

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'SMC-C', BANGALORE**

BEFORE SHRI A.K.GARODIA, ACCOUNTANT MEMBER

**ITA No.1436 (Bang) 2019
(Assessment year : 2006 – 07)**

Smt. Pushpa Devi,
No. 1, M. M. Lane,
Nagrathpet Cross,
Bangalore – 560002.
PAN. AARPP0186B

Appellant

Vs

The ITO, Ward – 5 (2)(2),
Bangalore.

Respondent

Assessee by : Smt. Suman Lunkar, C. A.

Revenue by : Shri Ganesh R. Ghale, Standing Counsel

Date of hearing : 23-10-2019

Date of pronouncement : 25-10-2019

ORDER

PER A. K. GARODIA, A.M.:

This appeal is filed by the assessee and it is directed against the order of CIT (A) – 12 Bangalore dated 09.05.2019 for A. Y. 2006 – 07.

2. It was submitted by the learned AR of the assessee that Ground No. 1 is general Ground No. 2.1 & 2.2 in respect of validity of reopening are not pressed. Accordingly, these grounds are rejected as not pressed. She submitted that only Ground No. 3.1 is to be decided. This Ground No. 3.1 reads as under:-

“3.1 In any case, the order passed in gross violation of the principles of natural justice and fair play, especially in the absence of the cross examination of the persons whose averments are sought to be relied upon by the AO while passing the order, make the order totally bad in law and liable to be cancelled.”

3. Learned AR of the assessee submitted that similar issue was decided by the tribunal in the case of Shri Mukesh Kumar Solanki vs. ITO in ITA NO. 2168/Bang/2016 dated 17.03.2017. A copy of this tribunal order was submitted

and it was pointed out that the tribunal has followed the judgment of Hon'ble Karnataka High Court rendered in the case of Chandra Devi Kothari in Writ Petition No. 39370/2014 dated 02.02.2015 and reproduced the relevant Para 8 of that judgment in Para 5 of this tribunal order and as per Para 6 of that tribunal order, the matter was restored to the file of the AO for fresh decision with the same directions as were given by the Hon'ble Karnataka High Court in that case as per Para 8 of that judgment. He submitted that in the present case also, the matter should be restored to the file of the AO for fresh decision with the same directions as were given by the Hon'ble Karnataka High Court in that case as per Para 8 of that judgment. Learned DR of the revenue supported the order of CIT (A). He could not point out any difference in facts.

4. I have considered the rival submissions. I find that there is no difference in facts in the present case and in the case of Shri Mukesh Kumar Solanki vs. ITO (Supra). In that case, the issue was decided as per Para 5 & 6 of that tribunal order. Para No. 8 of the judgment of Hon'ble Karnataka High Court rendered in the case of Chandra Devi Kothari (Supra) was reproduced and it is seen that as per this para of this judgment of Hon'ble Karnataka High Court, it was held that the assessee was denied an opportunity of fair hearing by providing copy of the statement and related details regarding the alleged share amount and bases on these observations, Hon'ble High Court restored the matter to the AO for fresh decision after providing opportunity of fair hearing by providing copy of the statement and related details regarding the alleged share amount. The tribunal in the case of Shri Mukesh Kumar Solanki vs. ITO (Supra) restored the matter back to AO for fresh decision with same directions as were given by Hon'ble High Court.

5. Respectfully following this tribunal order and in turn following the judgment of Hon'ble Karnataka High Court rendered in the case of Chandra Devi Kothari (Supra), I set aside the orders of CIT (A) in the present case also

and restore the matter back to AO for a fresh decision with same directions as were given by Hon'ble Karnataka High Court in that case as per Para No. 8 of that judgment as noted above. In view of this decision, no adjudication is called for at this stage regarding the merit of the addition raised before me as per remaining grounds.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(A.K. GARODIA)
ACCOUNTANT MEMBER

Bangalore

Dated : 25.10.2019

/MS/

Copy to :

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

By order,

AR, ITAT, Bangalore