u>

4. However the AO has not accepted the explanation since the Appellant did not produce any documents in support of the cash deposits at the time of Assessment Proceedings and therefore the AO has made an addition of Rs. 44,50,000/- being unexplained income without any source and the supporting documents.

5. The Appellant having been aggrieved with the addition has filed an Appeal before the CIT(A) and in the course of the Appellate Proceedings he has collected the documents from the Bank on 05-12-2018 and also a copy of the sale deed from the buyer and said documents were produced before the Ld. CIT(A) but he has not admitted the documents mainly on the ground that the aforesaid documents were not produced before the AO and therefore said documents are not admissible as evidence as per Rule 46A of IT Rules and dismissed the Appeal.
6. The Appellant submits that at the time of Assessment Proceedings he was not in possession of the above documents and therefore he was prevented from furnishing the same before the AO, but he could able to secure the documents on 05-12-2018 and produced the same before the CIT(A). Therefore the Appellant submits that the Ld. CIT(A) was not justified to dismiss the Appeal on technical grounds without going to the merits of the case. The Ld. CIT(A) ought to have appreciated the fact that the Appellant was not in possession of the relevant documents at the time of Assessment Proceedings.
7. The Appellant begs to place reliance on the following decisions:-
 - a. Order of the Hon'ble ITAT "SMC-B" Bangalore Bench dtd: 15-02-2019 G. Muniraju v/s. ITO Ward – 7(2)(4) in ITA No. 2920/Bang/2018, wherein that Hon'ble ITAT has held that the CIT(A) was not justified to decline the admission of documents and the matter was restored back to the AO to consider the relevant documents and to pass an order afresh after providing an opportunity to be heard.
 - b. The Order of the Hon'ble Supreme Court in the case of Collector, Land Acquisition v/s. Mst. Katiji and others (1987) 167 ITR 471 (SC), wherein it was observed that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in injustice being done because of non deliberate delay”

8. In view of the above decisions the appellant submits that the Ld. CIT(A) was not justified to dismiss the Appeal merely on technical grounds and therefore the Appellate Order of the Ld. CT(A) is arbitrary and unreasonable and hence the same is liable to be set aside and the Hon'ble Bench be pleased to pass orders granting the relief by deleting the addition made by the AO amounting to Rs. 44,50,000/- and future be pleased to pass such others order granting such other relief as the Hon'ble Bench may deem fit in the interest of justice and equity.

3.3 Per contra, the learned DR for Revenue supported the order of the CIT(A) in not admitting the additional evidence filed by the assessee.

3.4.1 I have considered the rival submissions and perused and carefully considered the material on record in the matter of admission of additional evidence (16 pages) filed by the assessee before the CIT(A); including the judicial pronouncements cited on both sides. After a careful consideration of the matter, I am of the view the powers under Rule 46A of the Rules are conferred on the CIT(A) only for the purpose of enabling the CIT(A) to consider evidence with the assessee but not produced before the AO. The CIT(A), in the case on hand, has observed that the assessee failed to explain the cash deposit in his bank account in spite of adequate opportunities provided. A perusal of the column 10 – Dates of hearings on page 1 of the order of assessment indicates that the adequate opportunities granted by the AO were five in number; in the period of less than a month (i.e., between 21.11.2007 to 19.12.2007). Admittedly, as per the averments of the learned AR, the assessee was only able to get the details, now sought to be admitted as additional evidence, after the completion of assessment proceedings.

3.4.2 In my view, in such circumstances as above, the CIT(A) ought to have come to the conclusion that the assessee was prevented by sufficient cause from producing evidence required before the AO. The case of the assessee would thus fall within the ambit of Rule 46A1(b) or (c) of the Rules. In any case, under Rule 46A(4) of the Rules, the CIT(A) has the inherent power to admit additional evidence. The only limitation on the part of the CIT(A) is that he / she cannot rely on the additional evidence without confronting the same to the AO and affording him the right of rebuttal. The power to admit additional evidence is at the discretion of the first appellate authority and that discretion has to be exercised judiciously, keeping in mind the spirit behind Rule 46A of the Rules. Based on the facts and circumstances of the case, as narrated above, I am of the view that the CIT(A) wrongly refused to admit the additional evidence furnished by the assessee in order to explain the source of the cash deposit of Rs.44.50 lakhs in his bank account with Federal Bank Ltd., and rather, ought to have admitted the same for examination / verification of the assessee's claim.

3.4.3 For the reasons stated above, I set aside the order of the CIT(A), in so far as it relates to the cash deposit of Rs.44.50 lakhs in the assessee's bank account with Federal Bank Ltd., and direct that the issue be examined afresh by the AO in the light of the additional evidence (16 pages) filed by the assessee before the CIT(A). The AO is directed to decide the issue afresh after taking into account the additional evidence filed by the assessee after affording the assessee adequate opportunity of being heard and to file details / documents / submissions required; which shall duly be considered by the AO before deciding the issue. It is accordingly ordered. In coming to this finding, support was drawn from the decision of ITAT, Bangalore Bench in the case of Shri. G. Muniraju in ITA No.2920/Bang/2018 dated 15.02.2019.

4. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on this 12th day of July, 2019.

Sd/-
(JASON P BOAZ)
Accountant Member

Bangalore.

Dated: 12th July, 2019.

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

By order

Assistant Registrar,
ITAT, Bangalore.