

IN THE INCOME TAX APPELLATE TRIBUNAL

“C” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA Nos. 915 & 917/Bang/2018
Assessment Years : 2008-09 & 2010-11

The Assistant Commissioner of Income-tax, Central Circle – 1 (4), Bangalore.	Vs.	Shri K. Manju, No. 1241/1, 28 th Main, 32 nd G Cross, 4 th T Block, Jayanagar, Bangalore. PAN: AJXPK1430E
APPELLANT		RESPONDENT

Assessee by	:	Shri CB.R. Renuka Prasad, Advocate
Revenue by	:	Shri Pradeep Kumar, CIT (DR)

Date of hearing	:	08.07.2019
Date of Pronouncement	:	12.07.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

Both these appeals are filed by the revenue which are directed against two separate orders of Id. CIT(A) – 11 both dated 29.12.2017 for Assessment Years 2008-09 and 2010-11. Both these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. The grounds raised by the revenue for Assessment Year 2008-09 in ITA No. 915/Bang/2018 are as under.

“1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs.45,75,000/- , disregarding the fact that the assessee failed to explain the entries in the seized document, with supporting details/evidences and preparing a cash flow statement?

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in shifting the burden on the Assessing Officer of justifying the additions, wherein, as per the provisions of section 132(4A) of the

Income Tax Act, the assessing officer has the right to consider the seized documents referred to earlier as true and onus is on the assessee to prove it otherwise?

3. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the additions based merely on the written submission of the assessee and accepting that the assessee had sufficient cash balance to fund the advances made to Sri V Subramani and Shri PL Indrajit Lankesh without appreciating the fact that the said submissions were merely statements without having the back-up of cash flow statements and requisite details with supporting evidences?

4. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the additions based merely on the written submission of the assessee and accepting that the assessee had already offered the investment of Rs.75,000/- as unexplained investments in the return of income filed in response to notice u/s153A without appreciating the fact that the said submissions have already been rebutted by the AO in the assessment order and the assessee has not produced any further details/explanations by way of back-up of cash flow statements and requisite details with supporting evidences?

5. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in admitting and considering fresh evidences as stated in Para 7.2 of Ld.CIT(A) order, which were not produced by the assessee, before the Assessing Officer at the time of assessment proceedings, without giving any opportunity to the Assessing Officer, in contravention to Rule 46A of the Income Tax Rules?

6. Any other grounds that may arise at the time of hearing.”

3. Similarly the grounds raised by the revenue for Assessment Year 2010-11 in ITA No. 917/Bang/2018 are as under.

“1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition on account of unexplained cash deposited of Rs.3,25000/- without appreciating the fact that the Assessing Officer has made the addition based on evidences in the seized materials which have been admitted by the assessee and for which he has not been able to provide any evidences inspite of giving sufficient opportunities.

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred deleting the addition of Rs.15,00,000/- on account of cash payment to Mr. Mammooty without appreciating the fact that the Assessing Officer has made the addition based on evidences in the seized materials which have been admitted by the assessee and for which he has not been able to provide any evidences inspite of giving sufficient opportunities and that the assessee has not discharged onus

cast on him.

3. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs.15,00,000/- on disallowance u/s 40A(3)/40(a)(ia).

Any other grounds that may arise at the time of hearing.”

4. It was submitted by Id. AR of assessee that for the Assessment Year 2008-09, the return of income is Rs. 68,21,400/- and the assessed income is Rs.1,13,96,400/- which means that there is an addition of Rs. 45,75,000/- made by the AO. Even if the entire addition is deleted by Id. CIT(A) and entire deletion is being disputed by revenue before the Tribunal, the tax effect is bound to be less than Rs. 20 Lakhs.
5. Similarly in Assessment Year 2010-11, the income as per the return of income is Rs. 42,37,450/- and the assessed income is Rs. 75,62,450/- and hence, the addition of Rs. 33,25,000/- was made by the AO and even if the entire addition is deleted by Id. CIT(A) and the entire deletion is being disputed by revenue before the Tribunal, then also, the tax effect in this year is also bound to be less than Rs. 20 Lakhs. In view of latest CBDT instructions as per Circular No. 3/2018 dated 11.07.2018, these appeals of the revenue are not maintainable. Accordingly, these appeals of the revenue are dismissed because of low tax effect.
6. In the result, both the appeals filed by the revenue are dismissed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 12th July, 2019.
/MS/

Copy to:

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

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.