

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “SMC-B”, BANGALORE**

Before Shri George George K, Judicial Member

ITA No.2432/Bang/2019 : Asst.Year 2011-2012

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| Sri.Satyanarayana Mahesh K.R.Extension, Polytechnic Road Chintamani – 563 125. Chickballapura Dist. PAN : AFSPN1433J. | v. | The Income Tax Officer Ward 1 Chickballapura. |
| (Appellant) | | (Respondent) |

Appellant by : Sri.R.Chandra Shekhar, Advocate
Respondent by : Sri.Ganesh B.Ghale, Standing Counsel

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| Date of Hearing : 17.03.2021 | Date of Pronouncement : 18.03.2021 |
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ORDER

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 28.08.2019. The relevant assessment year is 2011-2012.

2. The grounds raised read as follows:-

“1. The learned Commissioner of Income Tax (Appeals) failed to appreciate that there is no material on record to prove that the notice issued u/s 148 of the Act has been issued within the period of limitation.

2. The learned Commissioner of Income Tax (Appeals) failed to appreciate that the affixture made on 12.07.2008, clearly established that the notice has not been issued within the period prescribed u/s 148 of the Act and further 31.03.2018 was Saturday being a holiday to Department.

3. The learned Commissioner of Income Tax (Appeals) erred in holding that the appellant has been provided reasonable opportunity and opportunity provided was not sufficient opportunity.

4. The learned Commissioner of Income Tax (Appeals) having held that the appellant has not maintained any books

of account ought to have held section 68 of the Act is not applicable.

5. *The learned Commissioner of Income Tax(Appeals) ought to have considered the withdrawals from the bank as available for re-deposit.*

6. *The learned Commissioner of Income Tax (Appeals) failed to appreciate that the explanation of appellant that he was carrying on business in screen printing and deposits were made out of said business. The learned Commissioner of Income Tax (Appeals) ought not to have rejected the explanation since there was no other material on record to hold there was some other source of income.*

7. *The learned Commissioner of Income Tax (Appeals) erred in confirming the levy of interests u/s 234A, 234B and 234C of the Act.”*

3. The brief facts of the case are as follow:

As per AIR information, the assessee had made cash deposit of Rs.13,69,450 with Kotak Mahindra Bank during the relevant assessment year 2011-2012. Since the source of cash deposit was unexplained, the A.O. issued notice u/s 148 of the I.T.Act on 31.03.2018.Subsequently, notice u/s 142(1) of the I.T.Act was also issued. The assessee appeared on 20.12.2018 and furnished the bank statement of Kotak Mahindra Bank for the period 01.04.2010 to 31.03.2011. Since there was no response to further hearing notices, the Assessing Officer proposed a best judgment assessment u/s 144 of the I.T.Act, by adding the entire cash deposit as unexplained cash credit u/s 68 of the I.T.Act. As the assessee did not respond, the Assessing Officer completed the best judgment assessment u/s 144 r.w.s. 148 of the I.T.Act vide order dated 28.11.2018, wherein the entire cash deposit in Kotak Mahindra Bank was treated as unexplained cash credit u/s 68 of the I.T.Act.

4. Aggrieved by the assessment order, the assessee preferred an appeal to the first appellate authority. Before the first appellate authority, it was submitted that the assessee was not provided with proper opportunity of hearing. It was further contended that no notice u/s 148 of the I.T.Act was served on the assessee. On merits it was contended that cash withdrawals were available for re-deposit. It was stated that the assessee was carrying on the business of screen printing and other odd works, the receipt of which was utilized for cash deposit. The assessee had also filed a written submission, which was forwarded to the A.O. for his remand report. The CIT(A) on receipt of the A.O.'s remand report, called for assessee's objection / rejoinder. The CIT(A) after pursuing the rejoinder of the assessee, rejected all the issues raised in the appeal and dismissed the appeal of the assessee. The CIT(A) held that the assessee was given adequate opportunity of hearing before the A.O., hence, there was no violation of principles of natural justice. The CIT(A) held that notice u/s 148 of the I.T.Act was issued within the period of limitation, though it was served subsequently, hence, the reassessment cannot be held to be invalid. On merits, the CIT(A) held that there was no proof that cash deposits are out of business carried on by the assessee in screen printing activity and in the absence of cash book, the cash withdrawals cannot be given credit for redeposits.

5. Aggrieved by the order of the CIT(A), the assessee has preferred this appeal before the Tribunal. The learned Counsel for the assessee has filed a paper book comprising of 97 pages

enclosing therein copy of bank statement, computation of income and judicial pronouncements relied on. The learned Counsel submitted that the notice u/s 148 of the I.T.Act was never served on the assessee and hence reassessment completed u/s 148 r.w.s. 144 of the I.T.Act was invalid. Further, it was submitted that the assessee has not maintained any books of account and hence section 68 of the I.T.Act is inapplicable. On merits, it was stated that the A.O. has erred in not giving any credit / telescoping for the cash withdrawals made by him. It was further stated that the assessee was doing the business of screen printing and the receipts from the same was deposited in Kotak Mahindra Bank.

6. The learned Standing Counsel submitted that there was total lack of cooperation on the part of the assessee, because the assessee did not comply with any of notices issued u/s 142(1) of the I.T.Act. Hence the A.O. was forced to complete the assessment u/s 148 r.w.s. 144 of the I.T.Act. It was submitted by the learned Standing Counsel that the assessee has not explained the source of cash deposits, hence, the orders of the Income Tax Authorities needs to be confirmed.

7. I have heard rival submissions and perused the material on record. The notice u/s 148 of the I.T.Act was dispatched on 31.03.2018 in the address given by the assessee in the PAN portal. Since the notice was returned unserved, the same was served through affixture. The learned Standing Counsel has produced the assessment records to prove that the notice u/s 148 of the I.T.Act was dispatched on 31.03.2018 itself. In this context, the judicial pronouncement relied on by the CIT(A)

clearly states that it is not necessary that notice needs to be served within the limitation period, but only need to be dispatched within the specified period. Therefore, the technical grounds raised by the assessee are dismissed.

8. The learned AR had contended that since no books of account are maintained, section 68 of the I.T.Act is inapplicable. In this context, I refer to the order of the Bangalore Bench of the Tribunal in the case of Shri G.Nataraj v. ITO in ITA No.2198/Bang/2019 (order dated 18.02.2021), wherein it was held that the impugned addition can be examined within the parameters of section 69A of the I.T.Act. The Tribunal concluded that the addition made by the A.O. u/s 68 of the I.T.Act being inapplicable, the correct section, namely, section 69A could be invoked and there is no fatality in mentioning the wrong section by the A.O.

9. As regards the issue on merits, I notice that the assessee was not given any benefit of telescoping with regard to the withdrawals made by him. The assessee has also contended that he is deriving income from screen printing activities and the same were deposited in Kotak Mahindra Bank. It was stated by the assessee that the notice u/s 142(1) of the I.T.Act was served on the assessee in the fag end of limitation period for completion of assessment, hence, was not in a position to furnish the necessary proof / evidences. Admittedly, in this case, the assessment has been completed on a best judgment basis. Therefore, in the interest of justice and equity, I am of the view that the assessee should be provided with one more

opportunity to explain the source of cash deposit. The assessee shall produce the necessary evidences / documents to prove the source of cash deposits. The assessee shall co-operate with the department and shall not seek unnecessary adjournment. The A.O. is directed to afford a reasonable opportunity of hearing to the assessee and pass an order in accordance with law. It is ordered accordingly.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 18th day of March, 2021.

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 18th March, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-6, Bangalore.
4. The Pr.CIT-6, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore