

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

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA Nos.1786&1787/Bang/2017
Assessment Year: 2010-11 & 2011-12

ACIT Central Circle-2(1) Bangalore	Vs.	M/s. Bhakta Markandeshwara Minerals Door No.93, 3 rd Cross Weavers Co-operative Colony Hospet Karnataka-583201. PAN NO : ABVFS1475R
APPELLANT		RESPONDENT

ITA Nos.1891/Bang/2017
Assessment Year: 2010-11

M/s. Bhakta Markandeshwara Minerals Karnataka-583201.	Vs.	DCIT Central Circle-2(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Pradeep Kumar, D.R.
Respondent by	:	Shri V. Srinivasan, A.R.

Date of Hearing	:	23.07.2020
Date of Pronouncement	:	31.07.2020

O R D E R

PER BENCH:

The appeals filed by the revenue for assessment years 2010-11 & 2011-12 and the appeal filed by the assessee for 2010-11 are directed against the orders passed by Ld. CIT(A)-

11, Bengaluru. All these appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. The facts relating to the case are stated in brief. The assessee herein is a partnership firm belonging to Shri K. Mahesh Kumar family. The revenue carried out search & seizure operation u/s 132 of the Act on 25.10.2010. On account of search operations, all the cases of assesseees belonging to the family were centralised. The assessee, initially, filed its return of income u/s 139 of the Act on 9.12.2010 declaring a total income of Rs.22,48,790/-. In the search proceedings, Shri Mahesh Kumar furnished a letter dated 28.3.2011 before the investigation officials, wherein he agreed to offer additional income of Rs.25 crores in the hands of various assesseees belonging to his family. It was submitted that the above said surrender of income represents business profits, unexplained investments/advances in respect of group concerns and also to overcome shortcomings till the assessment year 2011-12.

3. In the above said offer letter, a sum of Rs.4 crores was offered in the hands of the assessee for assessment year 2010-11. In compliance to the same, the assessee filed a return of income for assessment year 2010-11 on 4.12.2012 declaring total taxable income of Rs.4,22,48,790/- under the head

profits & gains of business, apparently u/s 153A of the Act. In the statement of total income, the assessee stated that the above said income of Rs.4.22 crores has been estimated on the total turnover of Rs.21.05 crores, in the absence of maintenance of books of accounts, as per declaration given u/s 132(4) of the Act in order to buy peace from the department. It was also stated that though the assessee was not a party to the said declaration, yet it is surrendering the said income to buy peace with the department and to avoid protracted litigation. However, the assessee did not file any return of income for AY 2011-12.

ASSESSMENT YEAR 2010-11:-

4. We shall take up the appeals filed by both the parties for AY 2010-11. The assessing officer took up the return of income for scrutiny and called for various details. However, the assessee failed to comply with the same and furnished only bank statements. Hence, the assessing officer proceeded to complete the assessment to the best of his judgement u/s 144 of the Act.

5. The A.O. noticed that the assessee has declared gross income of Rs.21.05 crores and declared profit of Rs.4.22

crores. Accordingly, the AO observed that the assessee has claimed expenses to the tune of Rs.16.83 crores. During the assessment proceedings the A.O. asked the assessee to submit details like nature of expenses, supporting bills or vouchers, details of purchases, permits for purchase of iron ore, transportation details, etc. Since the assessee did not furnish the details, the A.O. disallowed 20% of expenses i.e. 20% of Rs.16.82 crores, which worked out to Rs.3.36 crores.

6. The A.O. also examined bank accounts of the assessee and noticed that an aggregate amount of credit of Rs.61.50 crores have been found deposited by way of cash/cheques. Since the assessee did not furnish any explanation, the A.O. proposed to assess the bank deposits as unexplained credits. However, he allowed deduction to the tune of gross turnover of Rs.21.05 crores and accordingly assessed the balance amount of Rs.40.45 crores as unexplained credit. The A.O. noticed that Shri K. Mahesh Kumar is the key person of the group and he had admitted in his letter dated 28.3.2011 that a total turnover of Rs.204 crores was not disclosed to tax. Accordingly, the A.O. added the above said Rs.40.45 crores in

the hands of Shri K. Mahesh Kumar on substantive basis and in the hands of the assessee on “protective basis”.

7. The assessee challenged both the additions by filing appeal before Ld CIT(A). The Ld. CIT(A) confirmed the disallowance of expenses and hence the assessee is in appeal before us.

8. In respect of addition of unexplained bank deposits, the Ld. CIT(A) deleted the same with the observation that he had confirmed the addition in the hands of Shri K. Mahesh Kumar on substantive basis and hence there is no requirement to sustain addition made on protective basis. Aggrieved, the revenue is in appeal before us.

9. We shall first take up the appeal of the assessee, wherein the issue relating to disallowance of expenses is being contested. The Ld. A.R. submitted that the assessee has offered the income of Rs.4.22 crores on estimated basis on the total turnover of Rs.21.05 crores. When the income is estimated, there is no scope for making any disallowance of expenses. When a specific query was raised as to how the return of income was furnished u/s 139 of the Act, the Ld A.R submitted that the books of accounts of the assessee have

been misplaced. He submitted that this fact was brought to the notice of the department by Shri K Mahesh Kumar in his letter dated 28-03-2011. Accordingly he submitted that the assessee was constrained to estimate the income and further, it could not furnish various details called for by the AO. In any case, while filing return of income in response to notice u/s 153A of the Act, the assessee has clearly stated in the return of income that the income of Rs.4.22 crores is estimated on the total turnover of Rs.21.05 crores. Accordingly, he reiterated that, when the income is estimated there is no scope for making any disallowance out of alleged expenses. In the alternative, the Ld. A.R. submitted that the additional income of Rs.4 crores was offered, inter alia, to take care of the shortcomings, if any till the assessment year 2011-12. In that view of the matter also, the disallowance of 20% expenses is not justified as the said surrender of Rs.4 crores would take care of deficiencies, if any.

10. On the contrary, the Ld. D.R. placed his reliance on the order passed by the A.O.

11. Having heard the rival submissions, we are of the view that there is merit in the submissions of the assessee. With

regard to surrender of Rs.4 crores made in the hands of the assessee, the letter dated 28.3.2011 written by Shri K. Mahesh Kumar makes it clear that the above said surrender was made, inter alia, to cover up shortcomings, if any till the assessment year 2011-12. We also notice that the surrender of Rs.4 crores is less than the disallowance of Rs.3.36 crores made by the A.O. and hence the said disallowance may be telescoped against the amount surrendered by the assessee. This is without prejudice to the quantum of disallowance made by the AO. In this view of the matter, we are of the view that there is no necessity to make separate disallowance of Rs.3.36 crores out of the expenses. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue and direct the A.O. to delete the disallowance.

12. We shall now take up the appeal filed by the revenue relating to deletion of protective addition relating to unexplained bank deposits. The Ld. A.R. submitted that the Ld. CIT(A) has deleted the protective addition, for the reason that the unexplained bank deposits has been confirmed by him on substantive basis in the hands of Shri K. Mahesh Kumar. The Ld. A.R. submitted that Shri K Mahesh kumar

filed appeals before Tribunal challenging the above said decision of Ld CIT(A). The said appeals filed by Shri K. Mahesh Kumar before the Tribunal in ITA No.1819 to 1822/Bang/2017 have since been disposed of by the Tribunal, vide its order dated 17.1.2020 and the Tribunal has restored the issue to the file of Ld. CIT(A) for examining the additions afresh by considering the evidences furnished by the assessee. Accordingly, the Ld. A.R. submitted that the protective addition deleted by the Ld CIT(A) requires to be re-examined at the end of CIT(A), since the original order of first appellate authority has been set aside by the Tribunal.

13. We find merit in the said submissions of Ld. A.R. Since the Ld. CIT(A) has deleted the protective addition on the ground that he has confirmed the substantive addition made in the hands of K. Mahesh Kumar and since the said issue has been restored back to his file by the Tribunal in the case of K. Mahesh Kumar, the present issue also needs to be set aside to his file for examining it afresh along with the appeals of Shri K Mahesh Kumar. Accordingly, we restore this issue to file of Ld. CIT(A).

ASSESSMENT YEAR 2011-12:-

14. Now we shall take up the appeal filed by revenue for assessment year 2011-12. In this year ALSO, the A.O. noticed that the aggregate amount of bank deposits made was Rs.76.34 crores. Since the assessee did not file any return of income and also did not furnish any details, the A.O. assessed the entire deposits of Rs.76.34 crores on “protective basis” in the hands of the assessee, while substantive addition was made in the hands of Sh. K. Mahesh Kumar in AY 2011-12, for the very same reasons discussed above, while dealing with an identical issue in assessment year 2010-11.

15. The Ld. CIT(A) deleted the protective addition on the reasoning that he has confirmed the addition on substantive basis in the hands of Shri K. Mahesh Kumar. The revenue is aggrieved.

16. For the reasons discussed on an identical issue in assessment year 2010-11, this issue needs to be set aside to the file of Ld CIT(A), i.e. we have noticed that the Tribunal has restored the substantive addition made in the hands of Shri K. Mahesh Kumar to the file of Ld. CIT(A) in AY 2011-12 also and hence, this issue needs to be set aside to his file for examining

it afresh along with the appeal of Shri K Mahesh Kumar.

Accordingly, we restore this issue to the file of Ld. CIT(A).

17. The Ld. A.R. submitted that the assessing officer has framed the assessment for A.Y. 2011-12 in the hands of the assessee by assessing the unexplained bank deposits. The Ld. A.R. submitted that the assessee firm has been dissolved w.e.f. 1.4.2010 and hence the present partnership firm did not exist in the year relevant to A.Y. 2011-12. Accordingly, he submitted that the A.O. was not right in law in framing the impugned assessment in the hands of a non-existing assessee. The Ld. A.R. submitted that this fact was brought to the notice of Ld. CIT(A) and specific grounds, viz., ground no.3 & 4 were raised before Ld. CIT(A) questioning the validity of assessment made on a non-existing assessee. However, the Ld. CIT(A) has declined to adjudicate the above said grounds by observing that they are academic in nature, since the addition made in the hands of the assessee on protective basis has since been deleted by him.

18. The Ld. A.R. submitted that in the event that the issue of protective addition is restored to the file of Ld. CIT(A), the Ld

CIT(A) may be directed to adjudicate ground nos.3 & 4, as they go to the root of the matter.

19. We agree with the contentions of the assessee. Since the assessee is claiming that it did not exist during the period relevant to the assessment year 2011-12, the said claim goes to the root of the matter and the same is required to adjudicated first by Ld. CIT(A). Accordingly, direct the Ld. CIT(A) to adjudicate ground nos. 3 & 4 urged before him.

20. In the result, the appeal of the assessee filed for AY 2010-11 is treated as allowed and the appeals of the revenue filed for AY 2010-11 and 2011-12 are treated as allowed.

Order pronounced in the open court on 31.07.2020.

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 31st July, 2020.
VG/SPS

Copy to:

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

By order

**Asst. Registrar,
ITAT, Bangalore.**