

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“C” BENCH : BANGALORE**  
**BEFORE SHRI A.K.GARODIA, AM**  
**AND**  
**SHRI PAVAN KUMAR GADALE, JM**

<b>ITA No.1623/Bang/2019</b>
<b>Assessment year : 2009-10</b>

Shri Chandrashekar Bhat, No.70, 5 <sup>th</sup> B Cross, Narayanappa Layout. R T Nagar, Bangalore-560 032 <b>PAN No: ADOPB9307L</b>	vs.	DCIT, Central Circle – 1 (1), Bangalore
APPELLANT		RESPONDENT
Assessee by	:	Shri Malaya Kumar Panda, CA
Revenue by	:	Shri Pradeep Kumar, CIT
Date of Hearing	:	27.02.2020
Date of Pronouncement	:	17.03.2020

**ORDER**

**PER A.K. GARODIA, AM:**

This appeal is filed by the assessee and the same is directed against the order of the Id.CIT(A)-11, Bangalore dated 28-02-2018 for assessment year 2018-19.

2. The assessee has raised as many as eight grounds in his appeal but there is only one grievance of the assessee regarding addition made by the AO and confirmed by the CIT(A) of Rs.70.00 lakhs in respect of alleged undisclosed investment of Rs.70.00 lakhs given to Shri Udy B Garudachar and Rs.10.00 lakhs being interest on the said amount.

2. This appeal has been filed by the assessee after a delay of 433 days and the assessee has moved an application for condonation of delay along with an affidavit and a medical certificate. In the affidavit, the assessee has explained the

reasons about this delay and the main reasons as per the same are that the assessee was suffering with bad health during the relevant period and it is also stated that when the assessee was on sick bed as per the advice of Doctor there was some mental issue also because of search and seizure operation conducted in May 2013 because of which the entire jewellery of the family was seized and the assessee's father was also diagnosed with cancer and subsequently passed away in the year 2015 and the assessee was very much disturbed because he could not arrange proper treatment for his father because of fund shortage. It is also submitted that after this, the assessee's mother fell sick and she was almost on bed in her age of 79 years and the assessee had to be alongside his mother's bed to take care of her and because of all these facts, assessee could not file the appeal in time.

3. Although, ld. DR of the revenue opposed the condonation of delay but considering the facts as noted above and in the interest of justice, we condone the delay and admit the appeal.

4. Regarding merit of the additions made by the AO, it was submitted by the ld. AR of the assessee that in last para of page 2 of the assessment order, the AO has noted that summons were issued to Uday B Garudachar and in response to summon, Shri Uday B Garudachar appeared personally on 20-01-2016 and filed letter stating that the assessee had placed with him an amount of Rs.70.00 lakhs sometime in the month of April, 2009 to invest in real estate jointly. The AO made addition in assessment year 2009-10 and hence, even if the allegation is correct that the assessee has advanced a sum of Rs.70.00 lakhs to Shri Uday B Garudachar in the month of

April, 2009, the assessment year in which such addition can be made may be 2010 – 11 and not the present year being A. Y. 2009 – 10 and for this reason alone, the addition made should be deleted. He also submitted a certified copy of the said letter dated 20-01-2016 submitted by Shri Uday B Garudachar to the AO and pointed out that in this letter also, it is stated in very clear terms that the assessee Shri Chandrashekar Bhat has placed with him cash of Rs.70.00 lakhs sometime in the month of April, 2009 to be invested in some of the real estate projects jointly and this amount was returned to the assessee by him in the month of January, 2010. He submitted that hence, there is no doubt about this fact that the allegation of the AO regarding investments made by the assessee with Shri Uday B Garuachar is in April, 2009 and it is not a typing mistake in the assessment order and hence, on this basis, no addition can be made in the present year. The ld. DR of the revenue supported the order of the authorities below.

5. First of all, we reproduce the last para from page-2 of the assessment order which reads as under;

Loan advanced of Uday B Garudachar of Gaudachar.

*“ On this issue a questionnaire was issued to the assesee on 23-12-2015. Later on summons were issued to Shri Uday B Garudachar. In response to the summons, Shri Uday B Garudachar appeared personally on 20-01-206 and filed a letter stating that Shri Chandrashekar Bhat had placed with him a sum of Rs.70,00,000/- in cash sometime in the month of April, 2009 to invest in his real estate projects jointly, and that the said amount was returned to Shri Chandrashekar Bhat in the month of January,2010. In the light of this statement and on the basis of seized document a show cause notice was issued to*

*the assessee on 21-01-2016 which is reproduced as below”.*

6. We also produce the relevant portion of the letter dated 20-01-2016 written by Shri Uday B Garudachar to AO i.e. DCIT, Central Circle-1(1), Bangalore.

To,  
The Deputy Commissioner of Income Tax,  
Central Circle — 1(1),  
Bangalore

Sir,

Sub: - Income Tax Scrutiny Assessment consequent on search & Seizure proceedings in the case of Shri.Chandrasekhar Bhat and Smt. Ranjani C Bhat information called for u/s 133(6)

Ref: - F.No. 133(6)/DCIT/CC - 1(1)/2015 - 16 letter dated 23.12.2015

With reference to the above letter I would like to confirm you that Shri.Chandrasekhar Bhat has placed with me in cash Rs 70 Lacks sometime in the month of April 2009 to invest in some of my Real estate Projects Jointly. I have returned the same to him in the month of Jan 2010.

With regard to payments to Smt. Ranjani C Bhat our company M/s Maverick Holdings & Investments Private Limited has paid Rs 2 Lacks per month from 1<sup>st</sup> September 2008 to 1<sup>st</sup> August 2009 as a consultancy fee during mall renovation. Tax has been deducted as per the provisions of Income Tax Act and remitted to the government.

Thanking You,

Yours faithfully,

Sd/-  
Uday B Garudachar

7. From the above, we find that as per this letter and as per the relevant part of the assessment order re-produced above also, this is the allegation of the AO that the assessee invested a sum of Rs.70.00 lakhs in cash with Shri Uday B Garudachar sometime in the month of April, 2009 to invest in the real estate jointly. At present stage, we do not want to go into the correctness or otherwise of the allegation but even if the allegation is correct then also on the basis of this allegation, no

reason can be made in the present year because if any undisclosed investment is made by the assessee in the month of April, 2009 then addition can be made in assessment year 2010-11 and not in assessment year 2009-10 as has been done by the AO. We therefore, delete this addition. The second addition of Rs. 10 lacs is about interest on the investment of Rs. 10 lacs and hence, if the addition on account of investment is deleted, the addition of interest cannot survive and therefore, that addition is also deleted.

8. The assessee gets a relief to the extent of Rs.80.00 lakhs regarding alleged undisclosed investment of Rs.70.00 lakhs and the consequential interest income of Rs.10.00 lakhs on the same investment of Rs.70.00 lakhs.

9. In the result, the appeal filed by the assessee is allowed.

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-  
**(PAVAN KUMAR GADALE)**  
**Judicial Member**

Place : Bangalore

Dated: 17<sup>th</sup> March, 2020

**am\***

Copy to:

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

Sd/-  
**(A.K.GARODIA)**  
**Accountant Member**

By order

Assistant Registrar