

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE “SMC-C” BENCH, BANGALORE**

Before Shri George George K, Judicial Member

IT(IT)A No.151/Bang/2021 : Asst.Year 2017-2018

Sri.Jerry Mathew Elias Kovoor B-1100, Chartered Coronet Arakere, Bannerghatta Road Bengaluru – 560 076. PAN : AEQPK8249F.	v.	The Income Tax Officer Ward (International Taxation) 1(2), Bengaluru.
(Appellant)		(Respondent)

Appellant by : Sri.Venkatesh Kumar, Advocate
Respondent by : Sri.Ganesh R.Ghale, Standing Counsel

Date of Hearing : 24.09.2021	Date of Pronouncement : 27.09.2021
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ORDER

This appeal at the instance of the assessee is directed against the CIT(A)'s order dated 05.02.2021. The relevant assessment year is 2017-2018.

2. Two issues are raised in this appeal – (i) whether interest on loan taken for purchase of vacant site goes to increase the cost of acquisition u/s 48 of the I.T.Act; and (ii) whether the CIT(A) is justified in confirming the addition of Rs.6,84,423 made by the Assessing Officer as unexplained money u/s 69A of the I.T.Act. I shall adjudicate the above issues as under:-

(i) Whether interest paid on loan goes to increase the cost of acquisition

3. The assessee had purchased a vacant site from Bangalore Development Authority by taking loan from ICICI Bank. The total interest paid amounting to Rs.2,00,369 was

claimed as cost of acquisition of asset u/s 48 of the I.T.Act while computing the long term capital gains (when the site was sold during the relevant assessment year). The Assessing Officer denied the amount of Rs.2,00,369 as part of cost of acquisition by holding that the interest expenditure will be claimed as deduction u/s 24 of the I.T.Act in the year of payment, and accordingly, the indexed cost of acquisition claimed on interest paid was also disallowed.

3.1 Aggrieved, the assessee preferred an appeal to the first appellate authority. The view taken by the Assessing Officer was confirmed by the CIT(A).

3.2 Aggrieved, the assessee has raised this issue before the Tribunal. The learned AR submitted that the assessee has not claimed as deduction u/s 24 of the I.T.Act the interest payment on loan taken from ICICI Bank. It was stated that the interest claimed u/s 24 of the I.T.Act is in respect of purchase / construction of a house property and not in respect of purchase of vacant site. It was further submitted that the Hon'ble Andhra Pradesh High Court in the case of *Addl.CIT v. K.S.Gupta reported in (1979) 119 ITR 372 (AP)* had categorically held that land purchased with borrowed money and interest payment of such borrowals should be included in the cost of acquisition for the purpose of determination of capital gains.

3.3 The learned Standing Counsel strongly supported the orders of the Income Tax Authorities.

3.4 I have heard rival submissions and perused the material on record. The assessee has not placed on record his return of income and computation statement. Therefore, I am not in a position to determine whether the interest paid on ICICI Bank loan was claimed as deduction u/s 24 of the I.T.Act. In such circumstances, I am of the view that the matter needs to be decided by the A.O. afresh. Accordingly, this issue is restored to the files of the A.O. The A.O. is directed to examine the interest amounting to Rs.2,00,369 which was claimed as deduction u/s 24 of the I.T.Act. In the event, the assessee establishes that there is no claim of deduction u/s 24 of the I.T.Act in respect of interest paid amounting to Rs.2,00,369, the A.O. shall consider the claim that interest paid whether it goes to increase the cost of asset in light of the dictum laid down by the Hon'ble Andhra Pradesh High Court in the case of *Addl.CIT v. K.S.Gupta (supra)* and shall take a decision in accordance with law.

3.5 In the result, the ground relating to computation of capital gains in respect of interest paid on loan, whether it goes to increase the cost of acquisition of land, is allowed for statistical purposes.

(ii) Addition of Rs.6,84,423 as unexplained money u/s 69A of the I.T.Act.

4. During the course of assessment proceedings, the A.O. examined bank statement of the assessee maintained with State Bank of India. The assessee was directed to explain the

source of credits appearing in the bank statement. The assessee filed submissions online. It was noticed that the assessee had received amounts from relatives amounting to Rs.6,84,423. The A.O. vide office letter dated 27.11.2019 asked the assessee to substantiate the creditworthiness of the persons from whom the amounts have been received. In response to the letter, the assessee filed an e-mail, wherein it is stated that assessee's wife had received gift from her sister and mother. Further, the assessee's mother was having bank deposits and subsequent to her death, the FD in the joint name were transferred to the assessee's account. The submissions of the assessee was not accepted by the Assessing Officer and he added a sum of Rs.6,84,423 as unexplained money u/s 69A of the I.T.Act. The relevant finding of the A.O. in this regard, reads as follow:-

“5.1 The assessee has not substantiated the gifts received by any supporting documents. Hence the sum of Rs.6,84,423/- is treated as unexplained money u/s 69A of the I.T.Act and is accordingly added to the returned income. Penalty u/s 271AAC(1) of Income tax Act, initiated for unexplained money brought to tax u/s 69A of the Income Tax Act.”

4.1 Aggrieved, the assessee preferred an appeal to the first appellate authority. Before the first appellate authority, the assessee submitted additional evidence under Rule 46A of the I.T.Rules to prove the source of gifts. The CIT(A), after extracting the provisions of section 69A of the I.T.Act, did not admit the additional evidence for the reason that the assessee was given ample opportunity during the course of assessment proceedings and the additional evidence produced by the

assessee was not considered by the CIT(A). Thus, the CIT(A) confirmed the view taken by the Assessing Officer.

4.2 Aggrieved, the assessee has raised this issue before the Tribunal. The learned AR submitted that the assessee is an NRI. It was stated that the assessee could not file the necessary materials since it was not asked for by the Assessing Officer. Further, being an NRI, the relevant document could not be furnished during the assessment proceedings as he was abroad. Before the first appellate authority, it was submitted that the assessee made all efforts and produced the additional evidences. It was stated that the CIT(A) has grossly erred in not taking additional evidence on record. Therefore, the learned AR submitted that in the interest of justice and equity, one more opportunity should be granted to the assessee to prove the source of credits with regard to Rs.6,84,423.

4.3 The learned Standing Counsel supported the orders of the Income Tax Authorities.

4.4 I have heard rival submissions and perused the material on record. Many of the credits appearing in assessee's bank account is on account of bank transfers. The assessee's submission that the FD deposits in the name of his deceased mother, which were in the joint account with the assessee, were automatically transferred to the assessee's bank account cannot be totally ruled out. The assessee being an NRI and not being present in India during assessment proceedings, is

sufficient cause for not producing the necessary material / evidence before the A.O. In the interest of justice and equity, I am of the view that the additional evidence, which is furnished, goes to the root of the issue and for substantial cause, I admit the same. Since the additional evidence is taken on record, the matter is restored to the files of A.O. The A.O. is directed to consider the evidences placed with regard to the source of credits in the bank account to the extent of Rs.6,84,423, which has been disbelieved by the A.O. The A.O. is directed to afford a reasonable opportunity of hearing to the assessee and take a decision in accordance with law. It is ordered accordingly.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 27th day of September, 2021.

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 27th September, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-12, Bengaluru
4. The Pr.CIT-5, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore