

IN THE INCOME TAX APPELLATE TRIBUNAL

“C” BENCH : BANGALORE

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

ITA No. 1035/Bang/2015
Assessment Year : 2009-10

The Income Tax Officer, Ward – 6 (2) (1), Bangalore.	Vs.	Smt. R. Kusuma, No. 322, 3 rd A Cross, II Block, III Stage, Basaveswaranagar, Bangalore. PAN: AFOPK5337H
APPELLANT		RESPONDENT
Assessee by	:	Shri V. Chandrasekhar, Advocate
Revenue by	:	Dr. S. Palani Kumar, Addl. CIT (DR)
Date of hearing	:	24.07.2019
Date of Pronouncement	:	28.08.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the revenue which is directed against the order of Id. CIT(A)-2, Bangalore dated 20.05.2015 for Assessment Year 2009-10.

2. The grounds raised by the revenue are as under.

1.	<i>The order of the CIT (Appeals) is opposed to law and the facts and circumstances of the case.</i>
2.	<i>On the facts and in circumstances of the case, the CIT(A) erred in allowing relief to the assessee, totally relying on the very perfunctory one page remand report submitted by the Assessing Officer. The Assessing Officer had made no attempt to ascertain the correct sources of huge cash deposits made into the bank account by the assessee, before submitting his remand report. There is no clarity in the order of the CIT(A) explaining the sources of such huge cash deposits of the assessee.</i>
3.	<i>For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer be restored.</i>
4.	<i>The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of the appeal.</i>

3. This appeal was heard on 24.07.2019 but thereafter, there is a notification of CBDT as per which, it was prescribed that any appeal filed by the revenue before the Tribunal should be withdrawn in a case where the tax effect is below Rs. 50 Lakhs. This Tribunal has taken a view that this enhanced limit of low tax effect is applicable to pending appeals also and since, the order in this appeal is still pending, this appeal is also hit by his enhanced limit of low tax effect. In the present case, the grievance of the revenue is regarding relief allowed by Id. CIT(A) on the basis of remand report of the AO. The remand report of the AO was considered in para nos. 3 to 3.5 of the order of Id. CIT(A) and therefore, these paras are relevant in this regard and hence, we reproduce these paras hereinbelow to understand the tax effect in the present appeal of the revenue.

“3. ADDITION OF CASH DEPOSITS: Rs.1,39,50,000/-

3.1 According to the AO, she had information that there were cash deposits amounting to Rs.1,39,50,000/- in her bank account with Andhra Bank, Cooke Town Branch, Bengaluru. When queried by the AO, the appellant is reported to have stated that she had received a sum of Rs.4,98,02,815/- in cash on 31/3/2008 from one Shri C.Gangadhara Murthy out of which she had drawn a sum of Rs.1.4 crores for physical verification and safe custody. In the opinion of the AO, the money claimed to have been received thus was a loan, which was in violation of the provisions of section 269SS. Observing that the appellant was in the habit of not submitting the details properly or furnishing details on predated letters and that the claim of withdrawing the amount for physical verification and safe custody was unacceptable as being frivolous, the AO held that the amount of Rs. 1,39,50,000/-constituted unexplained cash credits and brought it to tax as such u/s 68 of the Act in the hands of the appellant.

3.2 The following is the relevant ground of appeal:

"4. The learned Income Tax Officer is not justified in holding the cash deposits of Rs. 1,39,50,000/- made in the bank account of the Appellant, as unexplained cash credits u/s 68 of the Income Tax Act 1961, under the facts and in the circumstances of the Appellant's case."

3.3 The written submissions made in this regard read as follows:

"The Authorised representative of the appellant appeared before the assessing officer & produced the books of accounts of the appellant for verification by the assessing officer. The assessing officer states in her order that Sri N.N.Somesh, CA appeared on 08/12/2011 & produced the books of accounts. She also categorically states that the A.R. for the assessee filed letters of confirmation in respect of loan creditors.

Every single deposit is reflected in the books of accounts maintained by the appellant and all these stand explained.

It is apparent from the assessing order that the AO has not made the addition based on a finding that either these deposits are not reflected in the books of accounts OR though reflected, the sources for the same are unexplained.

The AO has stated that the assessee has received Rs.4,98,02,815/- in cash from C.Gangadhar Murthy & further states that if so, the same should be treated as loans received in violation of section 269SS of the Act.

The above observation of the AO is factually wrong. C.Gangadhar Murthy is the husband of the Appellant & is assessed to tax with the very same AO. Further he has not given a single rupee loan by way of cash to the appellant. All money transfers are through banking channels.

The AO then goes onto state that the explanation of the assessee that the deposits are made out of the opening balance is not believable & acceptable. She does not assign any reasons to come to this conclusion. There is no finding of fact that the Appellant is unable to explain the deposits so made. It is very obvious from the very assessment order that the AO has merely presumed that these deposits are not explained. She has not disproved the explanation of the deposits by disproving the entries made in the books of accounts. She states that the explanations given by the assessee are not satisfying and are not substantiated. This is a sweeping statement made by the AO in total disregard to the books of accounts produced before her. She has not made any efforts to disprove the veracity of the entries made therein.

Section 68 reads as under:

'Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanations offered by him is not, in the opinion of the assessing officer, satisfactory, the sum so credited may be charged to Income Tax as the income of the assessee for that previous year.'
From the above section it is clear that the following ingredients are essential to make an addition u/s 68:

There must be a credit entry in the books of an assessee. In other words the assessee must have received monies & credited some person or source for the monies so received.

*The assessee is either unable to explain these credit entries
OR*

The explanation offered is not, in the opinion of the assessing officer, satisfactory.

In the present case no person has been credited for the deposits made into bank & therefore there exists no credit entry for these deposits.

All these deposits are made out of the cash on hand available with

the appellant and which are duly reflected in the books of accounts. The very addition u/s 68 fails as the essential ingredients for making an addition u/s 68 do not exist.

Further the assessing officer must give a finding that the cash deposits made are not found to be entered in the books, in which case the provisions of section 68 gets attracted.

Or

The assessing officer must give a finding that the deposits though entered in the books are not supported by enough cash balances & the making of such deposits results in negative cash balance in which case the amount to the extent of the negative balance will get added u/s 68.

Or

The assessing officer must give a finding that the deposits though entered in the books are received from persons who are not capable of giving such amounts, in which case the amount to the extent of the negative cash balance will get added u/s 68.

The assessing officer has not given any finding which would enable the invoking of section 68. The essential prerequisites which should be prevalent (since qua non) for invoking section 68 are entirely absent in this case.

Thus it is clear from the above facts of the case that the addition made cannot be sustained both on legal grounds & on merits."

3.4 In this regard, a report was called for from the AO. The present incumbent viz. ITO, Ward-6(2)(1), Bengaluru has sent his report, which is reproduced below:

"2. As directed, a true copy of the statement of Savings Bank Account of Smt.R.Kusuma, the assessee for the assessment year 2009-10 relevant to the financial year 2008-09 was obtained from Andhra Bank, Cooke Town Branch, Bengaluru. The date-wise particulars of the deposit of cash as compiled from the said bank statement during the financial year 2008-09, which is also in accordance with the AIR information, is as follows:

<i>Date</i>	<i>Particulars</i>	<i>Amount in Rs</i>
<i>07/05/2008</i>	<i>Cash deposited</i>	<i>3,00,000-00</i>
<i>12/5/2008</i>	<i>Cash deposited</i>	<i>33,00,000-00</i>
<i>30/5/2008</i>	<i>Cash deposited</i>	<i>6,60,000-00</i>
<i>31/7/2008</i>	<i>Cash deposited</i>	<i>4,00,000-00</i>
<i>09/08/2008</i>	<i>Cash deposited</i>	<i>20,000-00</i>
<i>12/09/2008</i>	<i>Cash deposited</i>	<i>52,00,000-00</i>
<i>03/11/2008</i>	<i>Cash deposited</i>	<i>15,000-00</i>
<i>30/12/2008</i>	<i>Cash deposited</i>	<i>33,30,000-00</i>
<i>06/02/2009</i>	<i>Cash deposited</i>	<i>35,000-00</i>
<i>18/02/2009</i>	<i>Cash deposited</i>	<i>30,000-00</i>
<i>11/3/2009</i>	<i>Cash deposited</i>	<i>2,00,000-00</i>
<i>13/3/2009</i>	<i>Cash deposited</i>	<i>4,60,000-00</i>

<i>Grand Total</i>		<i>1,39,50,000-00</i>
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3. *The assessee's Authorised Representative Shri N.N.Somesh, CA appeared and produced the cash book of the assessee and same has been verified. On verification it is seen that all the above deposits are accounted for in the cash book on relevant dates."*

3.5 *I have carefully considered the submissions of the appellant, perused the assessment order and gone through the remand report of the AO. I find merit in the submissions of the appellant in as much as the AO has, in the assessment order, stated that "... the assessee's representative appeared and produced books of account, bank account extracts, details of loans availed, confirmation letters from the loan creditors." It is clear from the remand report that the deposits amounting to Rs.1,39,50,000/- have been certified by Andhra Bank, Cooke Town Branch, Bengaluru and, therefore, the transactions have taken place through the banking channel. Even before me during the appeal proceedings, the appellant's authorised representative has produced all the relevant details such as the bank accounts, books of account, etc. to support the appellant's claim that the amount of Rs.1,39,50,000/- figuring in the cash deposits in her bank account is genuine and not unexplained. This is evident from the remand report as well. In the circumstances, I hold that there was no justification for the AO, who completed the assessment, to bring the said amount to tax in the hands of the appellant as unexplained cash credits and delete the addition made in the assessment order."*

4. From the above paras reproduced from the order of Id. CIT(A), it is seen that the addition deleted by Id. CIT(A) is of Rs. 139.50 Lakhs. Total tax effect of deletion of this addition of Rs. 139.50 Lakhs @ 30% comes to Rs.41.85 Lakhs and even if surcharge and edu. cess is added, then also the tax effect is below Rs. 50 Lakhs and hence, in view of CBDT instructions, we hold that the appeal of the revenue is not maintainable because of low tax effect being less than Rs. 50 Lakhs.
5. In the result, the appeal filed by the revenue is 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 28th August, 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.