

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

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

ITA No.937/Bang/2013
Assessment year : 2008-09

Mr. B.M. Mumtaz Ali, “Showkath Manzil”, 8 th Block, Chokkabettu, Suratkal, Mangalore. PAN: ADDPA 6813B	Vs.	The Deputy Commissioner of Income Tax, Central Circle 2(3), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Narendra Sharma, Advocate
Respondent by	:	Shri C.H. Sundar Rao, CIT(DR-I), ITAT, Bangalore.

Date of hearing	:	09.07.2019
Date of Pronouncement	:	19.07.2019

ORDER

Per N V Vasudevan, Vice President

This is an appeal by the Assessee against the order dated 20.3.2013 of CIT(Appeals), Mysore, relating to assessment year 2008-09.

2. This appeal was heard on 28.11.2017 and an order was passed on 26.2.2018 disposing the appeal. The Assessee filed Miscellaneous application No. 270/Bang/2018 u/s.254(2) of the Income Tax Act, 1961 (the Act), pointing out that ground No.7 of the grounds of appeal had not been disposed/decided by the Tribunal. The Tribunal by its order dated 17.9.2018 recalled the order of the Tribunal for the limited purpose of adjudication of Gr.No.7 of the grounds of appeal. This is how this appeal

has now come up for hearing before us for the limited purpose of adjudication of Gr.No.7.

3. Ground No.7 raised by the Assessee in the grounds of appeal reads as follows:-

“7. The learned Commissioner of Income-tax(appeals) is not justified in law in confirming the addition of Rs.11,30,000/- made by the learned Assessing Officer on account of sale of property to Sri.Y.M.Shetty as unexplained income, under the facts and circumstances of the case”.

4. The Assessee is an individual engaged in the business of fish-meal and fish manure and timber business. There was a search u/s.132 of the Act in the case of the Assessee on 17.1.2008. An order of assessment u/s.153A read with Sec.143(3) of the Act was passed on 24.12.2009 in which several additions were made to the total income of the Assessee for AY 2008-09. One such addition was an addition of Rs.11.30,000/- made on the basis of a seized document MA-II/8 dated 17.1.2008 which was found in the course of search in the case of the Assessee. The said document which was a registered contained an entry for cash received totaling to Rs.27,00,000/- from Smt.Anu Shetty, Mumbai, during financial year 2007-08. The Assessee explained that he had sold property to YM Shetty for a consideration of Rs.11,30,000/-, and that the remaining sum was advance (loan) received by the Assessee from one Mr. Abdul Salam. The AO held that the sum of Rs.11,30,000 received on sale of the property has not been declared in the return of income and the factum of sale has also not been confirmed either by Anu Shetty or YM Shetty. The AO therefore added the sum of Rs.11,30,000 as undisclosed income of the Assessee. The CIT(Appeals) confirmed the order of the AO.

5. The learned counsel for the Assessee submitted before us that the income on sale of the property had been declared by the Assessee in the

return of income and prayed that the required details will be furnished to the AO if the issue is remanded back to the AO for fresh consideration. In this regard our attention was drawn to paragraph-14 of the statement of facts filed before the CIT(A) wherein, he has specifically alleged that the sum of Rs.11,30,000/- has been offered to tax in Assessee's letter dated 24.11.2009 receipt of which was duly acknowledged by the AO vide endorsement dated 25.11.2009.

6. These facts have not been verified by the CIT(A) or the AO and it requires to be examined again. Therefore, we set aside the order of CIT(A) on this issue and remand for fresh consideration by the AO the addition of Rs.11,30,000/- after affording Assessee opportunity of being heard. This ground is treated as allowed for statistical purpose.

7. Ground No.7 is treated as allowed for statistical purpose.

Pronounced in the open court on this 19th day of July, 2019.

Sd/-
(JASON P. BOAZ)
Accountant Member

Sd/-
(N.V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 19th July, 2019.
/ Desai Smurthy /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.