

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI A.K GARODIA, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.752 & 753/Bang/2017
Assessment Year : 2012-13

The Dy. Commissioner of Income-tax, Circle-1(1)(2), Bengaluru.	Vs.	M/s Bengaluru Leisure Pvt. Ltd., No.116, D Block-45/5, Neeladri Mahal, Nandidurga Road, Benson Town Post, Bengaluru-560 046. PAN - AAECB 0355Q
APPELLANT		RESPONDENT

Assessee by	:	Shri Manjeet Singh, Addl. CIT
Revenue by	:	Shri Mukeshkumar Jain, C.A

Date of Hearing	:	03-08-2020
Date of Pronouncement	:	21-08-2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals have been filed by revenue against order dated 23/12/2016 passed by Ld. CIT (A)-1, Bangalore for assessment years 2012-13 and 2013-14 on following grounds of appeal:

"1. The order of the Learned CIT(Appeals), in so far as it is prejudicial to the interest of revenue, is opposed to law and the facts and circumstances of the case.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition made by the Assessing Officer u/s 68 of the Income tax Act, 1961 on account of unexplained cash

credits and not appreciating that the assessee had failed to prove the creditworthiness of the loan creditors during the assessment proceedings.

3. On the facts and in the circumstances of case, the Ld. CIT(A) has erred in deleting the addition made by the Assessing Officer u/s 68 of the Income tax Act, 19961 on account of unexplained cash credits by accepting only ledger account as evidence for loan and not appreciating that the assessee had failed to prove the creditworthiness of the creditor of the creditors during the assessment proceedings.

4. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the Ld. CIT(A) be reversed and that of the assessing officer be restored.

5. The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of appeal.”

2. At the outset, Ld.Sr.DR submitted that assessee filed various documents before Ld.CIT(A) which was not sent to Ld.AO for remand. He also submitted that Ld.CIT(A) did not carry out independent verification of such details/documents, if any, that has been filed by assessee. Ld.Sr.DR submitted that, impugned orders passed by Ld.CIT(A) are cryptic and without any reason. He submitted that Ld.CIT(A) reproduced what has been observed and recorded by Ld.AO and submissions by assessee for deleting the addition.

3. He therefore submitted for the appeals to be set-aside to Ld.CIT(A) for due verification of the documents filed by assessee.

4. On the contrary, Ld.AR, while opposing submission by Ld.Sr.DR, submitted that, all details filed by assessee have been verified by Ld.CIT(A). He opposed ground raised by revenue, wherein, violation of Rule 46A have been alleged.

He also submitted that all details were filed before Ld. AO and therefore there is no violation of rule 46A. However on perusal of assessment order we note that Ld. AO recorded that assessee did not file any details to discharge identity, creditworthiness and genuineness of transactions with respect to section 68.

5. In support, Ld.AR placed reliance on following decisions:

- Decision of *Hon'ble Allahabad High Court* in case of *CIT vs Subash Chander Aggarwal* reported in 172 ITR 166
- Decision of *Hon'ble Gujarat High Court* in case of *CIT vs.Volimohemad Ahmedbhai*, reported in 134 ITR 214
- Decision of *Hon'ble Allahabad High Court* in case of *Smt.Mohinder Kaur vs.Central GovernmentI* reported in 104 ITR 20

6. We have perused all decisions relied by Ld.AR.

6.1. We note that, in decision by *Hon'ble Allahabad High Court*, in case of *CIT vs Subash Chander Aggarwal(supra)*, issue was in relation to non-granting of cross-examination. In our view this decision does not support the arguments of assessee as they are factually not similar.

6.2. In *CIT vs.Volimohemad Ahmedbhai(supra)*, Hon'ble Court considered issue, whether, the AAC admitted additional evidence without giving opportunity to AO. Hon'ble Court observed and held as under:

"It is clear from the above-quoted provision that the AAC should not have taken into account any evidence produced under sub-rule (1) unless the ITO had been allowed a reasonable opportunity to examine the evidence or to cross-examine the witness whose evidence was taken on record or to produce any evidence in rebuttal of the additional evidence produced by the assessee. It is, therefore, obvious that the AAC could not have relied on the additional evidence without giving

such opportunity to the ITO. The mere fact that notice of hearing of the appeal was given to the ITO would not meet the requirements of the above rule. Even if no such rule was in existence, ends of justice and fair play demand that when an assessee produces additional evidence in his appeal an opportunity is given to the ITO to test the evidence or to counter the effect of the evidence by producing evidence in rebuttal or otherwise. The reason is self-evident. It stands to reason to presume that the ITO took his decision not to remain present because he considered it unnecessary to do so in the context of the existing record. He could not have anticipated or reasonably foreseen that the record was going to be augmented by adducing fresh evidence. Besides, he had a right to object to the production of additional evidence. Since something adverse to the ITO was sought to be done in the course of the appeal by way of augmenting the record, the ITO ought to have been heard and given an opportunity to meet with the additional material by way of cross-examination, counter evidence and urging submissions in the context of the augmented record. Of course, if the appeal was going to be decided on the basis of the existing record of which he had notice, no such question could arise and no grievance could be made as the ITO had failed to exercise his option to remain present. He had no notice of the application for additional evidence as no notice was issued. When a prayer for additional evidence was made, it was an independent and substantive application seeking a new right. Notice of such application was necessary to the ITO and he ought to have been afforded both an opportunity to oppose it and to test the additional evidence or counter the effect thereof or produce evidence in rebuttal. No such order granting the request could have been passed behind the back of the ITO in violation of the principles of natural justice. At the cost of repetition, it be stated that notice of appeal cannot be equated with notice of a future application to lead additional evidence which no one could have anticipated or reasonably foreseen. Ordinarily, the appeal would be decided on the evidence recorded in the course of assessment proceedings. The ITO, therefore, may not, in a given case, think it necessary to remain present at the hearing of the appeal. He, however, cannot be expected to anticipate that additional evidence might be produced by the assessee in his appeal. It is for this reason that it is necessary to give him an opportunity to meet the additional evidence. The Tribunal has, therefore, fallen into an error in rejecting the plea of the revenue that the AAC ought to have given an opportunity to the ITO to examine the additional evidence or to cross-examine the witnesses whose evidence was taken on record or to rebut the additional evidence. We, therefore, answer the question referred to us in the negative and against the assessee.”

6.3. In *Smt.Mohinder Kaur vs.Central Government(supra)*, Hon’ble Allahabad High Court held as under:

“No part of rule 46A whittles down or impairs the power to make further inquiry conferred upon the AAC by section 250.”

In our view, these decisions relied by Ld.AR does not come to rescue assessee, rather it supports contention of revenue.

7. We also note that Ld.CIT(A), did not refer to any documents filed by assessee in impugned order, when Ld.AO categorically mentions in assessment order that assessee did not file any evidence to establish genuineness of transactions. We note that Ld.CIT(A) merely relied on submissions advanced by assessee without carrying independent enquiries/verification in respect of unexplained credits and sundry creditors for assessment year 2012-13 and unexplained credits for assessment year 2013-14 appearing in the books of account of assessee. We refer to the following paragraphs in impugned orders:

“4.5 This was the situation in 2012-13, the AO did not believe the evidence given and made addition. The appellant submitted various details once again which according to him he had been submitted to the AO also giving the entire copies including the, details of share application money. The same was sent to the AG for remand report. However, no remand report has been received till date.

4.6 It is seen that details regarding ledger account and share application money have been filed before the AO, but the AG ignored the same and made an addition of Rs.3,16,92,240 on account of unsecured loans. The transactions are mostly by cheque. The AG has no basis for making addition when concerned details and evidences were available.

5. According to the appellant there was no discussion on addition of Rs.1,00,66,066/- during the assessment proceedings on account of sundry creditors. The appellant was not asked to explain regarding the same. While the appellant provided all the concerned details during the assessment proceeding, AG has merely recorded that the assessee has failed to produce the details and hence the addition has been made. As the addition is without any basis, the same is hereby deleted.”

8. Observations in impugned order for assessment year 2013-14 are as under:

“4.6 According to the appellant all the facts has been adequately disclosed, and the income is also offered, there cannot be anything of the assessee which is undisclosed. Such consideration of loans as undisclosed is contrary to the facts and provisions of the law. The learned assessing officer has not applied his mind and has passed the order. The learned assessing officer has not given any finding nor conducted any inquiry and has passed the order without any material on record. Such passing of assessment is arbitrary. Provisions to Section 68 has not been given due consideration and Learned Assessing Officer has acted arbitrarily while passing the order.

4.7 The appellant has filed written submission and submitted various details which had been submitted before the AO in the assessment proceeding. Copies of confirmation accounts, ledger accounts were filed during the assessment proceedings. Inspite of various evidences furnished, the AO has recorded that the details were filed on 25/02/2016. The assessment order is passed stating that there is nothing to record to establish the credit worthiness of these creditors. However, no opportunity appears to have been provided to establish the same, in case the AO wanted to question if details have been filed and the AO should have provided more opportunity. As the assessment is made on the basis of details provided there is no reason to make an addition u/s 68 without further hearing or opportunity. As all the details and confirmation were provided by the appellant, there is no basis for the addition, the addition is here by deleted.”

9. From above observations in impugned order, it is clear that Ld.CIT(A) either remanded evidence failed by assessee to Ld.AO nor carry out any independent verification. Based on what was stated by assessee, he deleted the addition. We therefore agree with argument advanced by Ld.Sr.DR.

10. In the light of above, we set aside these issues back to Ld.CIT (A) for fresh adjudication after complying with requirements under Rule 46A. Assessee is also directed to file all necessary evidences and explanations in support of its claim. Ld.CIT (A) is directed to pass a detailed order by

granting proper opportunity to assessee of being heard in accordance with law.

Accordingly, grounds raised by revenue in both these appeals stands allowed for statistical purposes.

In the result, appeals filed by revenue stands allowed for statistical purposes.

Order pronounced in the open court on 21st Aug, 2020.

Sd/-
(A.K GARODIA)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 21st Aug, 2020.
/Vms/

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.

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-08-2020		Sr.PS
3.	Draft proposed & placed before the second member	-08-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-08-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-08-2020		Sr.PS/PS
6.	Kept for pronouncement on	-08-2020		Sr.PS
7.	Date of uploading the order on Website	-08-2020		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-08-2020		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS