

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

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

ITA No.763/Bang/2018
Assessment year : 2013-14

Shri S L Chandrashekar, No.1400, 12 th ‘B’ Cross, 2 nd Stage 2 nd Phase, WOC Road, Mahalakshimpuram, Bangalore – 560 086. PAN: BCGPS 0812P	Vs.	The Assistant Commissioner of Income Tax, Circle 6(2)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Sudarshan Kaniyar, CA
Respondent by	:	Shri Kannan Narayanan, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	20.07.2021
Date of Pronouncement	:	20.07.2021

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order dated 20.10.2017 of the CIT(Appeals), Bengaluru-6, Bengaluru for the assessment year 2013-14.

2. The assessee has raised the following grounds:-

“1. The ACIT Circle-6(2)(1) has committed a serious error while passing the order and the same is not sustainable on both law and facts.

2. The ACIT has made several additions to the toto income which is not supported by any material facts and the additions made are at random and there is no reasoning.
3. The ACIT, while passing the order u/s 144 shall take into account all relevant material which the officer has gathered and then determine the sum payable by the assessee.
4. The learned CIT(A), Bengaluru-6 in the order passed u/s 250 dated 20-10-2017 has, in paragraphs 6 point 7 has admitted that, I have submitted the relevant records in support of the transactions of sundry creditors, but in paragraphs 10 and 11 has stated that "the mere possession of details and has not produced any such details". Therefore it is clearly evident that the CIT (A)-Bengaluru-6 has erroneously proceeded to pass the order of dismissal.
5. Further in paragraph 6, point 6, the CIT(A)-Bengaluru-6, has stated that transactions are supported with detailed information and explained for. But has again not considered the same and has failed to appreciate the facts.
6. Further in paragraph 6 point 5, has stated that interest on land loan is supported by the letter from the bank for which the relevant document has been submitted, but while passing the order has erred in concluding that, the same is devoid of necessary evidence.
7. Further for the points mentioned in paragraph 6 points 1,2,3,4,5., I have produced the ledger copies and since the transactions are mostly in cash, with small amounts individual amounts, the documents are nearly in thousands of vouchers in numbers, have explained before the CIT(A)- Bengaluru-6, the CIT(A)-Bengaluru-6, has not appreciated the facts and merely without applying proper application of mind, which was ought to have been exercised before passing the order of dismissal has erred.
8. Viewed from any angle, the impugned order is totally contrary to all canons of law and well settled principles by the higher courts.

9. The impugned order is bad, illegal and unsustainable in the eyes of law. The impugned order is otherwise opposed to law and unjust.

10. The appellant reserves liberty to raise such other grounds at the time of considering the present appeal on merits.”

3. The assessee is an individual deriving income from Business and income from Other Sources. The assessee for the year under consideration e-filed his return of declaring total income of Rs. 44,07,880/-. The same was processed u/s 143(1) and the case was selected for scrutiny under CASS. Notice u/s 143(2) dated 03/09/2014 and notice u/s 142(1) r.w.s 129 were issued on 18/08/2015 & 15/10/2015 and served on the appellant. The assessment was completed u/s 144 of the Income-tax Act, 1961 [the Act] by the AO. The AO was of the view that assessee failed to furnish the confirmations from sundry creditors, unsecured loan, interest on land loan, labour charges paid, transport charges, staff welfare and repair and maintenance and hence the following additions were added back to the returned income:-

Sl No.	Particulars	Amount disallowed
1.	Labour Charges Paid	Rs.8,62,499/-
2.	Interest on land loan	Rs.12,50,315/-
3.	Transport charges	Rs.2,00,000/-
4.	Staff welfare	Rs.2,00,000/-
5.	Repair and maintenance	Rs.2,00,000/-
6.	Unsecured loan	Rs.15,00,000/-
7.	Sundry, Creditors	Rs.15,00,000/-
	Total	Rs.57,12,814/-

4. The assessee in appeal before the CIT(Appeals) submitted that hearing notices were not served since the place/office of the assessee had shifted and that he was not aware of Assessment Proceedings. It was further contended that he is in possession of all the Vouchers/Invoices in

support of expenditure incurred on the basis of which the Books of Account were Audited u/s 44AB of the Act. The assessee has also contended that the income declared was 10% which was more than 8% of the Income u/s 44AD of the Act.

5. The CIT(Appeals) was, however, of the view that the Appellant had not intimated his change in address to AO and more so he had not produced any evidence in this regard and therefore rejected the contention of non-service of notices. Further the assessee failed to produce such details before Assessing Officer in the course of Assessment Proceedings as well as in the appellate proceedings. Therefore, the assessee's appeal was dismissed. Against this, the assessee is in appeal before us.

6. We have heard both the parties and perused the material on record. The contention of the assessee is that the assessment order is passed *ex parte* u/s. 144 of the Act and the assessee was deprived opportunity of hearing before the AO. However, the assessee produced the necessary documents and proof of creditors and unsecured loans showing identity, credit worthiness and genuineness of the transactions before the CIT(Appeals). However, the CIT(A) has not considered the same and dismissed the appeal on the ground that sufficient details were not produced. The Id. AR pleaded for another opportunity before the CIT(Appeals) to present his case properly, for which the Id. DR strongly opposed and requested for confirming the order of CIT(Appeals). In our opinion, as seen from the Paperbook submitted by the assessee before us, the assessee has produced the letter for interest on bank loan, copy of statements from Sudha Co-op. Bank, HDFC bank and SBI to support various credits received by the assessee and also produced various details called for by the lower authorities. The CIT(Appeals) ought to have considered these details and given a proper finding on these issues. However, he has passed a cryptic order. We are therefore of the view that

it is appropriate to remit the issues back to the file of CIT(Appeals) to consider the arguments of the assessee with supporting documents in a proper perspective and decide the issues afresh in accordance with law. Accordingly, we remit the entire issues to the file of CIT(Appeals) for fresh decision.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on this 20th day of July, 2021.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 20th July, 2021.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.