

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

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

ITA No.2029/Bang/2018
Assessment Year: 2013-14

Shri D. Koti Reddy No.391, 13 th Cross Bangalore-560 080 PAN NO : AEJPD0132K	Vs.	ITO Ward-6(3)(2) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Sridhar, A.R.
Respondent by	:	Shri Kannan Narayan, D.R.

Date of Hearing	:	28.12.2020
Date of Pronouncement	:	11.01.2021

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 28.2.2018 passed by Ld. CIT(A)-6, Bengaluru and it relates to the assessment year 2013-14.

2. The grounds of appeal urged by the assessee give rise to the following two issues:-

- a) Non-consideration of return of income filed in response to notice u/s 148 of the Income-tax Act,1961 [‘the Act’ for short].
- b) Rejection of the plea not to assess income, which was wrongly offered in the return of income.

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3. The facts relating to the case are stated in brief. The Ld A.R submitted that the assessee is engaged in real estate business of development and sale of land. He submitted that the assessing officer received information from Income tax officer, Ward-3, Nellore that the assessee and his wife Smt. D Anuradha have invested a sum of Rs.2,78,75,000/- in purchase of lands at Nellore. Consequent thereto, the AO conducted survey operations in the hands of the assessee u/s 133A of the Act on 30.7.2013. In view of the survey operations, the assessee furnished a letter dated 27.9.2013 voluntarily declaring an amount of Rs.4,14,42,864/- as his income for the assessment years 2008-09 to 2013-14. Accordingly, the assessee filed his return of income on 02.10.2013 for AY 2013-14 declaring total income of Rs.2,60,41,500/-.

4. The Ld A.R submitted that the assessee had received advances from his customers for sale of land and they were shown as Sundry creditors in the books. Consequent to the survey operations, the assessee surrendered part of sundry creditors amounting to Rs.4,14,42,864/- as his income in order to purchase peace from the department. Accordingly, the assessee has offered income for the year under consideration by passing a journal entry in his books of accounts, i.e, by crediting the Profit and Loss account with Rs.2,60,38,898/- and debiting "Advance Income tax Adjustment a/c". The Ld A.R submitted that the break-up details of Sundry creditors, which was offered as income in AY 2013-14, is placed at page 5 of the paper book.

5. The Ld A.R further submitted that the AO, consequent to survey operations, reopened the assessment of assessment years 2008-09 to 2013-14 by issuing notices u/s 148 of the Act. Since the assessment of the assessment year 2013-14 was already

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pending, the AO withdrew the notice issued u/s 148 of the Act for AY 2013-14. During the course of assessment proceedings, the assessee submitted a letter dated 24.3.2016 stating therein that additional income of Rs.2,60,38,898/- offered by him in the return of income was erroneously offered. It was also stated that these creditors were outstanding as on 31.3.2012 also and the assessee had furnished confirmation letters from all the creditors during the course of assessment proceedings pertaining to AY 2012-13 and they were accepted by the AO without making any addition. Accordingly, the Ld A.R submitted that the cash credit surrendered in AY 2013-14 was actually received in the earlier years. Accordingly, the assessee prayed before the AO not assess the income surrendered in AY 2013-14, as they are genuine cash credits.

6. The Ld A.R submitted that the AO, however, did not accept the above said prayer put forth by the assessee. In the mean while, the assessee also filed a return of income for AY 2013-14 in response to the notice issued u/s 148 of the Act. In the above said return, the assessee did not include the amount of Rs.2,60,38,898/-. Since the said notice had been withdrawn by the AO, the assessing officer did not consider the return of income so filed by the assessee. Accordingly, the AO completed the assessment by accepting the total income declared by the assessee in the original return of income.

7. Aggrieved, the assessee carried the matter in appeal before the Ld CIT(A). The first appellate authority also confirmed the assessment order by observing that the assessee has voluntarily declared the income in the return of income filed by him.

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8. The Ld A.R submitted that the assessee had, in fact, received the advances from his customers during the financial year relevant to AY 2008-09 and they were shown as sundry creditors and carried forward in subsequent years. During the course of re-opened assessment proceedings for assessment year 2008-09, the AO has assessed sundry creditors balances of Rs.4,00,47,170/- as unexplained credits u/s 68 of the Act. The Ld A.R submitted that the above said amount also included major portion of the amount of Rs.2,60,38,898/- erroneously offered in assessment year 2013-14 by the assessee. The Ld A.R submitted that the assessee challenged the addition of Rs.4,00,47,110/- made in AY 2008-09 by filing appeal before Ld CIT(A). The first appellate authority has deleted the addition to the extent of Rs.3,80,93,238/- and confirmed the addition of Rs.19,53,932/- only. The Ld A.R submitted that the revenue has not challenged the above said order of Ld CIT(A) passed for AY 2008-09 and hence his order has attained finality, meaning thereby, the assessee has proved the cash credits to the extent of Rs.3,80,93,238/- as per the order of Ld CIT(A). Accordingly, he contended that the very same cash credits cannot be assessed as income in any other year.

9. The Ld A.R submitted that the assessee has prepared a statement furnishing details of creditors assessed in AY 2008-09 and the details of creditors erroneously offered by the assessee in AY 2013-14. This statement would reveal that most of the amounts were received from the creditors in AY 2008-09 itself and the same was also assessed in that year. The remaining creditors were also outstanding as on 31.3.2012, meaning thereby, the advance amount from remaining amounts were also not received during the year relevant to AY 2013-14. The Ld A.R submitted that the addition of unexplained cash credit can be made u/s 68 of the Act

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only in the year in which the cash credit was received. However, in the instant case, the amount of Rs.2,60,38,898/- has not been received by the assessee during the financial year relevant to AY 2013-14. Accordingly, the Ld A.R submitted that the above said amount is not legally assessable as income of the assessee in AY 2013-14, even if it was voluntarily offered by the assessee. He submitted that there is no estoppel against law and hence the voluntary surrender of income made by the assessee is liable to be deleted. In support of these contentions, the Ld A.R placed his reliance on the Third Member decision rendered by Chennai bench of Tribunal in the case of R.Natarajan vs. ACIT (ITA No.1058 (Mds)/2010 dated 23rd January, 2012.

10. The Ld D.R, on the contrary, submitted that the assessee has not reduced the sundry creditors balance in his Balance Sheet as on 31.3.2013, meaning thereby, the voluntary surrender of income made by the assessee cannot be taken as surrender of sundry creditors balances. Accordingly he submitted that the addition made by the AO u/s 68 of the Act in AY 2008-09 is independent of the income surrendered by the assessee in AY 2013-14. He further submitted that the assessee has voluntarily offered the amount of Rs.2.68 crores in his return of income and hence the assessee is not entitled to withdraw the same. Accordingly, he submitted that the Ld CIT(A) has rightly confirmed the order passed by AO.

11. In the rejoinder, the Ld A.R submitted that there is no dispute that the amount surrendered by the assessee represented sundry creditors balance only. He submitted that a proper reading of orders of lower authorities would make it clear. He submitted that income of one year cannot be assessed in another year.

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12. We heard rival contentions and perused the record. We notice that the assessee has, in his letter dated 24.3.2016 furnished before the AO, stated that the income was offered by reversing certain liability towards sale of land. Further the assessee states that he has filed confirmation letters from the creditors during the course of assessment proceedings relating to AY 2012-13. Accordingly, it was stated that the reversal of liability was a mistake. The AO, in paragraph 4 of page 2 of the assessment order, captures the same. These facts would make it clear that the assessee has surrendered part of sundry creditors only as his income.

13. There should not be any dispute that the addition u/s 68 of the Act can be made only in the year in which cash credit was received. In this regard, a gainful reference may be made to the decision rendered by Hon'ble Delhi High Court in the case of CIT vs. Usha Stud Agricultural Farms Ltd (2008)(301 ITR 384)(Delhi).

14. In the instant case, we notice that the assessee has received the advances from his customers during the year relevant to AY 2008-09. We also notice that the assessing officer has assessed sundry creditors as unexplained credit u/s 68 of the Act to the tune of Rs.4,00,47,170/-. The statement of sundry creditors furnished by the assessee at pages 21 to 23 of the paper book, the assessment orders passed for AY 2008-09 and 2012-13 & the appellate order passed for AY 2008-09 reveal the following facts:-

(a) The sundry creditors balance outstanding as on 31.3.2012 was Rs.9,89,89,527/-.

(b) The addition of Rs.4,00,47,170/- made by the AO as unexplained cash credits u/s 68 of the Act in AY 2008-009 forms part of the above said list of Rs.9,89,89,527/-.

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(c) The assessee had furnished confirmation letters of all the creditors before the AO in AY 2012-13. Accordingly, the AO has accepted the genuineness of all the creditors and hence did not make any addition u/s 68 of the Act in that year.

(d) We notice that the Ld CIT(A), while adjudicating the appeal filed by the assessee for AY 2008-09, has taken note of the fact that the AO has accepted the genuineness of the creditors in AY 2012-13. He also taken note of the fact that the additions made in AY 2008-09 formed part of the creditors list accepted by the AO in AY 2012-13. The Ld CIT(A) has also analysed the nature of details furnished by the assessee and accordingly deleted the addition to the extent of Rs.3,80,93,238/-.

(e) The sundry creditors amount of Rs.2,60,38,898/- offered by the assessee in AY 2013-14 forms part of the list of sundry creditors outstanding as on 31.3.2012.

15. These facts would show that the sundry creditors amount of Rs.2,60,38,898/- surrendered by the assessee in AY 2013-14 was in fact received in earlier years and hence the same cannot be assessed as income of the assessee in AY 2013-14. Since the creditors balance represent advances received for sale of land and since the assessee claims that the liability still exists, the provisions of sec.41(1) also would not apply.

16. Now we are left with the question as to whether an income voluntarily offered by the assessee can be held to be not assessable? Before us, the Ld A.R placed his reliance on a third member decision rendered by Chennai bench of Tribunal in the case of R. Natarajan (supra). The facts of the above said case are that the assessee Shri R Natarajan was a Salaried employee and he received performance incentive of Rs.4,28,750/- from his employer

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on 5.7.2007, i.e., after closure of the accounting year, but before the due date for filing return of income for AY 2007-08. The assessee offered the same as his income in Assessment year 2007-08. However, his employer took the same as performance incentive for the subsequent assessment year, i.e., AY 2008-09. Accordingly, the same amount came to be assessed in AY 2007-08 and 2008-09. The assessee sought exclusion of Rs.4,28,750/- in AY 2007-08. Since it was voluntarily offered by the assessee himself, his plea was rejected. The matter was carried to the Tribunal. Since there was difference of opinion between the members of the Tribunal, the matter was referred to a Third Member. The Hon'ble Third Member held that the above said amount is not taxable in AY 2007-08, even though it was voluntarily offered by the assessee. The decision rendered by Hon'ble Third member is extracted below:-

"13. The issue is as to whether the assessee should be subjected to tax on a sum of Rs. 4,28,750/- for two assessment years 2007-08 and 2008-09, even though the assessee himself has offered the said amount as his income for both the above assessment years.

14. The case of the assessee is that the above stated amount of ` 4,28,750/- was offered by him as income for the impugned assessment year 2007-08 by mistake, whereas the said amount was rightly offered as income for the subsequent assessment year 2008-09 and the same was assessed after getting the TDS credit and assessment has become final. In order to rectify his mistake of offering the income of Rs. 4,28,750/- for taxation for the assessment year 2007-08, the assessee has not filed any revised return. In these circumstances, the question is whether the assessee is entitled for relief so that the amount of Rs. 4,28,750/- may be excluded from the taxable income of the assessee for the impugned assessment year 2007-08. For the sake of clarity, it is to be made clear that there is no dispute whatsoever as far as the assessment year 2008-09 is concerned. The dispute is only with reference to the impugned assessment year 2007-08 as to whether the said amount of Rs. 4,28,750/- should be again taxed for the impugned assessment year or it should be excluded from taxation for the impugned assessment year.

15. [Article 265](#) of the Constitution of India reads as below:-

"Taxes not to be imposed save by authority of law.-

No tax shall be levied or collected except by authority of law."

16. In the light of the above stated constitutional mandate on collection of tax, it is incumbent upon public authorities vested with the duty of collecting tax to see that what is demanded is only the legitimate tax due from an assessee. The above constitutional mandate is profoundly reflected in the Circular issued by the Central Board of Direct Taxes to give administrative instructions for guidance of Income-tax Officers on matters pertaining to assessment. That particular Circular is numbered as Circular No.14(XL-35), dated 11-4-1955. Although the Circular was issued even before the present [Income-tax Act](#) of 1961, the principles survive for all the time. The most relevant extracts from the above Circular are reproduced below:-

"1. The Board have issued instructions from time to time in regard to the attitude which the Officers of the Department should adopt in dealing with assessees in matters affecting their interests and convenience. It appears that these instructions are not being uniformly followed.

2. Complaints are still being received that while Income- tax Officers are prompt in making assessments likely to result into demands and in effecting their recovery, they are lethargic and indifferent in granting refunds and giving reliefs due to the assessees under the Act. Dilatoriness or indifference in dealing with refund claims (either under [section 48](#) or due to appellate, revisional, etc. orders) must be completely avoided so that the public may feel that the Government are actually prompt and careful in the matter of collecting taxes and granting refunds and giving reliefs.

3. Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the department for it would inspire confidence in him that he may be sure of getting a square deal from the department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assessee on whom it is imposed by law, officers should--

(a) draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;

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(b) freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs.

4.

5. While officers should, when requested, freely advise assessee the way in which entries should be made in various forms, they should not themselves make any in them on their behalf. Where such advice is given, it should be clearly explained to them that they are responsible for the entries made in any form and that they cannot be allowed to plead that they were made under official instructions. This equally applies to the Public Relation Officers.

6. The intention of this circular is not that tax due should not be charged or that any favour should be shown to anybody in the matter of assessment, or that where investigations are called for, they should not be made. Whatever the legitimate tax it must be assessed and must be collected. The purpose of this circular is merely to emphasize that we should not take advantage of an assessee's ignorance to collect more tax out of him than is legitimately due from him."

17. The Board has given clear instruction to assessing authorities that they should not take advantage of ignorance of an assessee as to his rights. In the present case, the assessee voluntarily offered the incentive income of ` 4,28,750/- for taxation in the assessment year 2007-08 on a bona fide belief that the incentive related to the said assessment year and he would also get the benefit of TDS made by his employer on that amount of incentive in the very same assessment year 2007-08. But it happened that the assessee's employer accounted for the TDS for the assessment year 2008-09 and the department granted credit of such TDS only for the assessment year 2008-09. Therefore, the assessee had to offer the incentive again for taxation for the assessment year 2008-09, for otherwise the assessee would lose his legitimate right of availing credit of TDS made out of the income earned by him. All these facts were very much available before the assessing authority while completing the assessment for the impugned assessment year 2007-08. The assessing authority was all the more aware that though he has assessed the sum of ` 4,28,750/- as the income of the impugned assessment year, he has not given the assessee the benefit of the credit of the corresponding TDS. In spite of such a situation, where the assessee was denied credit of the TDS, it is very evident for the assessing authority to understand that the amount of ` 4,28,750/- was offered for the impugned assessment year by mistake and it was offered for the assessment year 2008-09, for which assessment year the assessment has been completed and it has become final. In spite

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of this factual knowledge, the assessing authority thought to assess the amount of Rs. 4,28,750/- as the income of the assessee for the impugned assessment year 2007-08 only on the technical ground that the said amount was offered for assessment by the assessee himself voluntarily.

*18. The Commissioner of Income-tax(Appeals) after understanding the facts of the case without any confusion, dismissed the plea of the assessee on the ground that when there is no liability as a result of the assessment, there is no scope for appeal. It is the case of the Commissioner of Income- tax(Appeals) that an appeal lies only when the assessee denies his liability to be assessed and in the present case as the assessing authority has accepted the returned income, there is no denial of liability from the side of the assessee. These are all reasonings for self consumption. **The Income-tax Act does not authorize levy of tax on the same amount of income more than once. A particular amount of income can be assessed only for once for a particular assessment year.** This is very certain. In the present case the subject income has already been assessed for the assessment year 2008-09 and that assessment has become final. Therefore, it is clear that it is not at all possible to assess the same income again for the assessment year 2007-08. There is no such enabling provision anywhere in the Income-tax Act; for that matter not under any other taxing statute.*

19. The Income-tax Department is collecting tax not for itself. It is collecting tax for the Sovereign State, that is, Union of India. Union of India as the sovereign authority does not require to levy tax on an amount returned by mistake. The sovereign authority does not want to take advantage of a mistake committed by an innocuous assessee. It is not the policy of the Sovereign State to crave for undue enrichment.

*20. When, under these circumstances, levy of tax on the sum of ` 4,28,750/- is altogether impermissible for the assessment year 2007-08, how the prayer of the assessee could be brushed aside? **If the Income-tax Act** authorizes a designated authority to collect tax for State, the same Act always permits the said authority to rectify any proceedings, which has resulted in double taxation. When the income of Rs. 4,28,750/- has been assessed for the assessment year 2008-09, the assessment of the same amount for the impugned assessment year 2007-08 is a mistake apparent from the records. The assessing authority could have corrected it and if not, the Commissioner of Income-tax(Appeals) could have given a direction to rectify such a mistake apparent from the records. There is no great question of law involved in this.*

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21. The decision of the Hon'ble Supreme Court in the case of [Goetze\(India\) Ltd. vs. CIT](#), 284 ITR 323, has no application in this context. The assessee is not asking for any exemption or any other concession. The assessee has not asked for any concession at all. The entire sum of Rs. 4,28,750/- has already been assessed for the assessment year 2008-09. Then, where is the question of concession or exemption? The prayer of the assessee is that his returning of the said amount as taxable income for the assessment year 2007-08 was a bona fide mistake and he be not subjected for taxation twice on the same amount. Is it not a legitimate claim made by the assessee?

22. In the facts and circumstances of the case, I find that the assessment of Rs. 4,28,750/- to income-tax for the assessment year 2007-08 is against law. Therefore, I agree with the order of the learned Accountant Member in giving direction to the assessing authority to delete the said amount of Rs. 4,28,750/- from the assessment relating to the assessment year 2007-08. I agree with the learned Accountant Member that the appeal of the assessee is to be allowed.”

17. In the instant case also, we have noticed that the assessee has offered the amount of Rs.2,60,38,898/-, which formed part of sundry creditors balance. Major portion of very same amount was assessed in AY 2008-09 by the AO and deleted by the Ld CIT(A). The assessing officer has accepted the above said creditors in AY 2012-13. We have also noticed that the above said credits were not received during the financial year relevant to AY 2013-14. Hence, even the assessee has surrendered above said amount voluntarily, yet the same is not legally assessable as income of AY 2013-14 as per the provisions of Income tax Act. As observed by Honourable Third member in the case of R Natarajan (supra), the Income tax Act does not authorize levy of tax on the same amount of income more than once. It is also well settled proposition that income pertaining to a particular year can be assessed only in that year, i.e., the income pertaining to one year cannot be assessed in any other year. In the case of CIT v. Milton Laminates Ltd (2013) 218 taxman 108 (Mag.) (Guj.), in Paragraph 5, the Hon'ble Gujarat High Court held that the Assessing Officer is free to give effect to order of

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Commissioner (Appeals) without restricting income to returned income, i.e., the assessing Officer can compute income lower than that returned income. In the case of *Nirmala L. Mehta v. A. Balasubramanian* (2004) 269 ITR 1 (Bom.)(HC), the Hon'ble Bombay High court held that, "There cannot be any estoppel against the statute, Article 265 of the Constitution of India in unmistakable terms provides that no tax shall be levied or collected except by authority of law. Acquiescence cannot take away from a party the relief that he is entitled to where the tax is levied or collected without authority of law".

18. Accordingly, following the decision rendered in the case of *R Natarajan* (supra), we hold that the income of Rs.2,60,38,898/- erroneously offered by the assessee in AY 2013-14 cannot be assessed in that year, merely for the reason that the assessee has offered the same voluntarily.

19. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 11th Jan, 2021

Sd/-
(Beena Pillai)
Judicial Member

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

Bangalore,
Dated 11th Jan, 2021.
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.**