

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B R BASKARAN, ACCOUNTANT MEMBER

ITA No.512/Bang/2016
Assessment year: 2012-13

Smt. Mala Bathla, L/R of Late Ashok Bathla, No.361, 7 th Main, HAL 2 nd Stage, Indiranagar, Bengaluru – 560 008. PAN: ACAPB 5672K	Vs.	The Deputy Commissioner of Income Tax, Central Circle 2(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri G.S. Prashanth, CA
Respondent by	:	Shri Pradeep Kumar, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	30.07.2020
Date of Pronouncement	:	05.08.2020

ORDER

Per N.V. Vasudevan, Vice President

This appeal by the assessee is against the order dated 27.1.2016 of the CIT passed u/s. 263 of the Income-tax Act, 1961 [the Act] in relation to assessment year 2012-13.

2. The assessee is an individual. There was a search & seizure operation u/s 132 of the Act on 6.2.2012 in the case of assessee. An order of assessment u/s. 153A of the Act for AY 2012-13 was passed u/s. 143(3) r.w.s. 153A of the Act.

3. The assessee is a licensed book maker in Bangalore Trust Club since 1982. A show cause notice was issued by the CIT on the following three grounds:-

“(a) The Assessing Officer had not assessed cash seizure of Rs.15.91 lakhs made during the course of search operation.

(b) The Assessing Officer had added an amount of Rs.1,19,25,000 discussed at para 12 of the assessment order.

(c) The Assessing Officer assessed the income derived by the assessee from book making (Licensed book maker of Bangalore Trust Club) under the head “Income from Other Sources” instead of “Income from Business.”

4. There is no dispute insofar as item (b) of the show cause notice u/s. 263 is concerned that no directions were given in the order u/s 263 of the Act.

5. As far as point (a) of the show cause notice is concerned, a sum of Rs.15.91 lakhs in cash was found at the time of search. In the order of assessment passed by the AO the cash found and seized at the time of search was considered as one belonging to the assessee and was directed to be added on a protective basis in the order of assessment. However, in the final computation of total income, a sum of Rs.15.91 lakhs has not been added. It is the plea of assessee that cash found was out of disclosed cash available in the books. The CIT, however, in the order u/s. 263 of the Act came to the conclusion that failure to add the aforesaid amount to the total income of assessee was erroneous and prejudicial to the interest of revenue and therefore directed the revenue to add the aforesaid sum to the total income of the assessee.

6. As far as the aforesaid issue is concerned, we find that though the addition was made on a protective basis, the amount should have been

added to the total income of the assessee and failure to do so rendered the order of assessment erroneous and prejudicial to the interest of revenue. Even though the amount has been added on a protective basis, yet the amount should have been added to the total income and it cannot be said that because addition is on a protective basis, the order of AO though it may be erroneous, but was not prejudicial to the interest of revenue. We therefore confirm the order u/s. 263 of the Act to this extent.

7. As far as the issue (c) raised by the CIT in the show cause notice u/s. 263 is concerned, the question is whether income derived by the assessee from book making ought to have been assessed under the head 'income from other sources or business'. At the time of hearing, it was admitted that the fact that income is assessed under income from other sources as against business income would not result in any loss to the revenue. In these circumstances, we are of the view that invoking jurisdiction u/s. 263 of the Act insofar as this issue is concerned was not warranted as there was no loss of revenue. To this extent, the order u/s. 263 of the Act is quashed.

8. In the result, the appeal by the assessee is partly allowed.

Pronounced in the open court on this 05th day of August, 2020.

Sd/-

(B R BASKARAN)
ACCOUNTANT MEMBER

Sd/-

(N V VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 05th August, 2020.

/Desai S Murthy/

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.