

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH : BANGALORE

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

ITA No. 1189/Bang/2014
Assessment Year : 2010-11

Shri Madhan Kumar J, Prop: Sri Chakravarthy Traders, Sacred Heard Road, Behind St. Anthony's Church, TC Palya, Bangalore – 560 036. <b>PAN: ADXPM3872C</b>	Vs.	The Income Tax Officer, Ward – 8 (1), Bangalore.
APPELLANT		RESPONDENT
Assessee by	:	Shri S. Krishnaswamy, CA
Revenue by	:	Shri Vikas Suryavamshi, Addl. CIT (DR)
Date of hearing	:	30.07.2019
Date of Pronouncement	:	27.09.2019

**ORDER**

*Per Shri A.K. Garodia, Accountant Member*

This appeal is filed by the assessee and the same is directed against the order of Id. CIT(A)-V, Bangalore dated 17.02.2014 for Assessment Year 2010-11.

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

*“1. Rs.2,75,000/- (Difference in capital account)- Para 8.2 of the order. The learned CIT (A) erred in sustaining an addition of Rs.2,75,008 in the ground that .it represented unexplained credit in the capital account; such an addition had not been made in the original assessment; the said sum of Rs. 2,25,000 is not separate from and included in the difference of Rs. 22,84,902/- taxed in the earlier year.*

*2. 8,75,922 (cash loans)*

*i) The learned ITO and CIT (A) erred in taxing a sum of Rs. 8,75,922/- which represented loans taken from individuals in respect of each loan details and confirmation letters had been filed,*

*ii) The learned CIT(A) erred in sustaining the addition holding filed that details of creditors had not been filed in the face of the statement in the assessment order that details have been furnished*

*3. 2,72,453 interest disallowed - para 7 of the order*

*The learned CIT (A) erred in disallowing an interest of Rs.2,72,453/- being loan on mortgage when such interest had been allowed in the*

*original assessment, and no opportunity was given to the appellant, to rebut the disallowance.”*

3. The appeal was filed by the assessee after a delay of 10 days. The assessee has moved an application for condonation of delay in which it is stated that assessee was indisposed at an outstation and he could not reach Bangalore in time to sign and file the appeal papers although the necessary fee had been paid in time. The assessee has filed an affidavit also in support of this contentions and under these facts, we condone the delay and admit the appeal.
4. Brief facts are that it is noted by the AO in the assessment order that there is difference in statement of affairs as on 31.03.2010 filed in course of assessment proceedings and the balance sheet filed along with the return of income for Assessment Year 2010-11. The AO has noted that there is variation in respect of the capital account of the assessee. The AO has further stated that this might have been done by the assessee probably to explain the sources for the investments made in the properties held by him. The AO has observed that in the statement of affairs as on 31.03.2010 filed in the course of the assessment proceedings, the assessee has shown a sum of Rs. 55,80,367/- towards capital as on 31.03.2010 but in the return of income filed by the assessee for Assessment Year 2010-11, the assessee has shown capital as on 31.03.2010 at Rs. 32,95,465/- only in the Balance Sheet filed with the return and thus there is difference of Rs. 22,84,902/- between the above statement of affairs and the balance sheet filed along with the return of income. The AO made addition of Rs. 22,84,902/-. Being aggrieved the assessee carried the matter in appeal before Id. CIT(A).
5. Before Id. CIT(A), it was submitted by assessee that the capital account shown in the Balance Sheet filed with the return of income only shows the capital investment of assessee in the business whereas in the statement of affairs, his investments in non-business assets such as land, vehicle etc. has also been shown. This is also submitted before Id. CIT(A) that the addition on account of difference in capital account has already been taxed in the Assessment Year 2009-10 and hence, the addition was not called for in this year. In para 8 of its order, it is noted by Id. CIT(A) that in so far as the difference in capital account as per Balance Sheet filed with the return and that shown in the statement of

- affairs amounting to Rs. 22,84,902/-, the same cannot be sustained as the capital shown in the statement of affairs includes credits (on account of cash gifts) which has been brought to tax as per the appellate order of even date in assessee's case for Assessment Year 2009-10 to the extent of addition related to cash loans. In para no. 8.2 of his order, it is noted by Id. CIT(A) that it was admitted that the actual closing capital account as on 31.03.2010 was Rs. 35,70,465/- while the AO has taken the figure of Rs. 32,95,465/- instead of Rs. 35,70,465/- having difference of Rs. 2.75 Lakhs on account of some hand loan.
6. The Id. AR of assessee reiterated the same contentions which were raised before Id. CIT(A). The bench wanted to see the statement of affairs and the balance sheet because this is the allegation that in the statement of affairs, capital was shown at Rs. 55,80,367/- whereas in the balance sheet as on 31.03.2010 filed along with the return of income, amount of capital was shown at Rs. 32,95,465/-. In reply, it was submitted by the learned AR of the assessee that the balance Sheet is available on page 1 of the paper book and the balance in capital account as per this balance sheet is Rs. 35,70,465.37. Learned DR of the revenue supported the order of CIT (A).
7. We have considered the rival submissions. We find that regarding this addition of Rs. 2.75 Lakhs confirmed by Id. CIT(A), this is the argument made before us that the AO has wrongly taken the figure of Rs. 32,95,465/- as capital balance as per the balance sheet instead of Rs. 35,70,465/- being the difference of Rs. 2.75 Lakhs. As per Para 8.2 of the order of CIT (A), it is stated by him that this was the argument before him that actual closing capital balance as on 31.03.2010 was Rs. 35,70,465/- while the AO has taken the figure of Rs. 32,95,465/- instead of Rs. 35,70,465/-. This is not the finding of CIT (A) that the actual capital balance is Rs. 32,95,465/-. He has confirmed this addition on this basis that this difference of Rs. 2.75 Lacs is on account of some hand loans which were not explained but at page 2 of the paper book is the details of capital account and as per the same, the opening balance in capital account is Rs. 33,08,160.25 and Rs. 724,758.12 is added on account of Net Profit for the present year and there is reduction of two amounts of Rs. 1.40 Lacs and Rs. 0.50 Lac being Drawings and Income Tax Advance respectively resulting into closing balance of Rs. 35,70,465.37 and there is no entry of any hand loan.

Under these facts, we delete this addition of Rs. 2.75 Lacs. Hence, we allow ground no. 1 raised by the assessee.

8. Regarding ground no. 2, it was submitted that on page no. 8 of the paper book is the list of personal loans received from friends and relatives to the extent of Rs. 8.76 Lakhs. Regarding this addition also, the Id. AR of assessee reiterated the same contentions which were raised before Id. CIT(A). The Id. DR of revenue supported the orders of authorities below.
9. We have considered the rival submissions. First of all, we reproduce para no. 9 from the order of Id. CIT(A). The same is as under.

*“9. As seen from the statement of affairs, assessee has shown fresh cash loans from friends and relatives amounting to Rs.875,922/-. However, apart from the list of 47 persons with amounts mentioned (all below Rs. 20,000/-) against the names, filed on 23.12.2011, no details of identity, and creditworthiness of such persons has been filed before the Assessing Officer. Total loan amounted to Rs.876000/-. Even during the course of appellate proceedings, no evidence regarding the said loans have been filed. It is rather strange that while the assessee is able to raise the cash loans (all below Rs. 20,000/-) from 47 persons, he has no friend or relative to advance loans by cheque. In earlier years also similar cash loans has been claimed. It appears to me that merely to explain the unaccounted investments, the assessee creates this alibi of cash loans. The addition of Rs.875922/- claimed to be on account of cash loans (all below Rs.20,000/-) from 47 persons, stated to be friend and relatives, is upheld.”*

10. From the order of Id. CIT(A), it is seen that apart from giving the name and amount of 47 persons in respect of this cash loan of Rs. 8,75,922/-, the assessee has not brought any other material on record in support of this contention. This is by now a settled position of law that in respect of cash credit addition u/s 68, the assessee has to establish the identity of the creditor, his credit worthiness and genuineness of the transactions and by merely giving name and amounts of various loans, these three ingredients cannot be satisfied. Hence on this issue, we find no reason to interfere in the order of Id. CIT(A). Hence, we reject ground no.2 raised by the assessee.
11. Regarding ground n. 3, it was submitted by Id. AR of assessee that para nos. 5 to 7 of the order of Id. CIT(A) are relevant regarding this issue. It was submitted before us that no notice was issued by Id. CIT(A) u/s. 251 and therefore, enhancement made by the Id. CIT(A) is bad in law. The Id. DR of revenue supported the order of CIT (A).

12. We have considered the rival submissions. We find that in the present case, as per the assessment order, it is noted by the AO that total income as per the return of income is Rs. 4,05,060/- and he made two additions being Rs. 22,84,902/- on account of difference in capital and Rs. 8,75,922/- in respect of unsecured loan creditors and assessed income as per the assessment order is Rs. 35,65,884/-. Hence it is seen that the business income as per the assessment order is only Rs. 4,05,060/- and as per para 7 of the order of Id. CIT(A), the Id. CIT(A) has directed the AO to compute the business income at Rs. 7,24,758/- and hence, enhancement is made by Id. CIT(A). As per the provisions of section 251(2) of the IT Act, Id. CIT(A) shall not enhance an assessment unless the assessee has been given reasonable opportunity of showing cause against such enhancement. Hence Id. CIT(A) was required to issue notice to the assessee u/s. 251 of the IT Act before making enhancement. Since this was not done by Id. CIT(A), we hold that the enhancement made by the Id. CIT(A) is bad in law and we delete the same. Ground no. 3 is allowed.

13. In the result, the appeal filed by the assessee is partly allowed.

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 27<sup>th</sup> September, 2019.  
/MS/

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

By order

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Bangalore.