

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC-B" BENCH : BANGALORE**

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT

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| ITA No.132/Bang/2020 |
| Assessment Year : 2016-17 |

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| Shri. Sadanand Ramachandra Shervegar, 76/41, 14 th Cross, 11 th Main, Padmanabhanagar, Bengaluru City – 560 070. PAN : AESPS 6348 P | Vs. | ITO, Ward – 7(2)(4), Bengaluru. |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Shri. Hariprasad Nayak, CA |
| Respondent by | : | Shri. Ganesh R. Ghale, Standing Counsel |

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| Date of hearing | : | 24.08.2021 |
| Date of Pronouncement | : | 25.08.2021 |

ORDER

Per N.V. Vasudevan, Vice President

This is an appeal by the assessee against the order dated 27.11.2019 of CIT(A)-7, Bengaluru, in relation to Assessment Year 2016-17.

2. The only issue that was pressed for adjudication in this appeal by the assessee is with regard to the addition of Rs.33,00,000/- made by the AO as unexplained cash credit under section 68 of the Income Tax Act, 1961 (hereinafter called "the Act"). The assessee is an individual. He derives income from running Bar and Restaurant business under the name and style "Sagar Bar and Restaurant". In the course of assessment proceedings, the AO noticed that the assessee had deposited a sum of Rs.33,00,000/- in his bank account with State Bank of India (SBI) in various dates. The AO called upon the assessee to explain the source of funds from which the

aforesaid deposit of Rs.33,00,000/- was made in the bank account. The assessee in a letter dated 10.12.2018 submitted before the AO that the sum of Rs.33,00,000/- was funds given to the assessee by one Mr. Suresh Shervegar to enable the assessee to get bar licence transferred in assessee's name but the funds were ultimately used for meeting the expenses in connection with the bar. The assessee filed confirmation from Mr. Suresh Shervegar.

3. The AO with a view to verify the genuineness of the transaction, issued summons under section 131 of the Act for examination of Mr. Suresh Shervegar. But Mr. Suresh Shervegar did not respond to the summons. The AO called upon the assessee to furnish documentary evidence in support of the claim of receipt of money from Mr. Suresh Shervegar. Since no such evidence was filed by the assessee, the AO treated the sum of Rs.33,00,000/- deposited in the bank account as unexplained cash credit under section 68 of the Act.

4. Before the CIT(A), the assessee submitted that only a sum of Rs.21,00,000/- was taken from Mr. Suresh Shervegar and the same was by way of transfer through RTGS/NEFT. The assessee claimed that another sum of Rs.3,00,000/- was taken from Mr. Santhosh Shervegar and the remaining sum of Rs.9,00,000/- was transfer of funds from the assessee's bank account with Corporation Bank account to the assessee's bank account with SBI. Since no evidence was filed in support of the aforesaid claim, the CIT(A) confirmed the order of the AO.

5. Aggrieved by the order of the CIT(A), the assessee is in appeal before the Tribunal. Before the Tribunal, the assessee has filed following documents as additional evidence:

| Sl. No. | Particulars | Page no. |
|----------------|---|-----------------|
| 1 | Additional evidence in the form of relevant extract of bank statements of the loan creditor- | 98-102 |
| 2 | Additional evidence in the form of relevant extract of bank statements of the loan creditor- | 103-106 |
| 3 | Additional evidence in the form of copy of income tax return of the loan creditor- Mr. | 107-111 |
| 4 | Additional evidence in the form of affidavit of loan creditor- Mr. Santhosh Shervegar | 112-113 |
| 5 | Additional evidence in the form of affidavit of Mr. Laxman Shervegar, father and sub-loan creditor of Mr Suresh Shervegar | 114-115 |
| 6 | Additional evidence in the form of copy of income certificate issued by Senior Assistant Director of Horticulture (ZP), Udupi, a Government Authority of the loan sub-creditors- Mr. Laxman Shervegar | 116-132 |
| 7 | Ledger statement of the loan from Unsecured Creditors | 133 |

6. Learned Counsel for the assessee submitted that under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963, regarding production of additional evidence before the Tribunal, it is the discretion of the Tribunal to admit additional evidence and such discretion has to be exercised keeping in mind the need of the Tribunal to pass orders on the appeal or for any other substantial cause or if the Income Tax authorities have decided the case without giving sufficient opportunity to the assessee. It was submitted that the assessee is a small businessman earning business income from running bar and restaurant with total income offered to tax in the Income tax return being Rs 8,80,860/-, that an addition of Rs 33,00,000/- under Section 68 of the Act is about 4 times the income declared in the return of income. The assessee will be saddled with tax liability of Rs 14,21,045, including interest u/s 234B and 234C of the Act. It was submitted that a letter of confirmation of loan was obtained from the creditor and furnished before the AO, during the course of assessment. Further, bank statements of the assessee were produced during the course of assessment. The Authorised representative of

the assessee was under the impression that the aforesaid information furnished were sufficient for establishing the genuineness of the transaction under question. However, on conclusion of the assessment proceedings, the AO has made the impugned addition, without offering any further opportunity to the Appellant of being heard, only on the basis of non-appearance of the loan creditor/ non-submission of the documents by the loan creditor in response to the summons dated 17.12.2018 issued u/s 131 of the Act. During the Appellate proceedings before the Commissioner of Income tax (Appeals), the AR of the Appellant CA. Manohar BV personally appeared before the authority and made oral representation of the case. An attempt was made to trace each receipt of loan to the bank statement of the assessee to prove that the same were received through proper banking channel. Unfortunately, the appeal was dismissed without allowing any further opportunity to the assessee whatsoever. Thus, it is the submission of the Appellant that there has been violation of natural justice. No specific documents were sought by the authorities from the assessee before arriving at the decision adverse to the assessee. Further, these documents- being relating to a third person, there was dependencies on the said third persons for collation of the same. Therefore, required longer time for its collation and therefore, could not be submitted before the lower authorities. It was submitted that the Tribunal is the last fact-finding authority. The appeal in question being driven by facts and evidences, any denial to admit the additional evidences at this stage would result in irreversible damage to the assessee.

7. The learned Counsel for the assessee relied on the decision of Hon'ble Supreme Court in the case of K Venkatarmaiah versus A Reddy

AIR 1963 SC 1526, the Apex Court held as follows in interpreting the words any other substantial cause:

“There may well cases where even though the court finds it is able to pronounce judgment on the state of record as it is, and so, it cannot strictly say that it requires additional evidence `to enable it to pronounce judgment', it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Such a case will be one for allowing additional evidence.”

The assessee therefore prayed for admission of additional evidence in the interest of justice.

8. The learned DR opposed the prayer of the learned Counsel for the assessee for admission of additional ground. According to him, the assessee has not shown any valid reasons as to why the additional evidence now filed before the Tribunal was not filed before the lower authorities. According to him, the additional evidence now sought to be filed is purely an afterthought.

9. I have considered the request for admission of the additional evidence and I find that the additional evidence is in the form of bank statements and it cannot be said that the additional evidence sought to be filed is to fill up the lacunae in the case of the assessee. In my opinion, the additional evidence is necessary to enable the Tribunal to pass orders on the issue in dispute in the appeal and hence the additional evidence is admitted.

10. As far as the merits of the addition of Rs.33,00,000/- is concerned, the statement of account of the assessee in the name of Sagar Bar and Restaurant with SBI, Malpe shows the following deposit of Rs.3,00,000/- on 11 different dates:

1-Apr-2015 to 31-Mar-2016

| <i>Date</i> | <i>Particulars</i> |
|-------------------|---|
| <i>06-05-2015</i> | <i>Dr State Bank of India-CA 306855</i> |
| <i>08-06-2015</i> | <i>Dr State Bank of India-CA 306855</i> |
| <i>20-08-2015</i> | <i>Dr State Bank of India-CA 306855</i> |
| <i>11-09-2015</i> | <i>Dr State Bank of India-CA 306855</i> |
| <i>24-09-2015</i> | <i>Dr State Bank of India-CA 306855</i> |
| <i>16-10-2015</i> | <i>Dr State Bank of India-CA 306855</i> |
| <i>11-11-2015</i> | <i>Dr State Bank of India-CA 306855</i> |
| <i>10-12-2015</i> | <i>Dr State Bank of India-CA 306855</i> |
| <i>11-01-2016</i> | <i>Dr State Bank of India-CA 306855</i> |
| <i>09-02-2016</i> | <i>Dr State Bank of India-CA 306855</i> |
| <i>09-03-2016</i> | <i>Dr State Bank of India-CA 306855</i> |

11. The explanation of the assessee with regard to source of cash deposit before the Tribunal is as follows:

(i) Deposit on 06.04.2015 : Rs.3,00,000/- by RTGS from Bank A/c of Mr. Santosh Shervegar with Syndicate Bank, Perdoor. Copy of Bank A/c. now filed as additional evidence at Pgs.102 to 106 of the Paper Book. Affidavit of Mr. Santosh Shervegar explaining his source is filed as additional evidence (Pages 112 to 113 of Paper Book).

(ii) Deposit of Rs.3,00,000/- each on 08.06.2015, 20.08.2015, 11.09.2015, 16.10.2015, 11.11.2015 and 10.12.2015 is explained as money given by Mr. Suresh Shervegar. The Bank A/c. of Mr. Suresh Shervegar for the period 24.07.2015 to 10.12.2015 with Corporation Bank, Perdoor showing payment to assessee is reflected in these statements. Bank statement of Mr. Suresh Shervegar with Vijaya Bank, Perdoor showing payment of assessee of Rs.3,00,000/- on 08.06.2015 has also been filed. These are filed as additional evidence at pages 98 to 102 of

assessee's Paper Book. Income Tax returns for Assessment Year 2015-16 and 2016-17 of Mr. Suresh Shervegar (copy at pages 107 to 111 is also filed as additional evidence.

- (iii) The deposit of Rs.3,00,000/- each on 24.09.2015, 11.01.2015, 11.01.2016, 09.02.2016 and 09.03.2016 are RTGS transfer of funds from assessee's Bank A/c with Corporation Bank (pages 86 to 94 of Paper Book).
- (iv) Additional evidence in the form of affidavit of Mr. Laxman Shervegar (at pages 114 to 115) stating that he had given Rs.40 lakhs by cash out of his agricultural income to his son Mr. Suresh Shervegar as gift. Out of this, he had given fund to the assessee who is Mr. Laxman Shervegar's brother's son. Evidence of agricultural income at pages 116 to 132 of the assessee's Paper Book.

12. In my opinion, the documents now sought to be filed by the assessee as additional evidence prima facie shows the source of funds is from Banks and requires examination by the AO and the AO has to be satisfied with the identity, capacity of the creditors and the genuineness of the transaction. For carrying out this exercise, it is necessary that the impugned order of the CIT(A) should be set aside and the issue with regard to addition of Rs.33,00,000/- under section 68 of the Act has to be remanded to the AO for fresh examination. The AO will afford opportunity of being heard to the assessee and decide the issue in accordance with the law in the light of the additional evidence filed by the assessee before the Tribunal. For statistical purposes, the appeal of the assessee is treated as allowed.

13. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(N. V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated : 25.08.2021.
/NS/*

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.