

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No. 211/Bang/2019
Assessment Year : 2010-11

Shri Bobbanna, No. 485, Behind KEB Office, Subhashnagar, Nelamangala, Bangalore – 562 123. PAN: AWBPB4730B	Vs.	The Income Tax Officer, Ward – 7 [2], Bangalore.
APPELLANT		RESPONDENT
Assessee by	:	Shri Nanjesh Prasad, Advocate
Revenue by	:	Shri Ganesh R. Ghale, Standing counsel for Dept.
Date of hearing	:	25.09.2019
Date of Pronouncement	:	11.10.2019

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)-1, Bangalore dated 02.11.2018 for Assessment Year 2010-11.

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

“1. The order of the learned Commissioner of Income-tax [Appeals] passed under Section 250 of the Act in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.

2. Grounds on Assessment u/s. 147 of the Act.

[i] The learned Commissioner of Income -Tax [Appeals] failed to appreciate that the notice issued u/s. 148 of the Act is bad in law and void ab initio as the reasons recorded were not communicated to the Appellant, consequently the order passed on an invalid procedure deserves to be cancelled on the facts and circumstances of the case.

[ii] The learned Commissioner of Income-tax [Appeals] erred in holding that the show cause notice dated 13/06/2013 stating merely details of transaction entered by the Appellant during the impugned assessment year is sufficient compliance of the principles laid down by the Hon'ble Apex Court in GKN Driveshaft [India] Ltd., v. ITO 259 ITR 19 [SC] with regards to communication of reasons recorded for issue of notice u/s. 148 of the Act on the facts and circumstances of the case.

[iii] The learned Commissioner of Income -Tax [Appeals] below erred in law in not holding that the order of assessment passed by the learned assessing officer under Section 143[3] r.w.s 147 of the Act is bad in law since the mandatory conditions as envisaged in the Act to assume jurisdiction did not exist or having not been complied with and consequently, the reassessment requires to be cancelled on the facts and circumstances of the case.

[iv] The learned Commissioner of Income -Tax [Appeals] erred in law in not holding that the notice issued by the learned assessing officer u/s 148 of the Act is in itself bad in law in as much as the notice proposes to 'reassess' the income of the Appellant for the assessment year 2010-11 when there was no assessment order passed earlier in respect of this assessment year and consequently the order passed u/s 143 [3] r.w.s 147 of the Act is bad in law and void ab initio on the facts and circumstances of the case.

[v] The learned Commissioner of Income -Tax [Appeals] failed to appreciate that the order of assessment is bad in law and void ab initio as the learned assessing officer had no reason to believe that the cash deposits/cash credits of the Appellant has escaped assessment and reassessment amounted to merely reasons to suspect on the facts and circumstances of the Appellant's case.

3. Without Prejudice, there was no unexplained deposits/ credits in appellant bank account as per section 68 of the Act, which was the deposits of cheque's issued by State Government of Karnataka.

i) The learned CIT [A] failed to appreciate that there was no unexplained cash deposits/cash credits as defined in section 68 of the Act for the impugned assessment year on the facts and circumstances of the case.

ii) The learned CIT [A] failed to appreciate that cash deposits/cash credits represented amounts deposited by the appellant from the cheque's realized from the State Government of Karnataka, to facilitate labor payments of Forest Department which was made in cash.

4. Without Prejudice, there was no consideration of the cash book accounts maintained by the Forest Department, Government of Karnataka on the facts and circumstances of the case.

i) The learned CIT [A] erred in not considering the cash book accounts maintained by the forest department, Government of Karnataka on the facts and circumstances of the case.

ii) The learned CIT [A] erred in considering the cash deposits/cash credits as un- explained on the facts and circumstances of the case.

iii) The learned CIT [A] erred in not giving the proportionate indexation benefit on the facts and circumstances of the case.

5. Grounds on Levy of interest under Section 234A and 234B in accordance with law.

The levy of interest under section 234 A and 234 B of the Act is bad in law as the period, rate, quantum and method of calculation adopted on which interest is levied are all not discernable and are wrong on the facts of the case

6. The learned CIT [A] erred in not adjudicating the case of the Appellant on the merits of the matter on the facts and circumstances of the case.

7. The Appellant craves leave to add, alter, substitute and delete any or all of the grounds of appeal urged above.

8. For the above and other grounds to be urged during the hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice.”

3. At the very outset, it was submitted by Id. AR of assessee that the order of Id. CIT(A) is ex-parte qua the assessee. He submitted that although various notices were issued by Id. CIT(A) regarding various dates of hearing fixed by him, but the assessee could not make any appearance before Id. CIT(A) because the assessee is a senior citizen having retired from the service of Government of Karnataka on 30.06.2011 and assessee has requested his counsel to appear before Id. CIT(A) but he did not appear before Id. CIT(A) and did not intimate the assessee that he will not appear before Id. CIT(A). He submitted that in the interest of justice and in view of this fact that the assessee is a senior citizen, the matter should be restored back to the file of Id. CIT(A) for fresh decision after providing reasonable opportunity of being heard to assessee. He has also given an undertaking that if matter is restored back to the file of Id. CIT(A), proper compliance will be made before Id. CIT(A). As against this, the Id. DR of revenue submitted that sufficient opportunities were provided by Id. CIT(A) and hence, the matter should not be restored back to his file for fresh decision.
4. I have considered the rival submissions. I find that admittedly various opportunities were provided by Id. CIT(A) and no appearance was made by assessee before Id. CIT(A) but this fact is also very important that the assessee is a senior citizen and he has requested his counsel to make appearance before Id. CIT(A) but no appearance was made by the counsel. It is also seen that in the impugned order, Id. CIT(A) has not decided the issue on merit, he has

simply dismissed the appeal of the assessee in limine by following the Tribunal order rendered in the case of CIT Vs. Multiplan India Ltd. as reported in 38 ITD 320. This is by now a settled position of law that even if there is no appearance of assessee before any quasi judicial authority, the appeal should be decided on merit. Considering all these facts, I feel it proper to set aside the order of Id. CIT(A) and restore the matter back to his file for fresh decision after providing reasonable opportunity of being heard to both sides. In view of this decision, no adjudication on merit is called for at the present stage.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes. Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 11th October, 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.