

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

**Before Shri George George K, Judicial Member**

ITA No.2379/Bang/2019 : Asst.Year 2009-2010

Sri.H.S.Abdul Hakeem No.35 B, 4 <sup>th</sup> Cross, Anepalya Bengaluru – 560 030. <b>PAN : AAPPH3609H.</b>	v.	The Income Tax Officer Ward 5(3)(1) Bengaluru.
(Appellant)		(Respondent)

Appellant by : Sri.Narendra Sharma, Advocate  
Respondent by : Sri.Ganesh R.Ghale, Standing Counsel

<b>Date of Hearing : 08.10.2021</b>	<b>Date of Pronouncement : 11.10.2021</b>
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**ORDER**

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 23.09.2019. The relevant assessment year is 2009-2010.

2. The solitary issue argued on the main ground of appeal is that the assessment order dated 28.12.2011 passed u/s 144 of the I.T.Act is served only on 15.03.2012, hence, the same is barred by limitation. The assessee has also raised additional ground on merits, namely, that addition u/s 68 of the I.T.Act amounting to Rs.17,11,500 is bad in law.

3. The brief facts of the case are as follows:

The Assessing Officer had made an addition of Rs.17,11,500 u/s 68 of the I.T.Act being cash deposits in saving bank account in the name of the assessee. The relevant observation of the Assessing Officer reads as follows:-

*“This case is mainly selected for scrutiny to verify the transactions reflected in the AIR information that the assessee has deposited a sum of Rs.17,11,500/- in cash in a Savings Bank Account. In the absence of any details for verification, the entire cash deposit of Rs.17,11,500/- is treated as unexplained cash deposit u/s 68 of the I.T.Act in the hands of the assessee and added to the total income returned by the assessee. Accordingly, the assessment is completed accordingly.”*

4. Aggrieved, the assessee preferred an appeal to the first appellate authority. Before the first appellate authority, the assessee raised technical issues namely (i) There is no notice served u/s 143(2) of the I.T.Act and hence, the assessment completed is bad in law. (ii) The assessment order is served beyond the time prescribed, hence, barred by limitation. As regards the above two technical issues, the CIT(A) rejected the plea of the assessee. The CIT(A) did not adjudicate the issue on merits. The plea of the assessee as regards the claim that the assessment order is barred by limitation was rejected by the CIT(A) by observing as under:-

*“5. Ground No.3 & 4 that ITO to serve the Assessment order U/s.144 dated 28-12-2011 on 15-03-2012 by speed post and it should have been served on the assessee on or before 31-12-2011.However in the statement of facts the appellant has stated that show cause was not served before passing order u/s 144 which is contradictory. In order to verify the correctness, a remand report was called for from the AO and the AO has submitted as under;*

The assessee has been asked to furnish the information in support of his claims and also offered opportunities of being heard twice on 16/07/2019 at 11:00 AM and 07/08/2019 at 11:00 AM. On perusal of the records, it is seen that the assessee has neither furnished the information called for by this office nor appeared till date.

It is hereby submitted that scrutiny assessment in this case was completed on 28/12/2011 for AY 2009-10 by the ITO, Ward-13{2}, Bengaluru u/s. 144 of the

Income Tax Act, 1961 as there was no response from the assessee. The Inspector attached to the ITO, Ward-13 {2}, Bengaluru has also made efforts to serve the letters/notices calling for the details u/s.142{1} personally at the address provided by the assessee. But. the Inspector also could not serve the same as the assessee was not available at the given address and his where about was not known. However, it is submitted that the notice u/s. 143{2} of the Income Tax Act, 1961 dated 18/08/2010 has been served to the assessee through speed post and a copy of the acknowledgement is enclosed herewith. Thus, it is clear that the assessee has filed appeal first to postpone the liabilities and he has no intention to represent the case before the CIT{A}. In view of this, it is humbly prayed that the appeal filed by the assessee may please be dismissed.”

*I have perused the remand report and it is found that the appellant had not availed the opportunity of being heard and could not substantiate his claim before the AO. The appellant during the appeal proceedings has not raised any grounds on merits and all the grounds are only technical in nature which have been clarified by the AO during the remand proceedings. In view of the facts of the case, I hereby hold that the order passed by the AO is justified and therefore the grounds are dismissed.”*

5. Aggrieved, the assessee has filed an appeal before the Tribunal. Though the assessee has raised grounds of appeal for non-service of notice u/s 143(2) of the I.T.Act, no argument was raised on such grounds. Therefore, the only contention insofar as the technical issue is whether the assessment order passed u/s 144 of the I.T.Act has been issued / despatched within the time limit prescribed. The learned AR reiterated the submissions made before the Income Tax Authorities.

6. The learned Standing Counsel has filed the assessment records and submitted that the assessment order has been

dispatched within the prescribed time limit, hence, the same is valid.

7. I have heard rival submissions and perused the material on record. On perusal of the assessment records, it is clear that the assessment order dated 28.12.2011 was dispatched on 29.12.2011. The copy of the demand notice endorsing the despatch date as 29.12.2011 is clearly mentioned. A copy of the cover which dispatched the assessment order and demand notice was returned unserved to Income Tax Office on 02.01.2012 and the same is placed on record. It is the settled position of law that the assessment order is to be issued beyond the control of the Assessing Officer within the period of limitation and the same need not be served on the assessee (refer Hon'ble Karnataka High Court judgments in case of M/s.Maharaja Shopping Complex in ITA No.832/08 (judgment dated 14.10.2014) and in the case of BJNI Hotels Ltd. reported in 382 ITR 110). The period of limitation in this case being 31.12.2011, it is clear from the perusal of records that the assessment order has been dispatched by the Assessing Officer within such period i.e. 29.12.2011. Therefore, the plea of the assessee that the assessment order is barred by limitation, is rejected.

7.1 As regards the additional ground is concerned, the issue raised whether addition u/s 68 of the I.T.Act is justified in facts and circumstances of the case. The assessee has not raised any ground before the CIT(A) on merits. However, I notice in the written submission, the assessee has raised the

plea that addition u/s 68 of the I.T.Act is not correct. At para 9 of the written submission, it is urged by the assessee as follows:-

*“The cash deposit of Rs.17,11,500/- in the savings Bank account cannot be added u/s 68 of the I.T.Act, 1961 (CIT v. Bhaichand H.Gandhi 141 ITR 67 Bom)”*

7.2 I am of the view in the interest of justice and equity, one opportunity should be granted to the assessee to prove the source of cash deposits amounting to Rs.17,11,500. For this purpose, the issue on merits is restored to the files of the A.O. The assessee is directed to cooperate with the Assessing Officer. The assessee shall place necessary documentary evidences to prove the source of cash deposits amounting to Rs.17,11,500. The A.O. is directed to afford a reasonable opportunity of hearing to the assessee.

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

Order pronounced on this 11<sup>th</sup> day of October, 2021.

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 11<sup>th</sup> October, 2021.

Devadas G\*

Copy to :

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

Asst.Registrar/ITAT, Bangalore