

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

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI GEORGE GEORGE K., JUDICIAL MEMBER

ITA No. 410/Bang/2020
Assessment year: 2014-15

Sri Kempaiah Vinay, No.67, Geleraya Balaga Colony, 1 st Phase, Mahalakshmiपुरam, Bangalore – 560 086. PAN: AEBPV 1933J	Vs.	The Assistant Commissioner of Income Tax, Circle 6(2)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Pratibha, Advocate
Respondent by	:	Shri Shashidhar N.S., Addl.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	04.08.2021
Date of Pronouncement	:	04.08.2021

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order of CIT(Appeals) dated 31.01.2020 for the assessment year 2014-15 on the following grounds :-

- “1. The learned CIT(A) erred in passing the order in the manner he did.
2. The learned CIT(A) erred in confirming the disallowance of Rs.48,33,200/- as unexplained expenditure without appreciating the submissions of the Appellant.
3. The learned CIT(A) ought to have appreciated the fact that the Appellant had furnished bank statements wherein it

showed self withdrawals and payments made to taxi hire charges, food, staff & driver wages etc. and accordingly he ought to have allowed the expenditures incurred for business purpose of the Appellant.

4. The learned CIT(A) erred in adding Rs.15,00,000/- towards low drawings without appreciating the submission of the Appellant.

5. The learned CIT(A) ought to have appreciated that the Appellant has shown 12,00,000/- drawing for the AY 2013-14 and for the relevant assessment year shown Rs.18,00,000/- and the ld. AO has disallowed the Rs. 15,00,000/- on the ground that the Appellant has not shown the drawings.

6. The learned CIT(A) erred in adding Rs.9,00,000/- towards cash deposit into the bank account under Section 68 of the Act without appreciating the submission of the Appellant.

7. The ld CIT(A) ought to have appreciated that the appellant has filed reconcile statement of cash book as well as the bank book and filed the confirmation letters also. Thus the addition confirmed is bad in law.

8. The learned CIT(A) erred in upholding the interest u/s 234B and 234C of the Act.

9. Without prejudice the disallowances as confirmed by the learned CIT (A) are arbitrary excessive and ought to be reduced substantially.

10. For these and such other grounds that may be urged at the time of hearing the Appellant prays that the appeal may be allowed.”

2. The first ground is with regard to disallowance of Rs.48,33,200 as unexplained expenditure. During the course of assessment proceedings, the details of expenditure with bills and vouchers as evidence for cash expenses of RS.74,42,095 was called for which the assessee failed to produce. However, the AO allowed an expenditure of Rs.26,08,895 not incurred in cash towards service tax, vehicle insurance, car loan interest,

telephone expense and depreciation. The balance of Rs.48,33,200 was disallowed which was not at all supported by any bills and vouchers. On appeal, the CIT(Appeals) confirmed the same. Against this, the assessee is in appeal before us.

3. The contention of the Id. AR is that assessee has received a sum of Rs. 2 crores as commission from ESS and ESS Infrastructure Pvt. Ltd. out of which Rs.20 lakhs has been deducted as TDS. The assessee executed project at Mysore, which is situated 150 Kms. From Bangalore. Hence the assessee frequently visited Mysore wherein the assessee met prospective customers to whom the assessee provided travelling, food and lodging expenses amounting to Rs.48,33,200. According to the Id. AR it is very reasonable compared to the earning of income by the assessee.

4. The Id. DR relied on the order of the CIT(Appeals).

5. We have heard both the parties and perused the material on record. In this case, the assessee claimed car hiring charges on 53 occasions which has been paid by cash. The amount of car hiring charges is Rs.8,25,640. The assessee placed oral arguments that it is incurred towards travelling from Bangalore to Mysore for business purpose. However, no evidence has been furnished in the form of bills, vouchers and receipts. The assessee also claimed drivers salary of Paramesha at Rs.1,63,800 and Praveen at Rs.1,67,000. When the assessee is having car and drivers, the necessity of hiring cars is not explained. The explanation of assessee is contradictory in nature.

6. Further it was submitted that on 43 occasions the assessee provided boarding and lodging facilities to his customers, each payment of which is more than Rs.10,000 and incurred in cash only. No hotel bills for lodging

and boarding has been produced. For claiming all these expenditure, assessee has not maintained books of account and produced necessary bills, vouchers and receipts. The assessee supports this claim stating that the amount has been withdrawn from the bank account. Even being so, it cannot be proved whether it was spent towards meeting this expenditure. Hence, in the absence of requisite evidence to prove that expenditure has been incurred wholly and exclusively for the purpose of business, we are not in a position to allow the claim of the assessee. Accordingly, this ground of appeal of the assessee is dismissed.

7. Ground No.2 is with regard to addition of Rs.50 lakhs towards low drawings. In this assessment year, the assessee has not shown any drawings in its books of account. The assessee made a plea that he has been staying with parents and no expenditure has been incurred. However, in the earlier AY 2013-14, the assessee has shown drawings of Rs.12 lakhs. Proportionately the AO for this assessment year has estimated it at Rs.15 lakhs. Even before us, the assessee is not able to place any reasonable explanation regarding non-incurring of any expenditure towards personal. Hence, we are of the opinion that that at least the assessee incurred expenditure as in the earlier year. Accordingly, we direct the AO to disallow on the issue of low drawings at Rs.12 lakhs instead of Rs.15 lakhs. This ground is partly allowed.

8. The next ground is regarding sustaining the addition of Rs.9 lakhs u/s. 68 of the Act. The assessee has deposited a sum of Rs.9 lakhs in the bank account of Janatha Seva Co-operative Bank. The assessee has not explained the source for the deposits. Hence the same was considered as unexplained credit u/s. 68.

9. Before us the Id. AR submitted that the assessee is having enough earlier withdrawals to deposit into the bank. Further, it was submitted that

the assessee had taken amount in cash for investment from one Sh. M. Nagraju Rs. 5,00,000/- on 13.04.2013, Sh. G. B. Chikkona Rs. 2,40,000/- on 15.04.2013 and Sh. H. N. Ravi. Rs. 4,00,000/- on 28.04.2013. The confirmation letters from the above persons for the amount received was filed before the AO. The whole amount of Rs. 31,40,000/- was deposited for purchase of a site but since it did not materialize, the whole amount was received back by him and a part of it was subsequently utilized for incurring expenditure for business purposes. As on 18.09.2013, the assessee was left with cash of only Rs. 9 lakhs from this original Rs. 31.40 lakhs and this was subsequently deposited into the bank. The cash deposits were thus out of the amount available with him.

10. The Id. DR relied on the order of the CIT(Appeals) and submitted that explanation of assessee was rejected for the following reasons:-

- (i) The opening cash balance in the books as on 1.4.2013 is only Rs.235388/-. It should have included Rs. 20 lakhs withdrawn from the bank during March 2013 (FY 12-13).
- (ii) No proof has been furnished regarding the proposal for purchase of the above referred site, and its subsequent cancellation.
- (iii) Though the confirmation letters from Sh. M. Nagraju (for Rs. 5,00,000/- on 13.04.2013), Sh. G. B. Chikkona (for Rs. 2,40,000/- on 15.04.2013) and Sh. H. N. Ravi (for Rs. 4,00,000/- on 28.04.2013) have been furnished, yet the balance sheet filed for 31.03.2014 does not show any liability against the said names.
- (iv) There is no entry in the cash book to indicate that loan amount has been returned to the lenders.

11. We have gone through the case laws relied on by the assessee. In our opinion, the assessee has to explain that the earlier withdrawals were available to redeposit into bank account. Accordingly, we remit this issue

to the file of AO for fresh consideration. The assessee has to file necessary evidence by reconciling the available cash and deposits into bank account. Ordered accordingly.

12. In the result, the appeal by the assessee is partly allowed.

Pronounced in the open court on this 04th day of August, 2021.

Sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 04th August, 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.