

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

BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER

ITA Nos.1383 and 1384/Bang/2019
Assessment years : 2011-12 and 2012-13

Smt. Teena Bethala, No.815, 8 th Block, 8 th Cross, 80 Feet Road, Koramangala, Bengaluru - 560 095. PAN : AIHPK 6533 H	Vs.	Income Tax Officer, Ward – 4(3)(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri V. Chandrashekar, Advocate
Revenue by	:	Shri. Ganesh R. G., Standing Counsel

Date of hearing	:	07.08.2019
Date of Pronouncement	:	28.08.2019

ORDER

These two appeals, by the assessee, are directed against the orders of CIT(A)-4, Bengaluru, dated 02.04.2019 for Assessment Years 2011-12 and 2012-13. Since common issues are involved, these appeals were heard together and we deem it appropriate to dispose them off by way of this common order.

Assessee’s appeal in ITA No.1383/Bang/2019 for Assessment Year 2011-12

2. Briefly stated, the facts of the case are as under:-

2.1 For Assessment Year 2011-12, the assessee filed her return of income on 03.10.2011 declaring income of Rs.2,37,680/-. Based on information received from the Office of the Dy. Director of Income Tax (Inv.), i.e., Investigation Wing of the Department vide letter dated 26.02.2018; that cash was deposited in the assessee's bank account maintained with Federal Bank Ltd., on various dates, the Assessing Officer (AO) initiated re-assessment proceedings under section 147 of the Income Tax Act, 1961 (in short 'the Act') and in this regard issued notice under section 148 of the Act to the assessee on 28.03.2018. In response thereto, the assessee vide letter filed on 25.04.2018 requested the AO to treat the original return filed under section 139 of the Act as having been filed in compliance to the notice issued under section 148 of the Act. The assessment was concluded under section 143(3) r.w.s. 147 of the Act vide order dated 27.12.2018, wherein the assessee's income was determined at Rs.8,67,680/-; in view of addition of Rs.6,30,000/- under section 69A of the Act. Aggrieved by the order of assessment dated 27.12.2018 for Assessment Year 2011-12, the assessee carried the matter in appeal before the CIT(A)-4, Bengaluru; but without any success.

3.0 Aggrieved by the order of CIT(A)-4, Bengaluru, dated 02.04.2019 for Assessment Year 2011-12, the assessee preferred this appeal before the Tribunal, wherein she has raised the following grounds:-

<i>Sl. No.</i>	<i>Grounds of Appeal</i>	<i>Tax Effect in Rs.</i>
<i>1.</i>	<p><i>a) The orders of the authorities below in so far as these are against the appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the appellant's case.</i></p> <p><i>b) The appellant denies herself liable to be assessed on an income of Rs,8,67,680/- as against a total income of Rs.2,37,680/- returned by</i></p>	-

	<i>the appellant under the facts and circumstances of the case.</i>	
2.	<p><i>The Appellant denies herself to be assessed under section 143(3) r.w.s. 148 of the Income Tax Act, 1961 (the Act) as the mandatory conditions for assumption of jurisdiction under section 148 of the Act have not been complied with on the ground that:</i></p> <p><i>a) The impugned reasons provided by the assessing officer are not reasons to believe and the same are reasons to suspect which is impermissible in the eyes of law.</i></p> <p><i>b) The assessing officer failed to appreciate the assessment cannot be reopened merely to verify the genuineness of the credits in the bank account as that would amount to fishing and roving enquiry without any tangible material to show escapement of income which is impermissible in law.</i></p> <p><i>c) The notice issued by the assessing officer under section 148 of the Act is barred by limitation under the facts and circumstances of the case.</i></p> <p><i>d) The assessing officer has not independently applied his mind to the facts of this case and has merely relied upon the information received from Investigation wing which amounts to borrowed satisfaction, which is impermissible in the eyes of the law and therefore the</i></p>	-

	<p><i>addition needs to be deleted in the interest of equity and justice.</i></p> <p><i>e) The sanction as required under section 151 of the Act has not been obtained from the Commissioner of Income Tax before issue of notice under section 148 of the Act or having been obtained, the copy of the same has not been provided to the appellant, which is against the principles of natural justice.</i></p>	
3.	<i>The authorities below erred in invoking the provisions of section 69A of the Act in respect of the transactions recorded in the books of the appellant and consequently the additions made on this count are liable to be deleted under the facts and circumstances of the case.</i>	
4.	<p><i>a) The learned CIT(A) erred in confirming the addition of Rs.6,30,000/-as unexplained money under the facts and circumstances of the case.</i></p> <p><i>b) The authorities below failed to appreciate the fact that the receipts of Rs.6,30,000/- are on account of loans repaid by M/s.Rippsons and consequently the addition made needs to be deleted under the facts and circumstances of the case.</i></p>	1,12,822/-
5.	<i>a) The learned CIT(A) failed to appreciate that the appellant had discharged the primary onus cast on her by the Act in providing all the details of the receipts and thus the action of the authorities below in treating the impugned amount as unexplained money is improper</i>	

	<p><i>and unwarranted under the facts and circumstances of the case.</i></p> <p><i>b) The learned CIT(A) erred in holding that the appellant had not explained the nature of the amount received on the facts of the case.</i></p>	
6.	<p><i>c) The authorities below erred in not taking cognizance of the various documents/ details/ information furnished by the appellant under the facts and circumstances of the case.</i></p> <p><i>d) The orders of the authorities below are bad in law as the addition was made merely based on suspicion and surmises under the facts and circumstances of the case.</i></p>	
7.	<p><i>a) The appellant denies himself liable to be levied to interest under sections 234B, 234C and 234D of the Act and further the computation of interest was not provided to the appellant as regard to the rate, period and method of calculation of interest under the facts and circumstances of the case.</i></p> <p><i>b) Without prejudice, the interest levied under sections 234B, 234C and 234D of the Act requires to be waived off under the facts and circumstances of the case.</i></p>	88,181/-
8.	<i>The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.</i>	-
9.	<i>In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity.</i>	-

4. **Ground Nos.1 (a & b), 8 and 9 (supra),** being general in nature and not urged before us, are rendered infructuous and accordingly dismissed.

5. **Ground No.2 (a to e) – Validity of Assumption of jurisdiction under section 148 of the Act**

5.1 In this ground (supra), the assessee challenges the assumption of jurisdiction under section 148 of the Act by the AO on various counts. However, at the outset of the hearing, the learned AR of the assessee submitted that the assessee is not pressing / urging ground No.2 (a to d) (supra). In these circumstances, the ground No.2 (a to d) (supra) is rendered infructuous and is accordingly dismissed as not pressed.

6. **Ground No.7 (a and b) – Charging of interest under section 234B, 234C and 234D of the Act**

6.1 In this ground (supra), the assessee denies herself liable to be charged interest u/s 234A, 234B and 234C of the Act. The charging of interest is consequential and mandatory and the AO has no discretion in the matter. This proposition has been upheld by the Hon'ble Apex Court in the case of Anjum H. Ghaswala (252 ITR 1) (SC) and I, therefore, uphold the action of the AO in charging the assessee the aforesaid interest u/s 234A, 234B and 234C of the Act. The AO is, however, directed to re-compute the interest chargeable u/s 234A, 234B and 234C of the Act, if any, while giving effect of this order.

7. **Ground No.3 to 6 – Addition under section 69A of the Act**

7.1 In these grounds (supra), the assessee assails the orders of the authorities below for invoking the provisions of section 69A of the Act in respect of

transactions recorded in the books of account of the assessee; which are receipts on account of repayment of loans amounting to Rs.6,30,000/- by M/s. Rippsons. It is contended by the learned AR that the CIT(A) erred in holding that the assessee had failed to explain the nature of the amounts received, when the assessee had discharged the primary onus cast on her by providing all the details / documents and information of the receipts and contended that the aforesaid addition under section 69A of the Act was made merely based on suspicions and surmises and therefore ought to be deleted. In support of the assessee's contentions, reliance was placed on the decision of ITAT – Mumbai Bench in Karthik Construction Co., in ITA No.2292/Mum/2016.

7.2 Per contra, the learned DR for Revenue supported the orders of the authorities below.

7.3.1 I have considered the rival contentions and perused the material on record; including the judicial decision cited and placed reliance upon. From a perusal of the order of assessment, it emerges that the AO at para 1.2 thereof has listed out the cash deposits, to the extent of Rs.13,00,000/-, made in the assessee's bank account with Federal Bank on various dates. It is also noticed that these deposits are made in the previous year relevant to Assessment Year 2012-13 and not in Assessment Year 2011-12 i.e., the year under consideration. In my view, the AO has neither made out any case for addition under section 69A of the Act nor given a reasoned finding as to how the amount of Rs.6,30,000/- has been added thereunder. As per the order of assessment, the AO has only mentioned that the information is received from the Investigation Wing of the Department that cash deposits were made in the assessee's bank account.

7.3.2 In the facts and circumstances of the case, as narrated above, it is essential that the provisions of section 69A of the Act be extracted hereunder:-

"69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."

7.3.3 On a reading of section 69A (supra), it is clear that the onus is upon the AO to find the assessee to be the owner of any money, bullion, jewellery or valuable article and such money, bullion, jewellery or valuable article was not recorded in the books of account, if any, maintained by the assessee for any source of income. In these circumstances, the AO can resort to making an addition under section 69A of the Act only in respect of such monies / assets / articles or things which are not recorded in the assessee's books of account. In the case on hand, the cash deposits are recorded in the books of account and are reportedly made on the receipt from a creditor. Further, the PAN and address of the creditor as well as ledger account copies of the creditor in the assessee's books of account have also been filed before the AO. In these circumstances, it is evident that the AO has not made out a case calling for an addition under section 69A of the Act. Probably, an addition under section 68 of the Act could have been considered; but then that is not the case of the AO. The assessee, apart from raising several other grounds, has challenged the legality of the addition being made under section 69A of the Act. In support of the assessee's contentions, the learned AR placed reliance on the decision of the ITAT – Mumbai Bench in the case of DCIT Vs. Karthik Construction Co. in ITA No.2292/Mum/2016 dated 23.02.2018, wherein the Bench at para 6 thereof has held that addition under section 69A of the Act cannot be made in respect of those assets / monies / entries which are recorded in the assessee's books of account. In

my considered view, the aforesaid decision of the ITAT – Mumbai Bench (supra) is squarely applicable to the facts of the case on hand, where the entries are recorded in the assessee's books of account. In this view of the matter, I am of the opinion that the addition of Rs.6,30,000/- made under section 69A of the Act is bad in law in the facts and circumstances of the case on hand and therefore delete the addition of Rs.6,30,000/- made thereunder. The AO is accordingly directed.

8. In the result, the assessee's appeal for Assessment Year 2011-12 is partly allowed.

Assessee's appeal in ITA No.1384/Bang/2019 for Assessment Year 2012-13

9. **For Assessment Year 2012-13**, the assessee filed her return of income on 01.12.2012 declaring total income of Rs.7,17,2010/-. Based on information received from the Office of the Deputy Director of Income Tax (Inv.) i.e., Investigation Wing of the Department vide letter dated 26.02.2018 that there were cash deposits in the assessee's bank account maintained with Federal Bank Ltd., on various dates, the AO initiated re-assessment proceedings under section 147 of the Act and in this context issued notice under section 148 of the Act to the assessee on 28.03.2018. In response thereto, the assessee vide letter filed on 25.04.2018 requested the AO to treat the original return filed on 01.12.2012 as having been filed in compliance to the notice issued under section 148 of the Act. The assessment was concluded under section 143(3) r.w.s. 147 of the Act vide order dated 27.12.2018 wherein the assessee's income was determined at Rs.40,40,635/-; in view of addition of Rs.33,23,425/- under section 69A of the Act. Aggrieved by the order of assessment dated 27.12.2018 for Assessment Year 2012-13, the assessee filed an appeal before the CIT(A)-4, Bengaluru, which was dismissed vide the impugned order of CIT(A)-4, Bengaluru.

10. Aggrieved by the order of CIT(A)-4, Bengaluru dated 02.04.2019 for Assessment Year 2012-13, the assessee preferred this appeal before the Tribunal, wherein she has raised the following grounds:-

Sl. No.	Grounds of Appeal	Tax Effect in Rs.
1.	<p>a) <i>The orders of the authorities below in so far as these are against the appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the appellant's case.</i></p> <p>b) <i>The appellant denies herself liable to be assessed on an income of Rs40,40,635/- as against a total income of Rs.7,17,210/- returned by the appellant under the facts and circumstances of the case.</i></p>	-
2.	<p><i>The Appellant denies herself to be assessed under section 143(3) r.w.s. 148 of the Income Tax Act, 1961 (the Act) as the mandatory conditions for assumption of jurisdiction under section 148 of the Act have not been complied with on the ground that:</i></p> <p>a) <i>The impugned reasons provided by the assessing officer are not reasons to believe and the same are reasons to suspect which is impermissible in the eyes of law.</i></p> <p>b) <i>The assessing officer failed to appreciate the assessment cannot be reopened merely to verify the genuineness of the credits in the bank account as that would amount to fishing and roving enquiry without any tangible material to show escapement of income which is impermissible in law.</i></p>	-

	<p>c) <i>The notice issued by the assessing officer under section 148 of the Act is barred by limitation under the facts and circumstances of the case.</i></p> <p>d) <i>The assessing officer has not independently applied his mind to the facts of this case and has merely relied upon the information received from Investigation wing which amounts to borrowed satisfaction, which is impermissible in the eyes of the law and therefore the addition needs to be deleted in the interest of equity and justice.</i></p> <p>e) <i>The sanction as required under section 151 of the Act has not been obtained from the Commissioner of Income Tax before issue of notice under section 148 of the Act or having been obtained, the copy of the same has not been provided to the appellant, which is against the principles of natural justice.</i></p>	
3.	<i>The authorities below erred in invoking the provisions of section 69A of the Act in respect of the transactions recorded in the books of the appellant and consequently the additions made on this count are liable to be deleted under the facts and circumstances of the case.</i>	
4.	<u>Addition of Rs.20,23,425/- as unexplained money under section 69A of the Act</u>	6,25,238/-

	<p>a) <i>The learned CIT(A) erred in confirming the addition of Rs.20,23,425/- as unexplained money under the facts and circumstances of the case.</i></p> <p>b) <i>The authorities below failed to appreciate the fact that the receipts of Rs.20,23,425/- are on account of loans repaid by M/s.Rippsons and consequently the addition made needs to be deleted under the facts and circumstances of the case.</i></p>	
5.	<p>a) <i>The learned CIT(A) failed to appreciate that the appellant had discharged the primary onus cast on her by the Act in providing all the details of the receipts and thus the action of the authorities below in treating the impugned amount as unexplained money is improper and unwarranted under the facts and circumstances of the case.</i></p> <p>b) <i>The learned CIT(A) erred in holding that the appellant had not explained the nature of the amount received on the facts of the case.</i></p>	
6.	<p><u>Addition of Rs.13,00,000/- on account of cash deposits</u></p> <p>a) <i>The learned CIT(A) erred in confirming addition of Rs.13,00,000/- being cash deposits as unexplained money under the facts and circumstances of the case.</i></p> <p>b) <i>The authorities below failed to appreciate the fact that the cash deposits of Rs.13,00,000/- are out of the savings and funds available with the appellant and consequently erred in treating the same as unexplained</i></p>	4,01,700/-

	<i>cash credits under the facts and circumstances of the case.</i>	
7.	<p><i>a) The authorities below erred in not taking cognizance of the various documents/ details/ information furnished by the appellant under the facts and circumstances of the case.</i></p> <p><i>b) The orders of the authorities below are bad in law as the addition was made merely based on suspicion and surmises under the facts and circumstances of the case.</i></p>	
8.	<p><i>a) The appellant denies himself liable to be levied to interest under sections 234B, 234C and 234D of the Act and further the computation of interest was not provided to the appellant as regard to the rate, period and method of calculation of interest under the facts and circumstances of the case.</i></p> <p><i>b) Without prejudice, the interest levied under sections 234B, 234C and 234D of the Act requires to be waived off under the facts and circumstances of the case.</i></p>	6,98,541/-
9.	<i>The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.</i>	-
10.	<i>In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity.</i>	-

11. Ground Nos.1, 9 and 10 (supra), being general in nature and not urged before us are rendered infructuous and accordingly dismissed.

12. Ground No.2 (a) to (e) - Validity of Assumption of jurisdiction under section 148 of the Act

12.1 In this ground (supra), the assessee challenges the assumption of jurisdiction under section 148 of the Act by the AO on various counts. However, at the outset of the hearing, the learned AR of the assessee submitted that the assessee is not pressing / urging ground No.2 (a to d) (supra). In these circumstances, the ground No.2 (a to d) (supra) is rendered infructuous and is accordingly dismissed as not pressed.

13. Ground No.8 (a and b) – Charging of interest under section 234B, 234C and 234D of the Act

13.1 In this ground (supra), the assessee denies herself liable to be charged interest u/s 234A, 234B and 234C of the Act. The charging of interest is consequential and mandatory and the AO has no discretion in the matter. This proposition has been upheld by the Hon'ble Apex Court in the case of Anjum H. Ghaswala (252 ITR 1) (SC) and I, therefore, uphold the action of the AO in charging the assessee the aforesaid interest u/s 234A, 234B and 234C of the Act. The AO is, however, directed to re-compute the interest chargeable u/s 234A, 234B and 234C of the Act, if any, while giving effect of this order.

14. Ground Nos.3 to 7 – Addition under section 69A of the Act

14.1 In these grounds (supra), the assessee assails the orders of the authorities below for invoking the provisions of section 69A of the Act in respect of transactions recorded in the books of account of the assessee; which are receipts on account of repayment of loans amounting to Rs.33,23,425/- by M/s. Rippsons. It is contended by the learned AR that the CIT(A) erred in holding that the assessee had failed to explain the nature of the amounts received. When the assessee had

discharged the primary onus cast on her by providing all the details / documents and information of the receipts and that the aforesaid addition under section 69A of the Act was made merely based on suspicions and surmises and therefore ought to be deleted. In support of the assessee's contentions, reliance was placed on the decision of ITAT – Mumbai Bench in Karthik Construction Co., in ITA No.2292/Mum/2016.

14.2 Per contra, the learned DR for Revenue supported the orders of the authorities below.

14.3.1 I have considered the rival contentions and perused the material on record; including the judicial decision cited and placed reliance upon. From a perusal of the order of assessment, it emerges that the AO at para 1.2 thereof has listed out the cash deposits, to the extent of Rs.13,00,000/-, made in the assessee's bank account with Federal Bank on various dates. It is also noticed that these deposits are made in the previous year relevant to Assessment Year 2012-13 i.e., the year under consideration. In my view, the AO has neither made out any case for addition under section 69A of the Act nor given a reasoned finding as to how the amount of Rs.33,23,425/- has been added thereunder. As per the order of assessment, the AO has only mentioned that the information is received from the Investigation Wing of the Department that cash deposits were made in the assessee's bank account.

14.3.2 In the facts and circumstances of the case, as narrated above, it is essential that the provisions of section 69A of the Act be extracted hereunder:-

"69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income,

and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."

14.3.3 On a reading of section 69A (supra), it is clear that the onus is upon the AO to find the assessee to be the owner of any money, bullion, jewellery or valuable article and such money, bullion, jewellery or valuable article was not recorded in the books of account, if any, maintained by the assessee for any source of income. In these circumstances, the AO can resort to making an addition under section 69A of the Act only in respect of such monies / assets / articles or things which are not recorded in the assessee's books of account. In the case on hand, the cash deposits are recorded in the books of account and are reportedly made on the receipt from a creditor. Further, the PAN and address of the creditor as well as ledger account copies of the creditor in the assessee's books of account have also been filed before the AO. In these circumstances, it is evident that the AO has not made out a case calling for an addition under section 69A of the Act. Probably, an addition under section 68 of the Act could have been considered; but then that is not the case of the AO. The assessee, apart from raising several other grounds, has challenged the legality of the addition being made under section 69A of the Act. In support of the assessee's contentions, the learned AR placed reliance on the decision of the ITAT – Mumbai Bench in the case of DCIT Vs. Karthik Construction Co. in ITA No.2292/Mum/2016 dated 23.02.2018, wherein the Bench at para 6 thereof has held that addition under section 69A of the Act cannot be made in respect of those assets / monies / entries which are recorded in the assessee's books of account. In my considered view, the aforesaid decision of the ITAT – Mumbai Bench (supra) is squarely applicable to the facts of the case on hand, where the entries are recorded in the assessee's books of account. In this view of the matter, I am of the opinion that the addition of Rs.33,23,425/- made under section 69A of the Act is bad in law

in the facts and circumstances of the case on hand and therefore delete the addition of Rs. 33,23,425/- made thereunder. The AO is accordingly directed.

15. In the result, the assessee's appeal for Assessment Year 2012-13 is partly allowed.

16. To sum up, the assessee's appeals for Assessment Years 2011-12 and 2012-13 are partly allowed.

Order pronounced in the open court on this 28th day of August, 2019.

Sd/-
(JASON P BOAZ)
Accountant Member

Bangalore.

Dated: 28th August, 2019.

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Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.