

IN THE INCOME TAX APPELLATE TRIBUNAL

“B” BENCH: BANGALORE

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.288/Bang/2020
Assessment Year: 2011-12

Shri Kushalraj Gulecha, No.54, K.G Road, K.R Circle, Bengaluru-560 009. PAN NO : ACCPG 6043 M	Vs.	The Dy. Commissioner of Income-tax, Circle-5(2)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri G.S Prashanth, C.A
Respondent by	:	Shri Priyadarshi Mishra, Addl. CIT (DR)

Date of Hearing	:	24.06.2021
Date of Pronouncement	:	15.07.2021

O R D E R

PER BEENA PILLAI, JUDICIAL MEMBER:

Present appeal has been filed by assessee against order dated 30/12/2019 passed by the Ld.CIT(A)-5, Bangalore for assessment year 2011-12 on following grounds of appeal on following grounds of appeal:

Sl. No.	Particulars	Tax Effect in Rs.
1	The orders of the authorities below in so far these are against the appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the appellant's case.	-
2	The appellant denies himself liable to be reassessed on a total income of Rs.50,66,980/- as against the assessed income of Rs.30,66,980/- under the facts and circumstances of the case.	-
3	<p><u>Grounds on validity of the reassessment proceedings:</u></p> <p>a. The proceedings completed under section 147 of the Act are barred by limitation as the impugned notice under section 148 of the Act has been issued after expiry of four years from end of the assessment year under consideration.</p> <p>b. The notice issued under section 148 of the Act suffers from a material irregularity in as much as the learned assessing officer did not mention the course of action i.e. whether to 'assess' or 'reassess' the income of the appellant and thus the order passed on such an invalid notice needs to be set aside in the interest of equity and justice.</p> <p>c. The impugned reasons provided by the assessing officer are not reasons to believe and the same are reasons to suspect which is impermissible in the eyes of law.</p>	-
	<p>d. The sanction as required under section 151 of the Act has not been obtained from the Commissioner of Income Tax, before issue of notice under section 148 of the Act or having been obtained, the copy of the same has not been provided to the appellant on the facts of the case.</p>	

4	<p>a. The learned CIT(A) erred in confirming the addition made by the assessing officer of Rs.20,00,000/- as unexplained expenditure under the facts and circumstances of the case.</p> <p>b. The authorities below are not justified in holding that the appellant has paid donation of Rs.20,00,000/- in cash to M/s. Jindutt Kushal Suri Khadhar Gachha Pedhi Trust merely based on some loose papers found in the premises of M/s. Kalavathi Finance under the facts and circumstances of the case.</p> <p>c. The authorities below grossly erred in not taking cognizance of the confirmation letter from Jindutt Kushal Suri Khadhar Gachha Pedhi Trust under the facts and circumstances of the case.</p> <p>d. The learned CIT(A) erred in not appreciating the fact that the assessment under section 143(3) r.w.s 147 of the Act was completed in the case of M/s. Jindutt Kushal Suri Khadhar Gachha Pedhi Trust by accepting the returned income and thus the addition made ought to have been deleted under the facts & circumstances of the case.</p>	6,18,000/-
5	<p>a. The appellant denies himself liable to be levied interest under sections 234D and 244A of the Act, as the computation of interest was not provided to the appellant as regard to the rate, period and method of calculation of interest under the facts and circumstances of the case. The appellant expressly urges that the period of levy of interest is not in accordance with the provisions of the Act.</p>	2,88,271/-

	b. Without prejudice, the interest levied under section 234D of the Act is not leviable and ought to have been waived on the facts of the case.	
	The appellant craves leave of your Honour to add, alter, delete or substitute any of the grounds urged above.	
	In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity.	

Brief facts of the case are as under:

2. The assessee filed its return of income for year under consideration on 29/09/2011 declaring total income of Rs.30,66,980/-. The Ld.AO completed the scrutiny assessment under section 143(3) of the Act, on 28/01/2014, accepting the returned income. Subsequently, the case was reopened on the basis of information received from investigation wing, and the Ld.AO completed the reassessment under section 143(3) read with section 147 by making an addition of Rs.20,00,000/- as unexplained expenditure.

2.1 Against the assessment order passed, assessee filed appeal before the Ld.CIT(A). The Ld.CIT(A) confirmed the order passed by the Ld.AO by observing as under:

“7.2. The issue on merits pertains to the detection of documentary details regarding alleged cash payment / donation of Rs. 20 lakhs to M/s Judutt Kushal Suri Khadhar Gachha Pedhi Trust, during the year under consideration. The departmental investigation wing conducted a survey operation at Ahmadabad in the case of M/s Kalavati Finance,

wherein it was found that the appellant, had paid cash donation of Rs. 20 lakhs to the above cited entity namely M/s Judutt Kushal Suri Khadhar Gachha Pedhi Trust. The AG has extracted a properly typed donation-list of the impugned donations, which clearly reflected the assessee's cash donation of Rs. 20 lakhs.

The AO has recorded a specific finding that, upon verification it came to his notice that the amount of Rs. 20 lakhs pertained to the appellant and that the telephone number (9844066064) and the address of the assessee available on the said document, indeed pertained to the assessee. In light of these facts, it is amply clear that the cash amounts in question relate to the assessee in question. It is also placed on record by the AG that, the directors of the firm M/s Kalavati Finance. Mr. Deepchand Bafna and Mr. Ashok Bafna were the founding members of the trust alongwith the assessee. The appellant's flat-denial of the transaction at the assessment or the present appellate stage cannot be summarily accepted, and the documentary evidences placed on record cannot be rejected merely because there is no book-trail available. The Assessee's bland argument is that, the impugned cash transactions (appearing in loose sheets) have not been corroborated by entries in any books of account. It is plain logic that, the very purpose of the impugned cash transactions is apparently such as would not form part of any regular books of account. Therefore the application of this sum (shown to be a donation) represents expenditure of an unexplained nature. The appellant on the contrary has failed to substantively refute the AO's findings that the telephone numbers; address and common directorship of the appellant in the concerned entity, gives definitive credence to the conclusion that, there was a live and apparent nexus established in respect of the impugned transaction. In the given facts & circumstances, there is a valid assumption on basis of available documentary evidence that cash payment of Rs. 20 lakhs was indeed made. However, since the nature of expenditure and its application is not sufficiently explained by the appellant, for reasons best known to him, the AO's action of treating the same as unexplained expenditure cannot be set-aside.”

3. Aggrieved by the order passed by the Ld.CIT(A) assessee is in appeal before us.

3.1 The Ld.AR submitted that, assessee is one of the trustee of the trust named, ‘Shri Jindutt Kushalsuri Khartar Gachha Pedhi’. He submitted that assessee had contributed a sum of Rs.11,111/- towards corpus fund of the said trust during the

financial year relevant to assessment year under consideration. The Ld.AR submitted that, during the course of survey at M/sKalavathi Finance by the investigation wing at Ahmedabad, it was found that assessee paid cash donation of Rs.20 Lacs towards trust named "Jindutt Kushalsuri Khartar Gachha Pedhi". The Ld.AO observed based on the information received from the investigation wing that, the directors of M/s.Kalavathi Finance were members of the trust. The Ld.AO observed that, list was found from the premises of M/s.Kalavathi Finance, stating donations received in the name of the trust. He observed that the name of assessee was mentioned in the alleged list having paid a sum of Rs.20 Lacs as donation to the said trust during financial year 2010-11.

3.2 The Ld.AR submitted that, the Ld.AO based on such information came to the conclusion that, income escaped assessment in the hands of assessee amounting to Rs. 20 Lacs.

3.3 The Ld.AR submitted that, the Ld.AO relied on information for which there was no corroborating evidence and therefore the addition made in the hands of assessee is bad in law. He submitted that assessee filed letter dated 21/12/2018 before the Ld. AO and denying the payment of Rs.20 lakhs having made to the trust. The said letter is placed at page 45-46 of paper book. Ld.AR submitted that, the Ld.AO had summoned the trust vide notice dated 13/11/2018. In response to the said notice the trust also denied having received any payment of Rs.20 lakhs from the assessee.

3.4 The Ld.AR thus submitted that, the Ld.AO without carrying out any further verification of facts made addition in the hands of assessee as unexplained expenditure.

4. On the contrary the Ld.Sr.DR submitted that the list found during the course of search at the premises of M/s Kalavathy Finance contained the name of assessee with all the details like address, mobile number etc., which were correct. He relied on the orders passed by authorities below to support the addition in the hands of assessee.

5. We have perused submissions advanced by both sides in the light of the records placed before us.

5.1 We note that the said amount alleged to have been paid by assessee in cash to the said trust is not corroborated by any other evidences by the Ld.AO. The Department has not been able to falsify the correctness of the letter/confirmation filed by the assessee and the trust, denying any payment having made/received. Under such circumstances such addition made by the Ld.AO cannot be sustained.

5.2 We are therefore unable to agree with the addition having confirmed by the Ld.CIT(A). We direct Ld.AO to delete the addition made on account of unexplained expenditure in the hands of assessee.

Accordingly ground No. 4 raised by assessee stands allowed.

6. Ground No.5 is consequential in nature and therefore need not require any adjudication.

6.1 As we have considered the issue on merits, we are not adjudicating the legal issue raised by assessee in ground 2-3 as it has become academic at this stage.

In the result appeal filed by assessee stands allowed.

Order pronounced in open court on 15th July, 2021

Sd/-

(Chandra Poojari)
Accountant Member

Sd/-

(Beena Pillai)
Judicial Member

Bangalore,
Dated 15th July, 2021.
Vms

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.

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-7-2021		Sr.PS
3.	Draft proposed & placed before the second member	-7-2021		JM/AM
4.	Draft discussed/approved by Second Member.	-7-2021		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-7-2021		Sr.PS/PS
6.	Kept for pronouncement on	-7-2021		Sr.PS
7.	Date of uploading the order on Website	-7-2021		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-7-2021		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