

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE 'S.M.C' BENCH, BENGALURU
BEFORE S/SHRI CHANDRA POOJARI, AM**

ITA No.1353/Bang/2019
Assessment Year: 2015-16

Shri Kurubarahalli Krishnagowda Jagadeesh, No. 9, 1 st Cross, Hegganahalli Cross Nagaraholenagar, Bangalore-560 097. [PAN:AISPJ 0804D]	Vs.	The Income Tax Officer, Ward-6(3)(3), Bengaluru
(Assessee -Appellant)		(Revenue-Respondent)

Assessee by	Shri Rajeev Nulvi, Advocate
Revenue by	Shri Ganesh R.Ghale, Advocate SC to Department

Date of hearing	10/09/2020
Date of pronouncement	11/09/2020

ORDER

Per CHANDRA POOJARI, AM:

This appeal filed by the assessee is directed against the order of the CIT(A)-6, Bengaluru dated 27/03/2018 and pertains to the assessment year 2015-16.

2. The assessee has raised the following grounds of appeal:

1. The order of the Assessing Officer as well as the Commissioner of Income- tax(Appeals) is bad in law and against the facts and circumstances of the case.
2. On the facts and circumstances of the case and under the provisions of law, the Assessing Officer has erred in the passing the order u/s. 144 of the I.T. Act without serving a notice u/s. 143(2) of the I.T. Act within the specified period after being return of income is filed.
3. On the facts and circumstances of the case and under the provisions of the law, the CIT(A) erred in dismissing our ground of non service of notice u/s. 143(2) of the I.T. Act without establishing the fact of service of the

notice u/s. 143(2) of the I.T. Act on the appellant by providing the acknowledgment for duly service of a notice.

4. On the facts and circumstances of the case and under the provisions of the law, the CIT(A) erred in forming an opinion that show cause notice dated 05/12/2017 was served to the address mentioned in the return of income but whereas the Assessing Officer claimed in the assessment order that show cause notice was issued to the address which is not mentioned in the return of income.

5. On the facts and circumstances of the case and under the provisions of the law, the CIT(A) erred in sustaining the addition of Rs.15,92,442/- though the appellant provided the list of parties with their Pan No. and address of the persons to whom he rendered service on random basis on the direction of the CIT(A).

6. On the facts and circumstances of the case and under the provisions of the law, the CIT(A) erred in sustaining the addition of Rs.15,92,442/- against the fact that the appellant is able to produce the list of parties if sufficient time is provided to the appellant.

7. For these and other reasons which may be adduced at the time of the hearing, the appellant prays before this Hon'ble Bench to annul the order as it is void-ab-initio,.

8. The appellant craves leave to add, to alter, to amend or to delete any other grounds at the time of the hearing.

3. The facts of the case are that for the assessment year 2015-16, the assessee file return of income u/s. 139(4) of the I.T. Act by declaring income of Rs.2,76,190/-.

The assessee is engaged in the petty business of earning commission for facilitating the payment of BBMP property tax for public and other related service. The assessee's case was selected for scrutiny under CASS for limited purpose to verify:

- i) Whether interest income was shown correctly in the return of income.
- ii) Whether investment on income related to bank deposits are duly disclosed.

The Assessing Officer claimed that notice u/s. 143(2) of the I.T. Act was served on the assessee. Further, notice u/s. 142(1) r.w.s. 129 of the I.T. Act was served on the assessee. Further, the Assessing Officer claimed that show cause notice was served on the assessee. However, the assessee denied services of all the above notices. The assessee submitted that none of the notices were served on the assessee even though the assessee resides in the same address which was given in the return of income. The above facts were brought to the notice of the Assessing Officer vide letter dated 09/02/2018 for which there was no response from the Assessing Officer. In consequence of non appearance of the assessee in response to the notices, the Assessing Officer passed order u/s. 144 of the I.T. Act by making additions u/s 69A of the Act amounting to Rs.32,64,842/- which consisted of cash deposits in the following Banks:

Sl. No.	Name of the Bank	Name of the Branch	Amount of cash deposited (Rs.)
1.	The Karnataka Bank Ltd.	Vidyanranyapura, Bengaluru	21,55,780/-
2.	Sri Sudha Co-op Bank Ltd.	Amruthhalli, Bengaluru	11,09,062/-
			32,64,842/-

4. On appeal, the CIT(A) on submitting the additional evidences and question of law raised, sought the Remand report from the Assessing Officer. The Assessing Officer, though the original order was passed u/s. 144 of the I.T. Act, without calling for the information and without providing opportunity of being heard forwarded the remand report to the CIT(A). The assessee filed objection to the said remand report stating that it was against the principles of natural justice. In view of the non compliance of the principles of natural justice, the CIT(A) granted 4 days

time to the assessee to provide the list of persons with their Pan No. and amount received, to whom the assessee provided the service. Accordingly, the assessee filed confirmation letters from the parties amounting to Rs.16,72,400/-. The CIT(A) deleted the addition of Rs.16,72,400/- only and sustained the addition of Rs.15,92,442/-.

5. Against this, the assessee is in appeal before us. At the time of hearing, the assessee pressed only the ground relating to the sustenance of addition of Rs.15,92,442/- and the other ground relating to issue of notice u/s. 143(2) of the I.T. Act was not pressed before us. Accordingly, the ground relating to issue of notice u/s. 143(2) of the Act is dismissed as not pressed.

5.1 The assessee has filed additional evidence along with petition which relating to confirmation letters for other balance of Rs.15,92,442 for our consideration under Rule 29 of the ITAT Rules, 1963.

6. The Ld. DR strongly opposed the admission of additional evidence stating that the additional evidence filed by the assessee is with regard to credits amounting to Rs.15,92,442/- from various parties and these cannot be admitted at this stage. It was further submitted that the CIT(A) has given effective opportunity of hearing to the assessee.

7. I have heard the rival submissions and perused the material on record. In this case, the original assessment order dated 22/12/2017 was passed u/s. 144 of the Act ex parte without the participation of the assessee. On appeal, the CIT(A) has given chance of hearing to the assessee on 22/11/2018, 11/03/2019 and 15/03/2019. It is the argument of the Ld. AR that on 22/11/2018, the case was

adjourned by the CIT(A) with the direction to the assessee to file written submission. On 11/03/2019, the assessee furnished written submission. The CIT(A) called for confirmation letters and the case was adjourned to 15/03/2019. On 15/03/2019, the assessee furnished few confirmation letters from the parties and the assessee asked for some time for further filing of the confirmation letters. However, the order was passed on 27/03/2019. Hence, the assessee was prevented by sufficient cause in not filing the confirmation letters from the parties in time. In my opinion, as explained by the assessee, these confirmation letters filed by the assessee go to the root of the issue in dispute before me. Ostensibly, the power of the Tribunal in terms of section 29 to admit fresh evidence entails an element of discretion which is required to be exercised in a judicious manner. The power of the Tribunal to additional evidences is not only in a situation where the evidence could not be produced before the lower authorities owing to lack of adequate opportunity but also in situations where the fresh evidence where the fresh evidence would enable the Tribunal to pass order for any other substantial cause. Of course, the power of the Tribunal is to be exercised judiciously and for reasons to be recorded. In the instant case, as seen from the evidences produced before me as enumerated in earlier paras, the assessee has sufficient cause not to produce the same before the lower authorities as these are not available at that time. The fresh evidences now being produced are very much required to appreciate the facts of the case correctly and the admission of the same is very much within the realm of the expression "for any other substantial cause" found in Rule 29 of ITAT Rules. Therefore, the said evidences produced by the assessee

deserve to be admitted in the interest of justice so as to remove obscurity in the order of the lower authorities on the impugned issue. Thus, the additional evidences are admitted and issue in dispute is remitted to the file of A.O. for his fresh consideration after setting aside the order of CIT (Appeals).

8. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 11th September, 2020.

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Bengaluru

Dated: 11th September, 2020

Reddy GP / GJ

Copy to:

1. Shri Kurubarahalli Krishnagowda Jagadeesh, No. 9, 1st Cross, Hegganahalli Cross Nagaraholenagar, Bangalore-560 097.
2. The Income Tax Officer, Ward-6(3)(3), Bengaluru.
3. The Commissioner of Income-tax(Appeals)-6, Bengaluru.
4. The Pr. Commissioner of Income-tax, Bengaluru
5. D.R., I.T.A.T., Bengaluru Bench, Bengaluru.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Bengaluru