

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

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT

ITA Nos.682 to 686/Bang/2020
Assessment Years : 2008-09 to 2011-12 and 2013-14

Shri. M. K. Kempasiddaiah, #412, 4 th ‘A’ Main, 1 st Block, 3 rd Stage, Basaveshwaranagar, Bengaluru – 560 079. PAN : ACUPM 2304 D	Vs.	ACIT, Central Circle – 1[3], Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. V. Srinivasan, Advocate
Revenue by	:	Shri. Ganesh R. Ghale, Standing Counsel for Department

Date of hearing	:	05.01.2022
Date of Pronouncement	:	06.01.2022

ORDER

Per N. V. Vasudevan, Vice President

ITA No.682/Bang/2020 to 686/Bang/2020 are 5 appeals by the Assessee against 5 orders of CIT(A)-11, Bangalore, all dated 27.4.2018 in relation to AY 2008-09 to 2011-12 and 2013-14. Since common issues are involved, these appeals were taken up together for hearing. We deem it convenient to pass a common order.

2. There is a delay of 844 days in filing these appeals by the Assessee. The reasons for the delay in filing the appeals was considered by this Tribunal and by an order dated 28.1.2021, the delay in filing the appeals was condoned.

3. We shall first taken up for consideration ITA No.683 to 685/Bang/2020, relating to AY 2009-10 to 2011-12, in so far as it relates to taxing Agricultural Income declared by the Assessee in the return of income filed in response to notice u/s.153A of the Income Tax Act, 1961 (Act), as income under the head "income from other sources". As the facts and circumstances in which this addition was made in these three appeals are similar and raises question with regard to scope of powers of an AO while framing assessment u/s.153A of the Act in respect of income which does not emanate from any material found in the course of search, we deem it appropriate to take up this issue for consideration for these three AYs together.

4. The Assessee filed return of income for AY 2009-10 to 2011-12 as per the details given below:

AY	Date of filing of return of income (ROI)	Due Date for issue of notice u/s. 143(2)	Remarks
2009-10	6.7.2010	30.9.2011	No notice u/s. 143(2) issued.
2010-11	30.3.2011	30.9.2011	No notice u/s. 143(2) issued.
2011-12	4.7.2011	30.9.2012	No notice u/s. 143(2) issued.

5. There was a search and seizure operation conducted u/s/.132 of the Act in the case of the Assessee on 18.7.2013, as part of the search operations conducted in the case of M/s.Ananda Social & Educational Trust. The Assessee filed return of income for all the aforesaid three AYs in response to notice u/s.153A of the Act, declaring Net Agricultural income of Rs.1,26,500, Rs. 1,02,000 and Rs. 1,12,000 respectively for AY 2009-10 to 2011-12.

6. In the proceedings u/s.153A of the Act, the AO called for details of Agricultural Income. The Assessee gave details of land holdings and documents in respect of Agricultural lands of 2 Acres in Belthur Village, Malavalli Taluk, Mandya District, and lands in S.No.48, at Byregowdanahalli, Nelamangala Taluk

and Kadakola Village, Mysore Taluk in S.No.35 in the name of the Assessee's son one M.K.Virapaksha. The Assessee could not produce the details of the crop and its sale bills and therefore the AO treated the agricultural income declared by the Assessee as Income from other sources and brought the same to tax as undisclosed income. The order of the AO was confirmed by the CIT(A) on this issue.

7. The submission of the Id. counsel for the assessee was that the above addition made by the AO in all the aforesaid assessment years are not based on any incriminating material found in the course of search of the Assessee. Our attention was drawn to a decision of the Bangalore Bench of the Tribunal in the case of *Yunus Zia v. DCIT, ITA Nos.126 to 130/Bang/2013 for AYs 2003-04 to 2007-08* order dated 20.3.2020 wherein the Tribunal has after analysis of the legal position come to the conclusion that where an assessment has already been completed for an AY and subsequently an assessment is made for the same AY u/s.153A of the Act, any addition u/s. 153A of the Act for that AY, cannot be made *de hors* incriminating material found in the course of search. In this regard, the learned counsel for the Assessee brought to our notice that assessments were for AYs 2009-10 to 2011-12 are deemed to have been completed prior to the search as no notice was issued u/s.143(2) of the Act in respect of original returns filed for those years by the Assessee and therefore the AO cannot make an assessment or addition without any incriminating material. Our attention was also drawn to a recent decision of the Hon'ble Karnataka High Court in the case of *Pri.CIT and another Vs. M/S.Delhi International Airport Pvt.Ltd. ITA No.322/2018* order dated 29.9.2021, wherein the law was explained that in unabated assessments completed prior to search, there can be no addition without material having been found in the course of search. The earlier decisions rendered by the Hon'ble Karnataka High Court and other High Courts were duly considered and there is no dispute on this aspect and the fact that the said decision is the law as of today on the subject rendered by the Hon'ble Karnataka High Court. In this regard there is also no dispute that the assessment for AY 2009-10 to 2011-12 have to be

regarded as unabated assessments completed prior to search as the return filed by the Assessee has been accepted and no notice u/s.143(2) of the Act within the time limit laid down therein has been issued. It was thus contended by Id. counsel for the assessee that since pursuant to the return of income filed by the assessee for the 3 assessment years, the acknowledgement has already been issued by the AO and since no further proceedings by issue of notice u/s. 143(2) within the time contemplated by law was issued, those assessments become final and can be disturbed only if incriminating material is found in the course of search. He highlighted the fact that both the additions made with regard to Agricultural income in all the three AYs have no relevance whatsoever to any material found in the course of search, which are alleged to be relating to the Assessee and in relation to Agricultural income declared by the Assessee. Since the addition in question have been made without any reference to any incriminating material found as a result of search, both the additions made by the AO deserves to be deleted.

8. The learned DR relied on the order of the CIT(A) and submitted that the scope of assessment proceedings u/s.153A of the Act is not limited to material found in the course of search and in this regard reiterated the ratio laid down by Hon'ble Karnataka High Court in the case of Canara Housing Development Vs. DCIT (2014) 49 Taxxman.com 98 (Karn.).

9. We have considered the rival submissions. In the present case, the assessment in all the three AYs 2008-09 to 2010-11 have already been completed prior to the date of search in the sense that the return filed by the Assessee was accepted and no notice u/s.143(2) of the Act was issued within the time limit laid down under those provisions to make an assessment u/s.143(3) of the Act within the time contemplated in law. The proceedings for these Assessment years were not pending and did not abated by virtue of the second proviso to Sec.153A(1) of the Act, which provides that any assessment proceedings for any of the six assessment years set out in Sec.153A (1) of the Act, which is pending as on the date of initiation of search u/s.132 of the Act, such assessment proceedings would abate and the AO will make one assessment after considering the original return

of income as well as materials found in the course of search. The assessment proceedings which have been completed as on the date of search u/s.132 of the Act will however continue to remain valid. Thus the former proceedings are referred to as "abated assessment proceedings" and the latter proceedings are referred to as "unabated assessment proceedings".

10. Therefore the scope of making assessment of total income u/s.153A of the Act in an unabated assessment proceedings is limited and can be only of assessing income that is not disclosed which is detected or which emanates from material found in the course of search of some other person and which relate to the Assessee, as has been held by the Hon'ble Karnataka High Court in the case of M/S.Delhi International Airport Ltd. (supra). Since the impugned addition treating the Agricultural income as income from other sources is not based on any incriminating material found during the course of search, the additions are liable to be deleted.

11. In AY 2008-09 and 2013-14 also an addition by treating the income declared in the return of income filed u/s.153A of the Act as income from other sources was made by the AO and these additions in these two AYs will not fall within the ambit of the ratio laid down by the Hon'ble Karnataka High Court in the case of M/S.Delhi International Airport Ltd. (supra). As far as the addition made in these two Assessment years are concerned, the Agricultural income declared was a sum of Rs. 1,26,500 and Rs. 1,65,800/- respectively. The Assessee is aged 80 years and is residing with his daughter. The declaration of Agricultural income is not with a view to explain any source. Moreover the Agricultural holdings are not disputed. Absence of details of crops grown and evidence of sale of Agricultural produce in the form of bills can be a basis to doubt the quantum of Agricultural income but cannot be the basis to treat the entire Agricultural income as income from other sources, in the peculiar facts and circumstances of the case. We therefore accept the plea of the Assessee in this regard and delete the addition made by the AO in both the AYs.

12. Apart from the common issue in all the appeals i.e., the issue by which the AO treated the agricultural income shown by the assessee in the return of income from other sources, there are certain other issues that have to be adjudicated in ITA Nos.683 to 685/Bang/2020.

13. In ITA No.683/Bang/2020, ground No.3 raised by the assessee reads as follows:

“3. The learned CIT[A] is not justified in upholding the addition of Rs. 1,00,000/- as unexplained expenditure u/s. 69C of the Act being the LIC Premium paid by the appellant's daughter Dr.M.K.Girija based on a receipt that was found and seized in course of search without appreciating that the said premium was not paid by the appellant especially since the premium related to the policy belonging to the appellant's daughter who is a Doctor and hence the addition made in the hands of the appellant is unjustified and ought to have been deleted.”

14. As far as the aforesaid ground is concerned, in the course of search in the assessee's premises, a copy of the LIC policy in the name of Dr. M. K. Girija, daughter of the assessee was found. A receipt for having paid premium to LIC of Rs.98,190 and Rs.24,326/- was also found. In the course of assessment proceedings, assessee explained that his daughter was a medical practitioner and had paid the premium on the LIC policy which was in her name out of her own earnings. The AO refused to believe the plea of the assessee on the ground that no documentary evidence was filed to show the source of income of Dr. M. K. Girija. The CIT(A) confirmed the order of the AO.

15. We have heard the rival submissions. Under section 292C of the Act, there is a presumption that the contents of the documents found during the course of search under section 132 of the Act are true. In the light of the aforesaid provisions, the revenue authorities have presumed that the premium on LIC policy, which is admittedly in the name of Dr. M. K. Girija has been paid by the Assessee. There can be no presumption that because this receipt was found in the course of search of the assessee that it is only the assessee who has paid premium. In fact, the presumption is that it is only Dr.M.K.Girija, who has paid the premium on LIC

policies as the policy as well as the receipts are in her name. I am therefore of the view that the very basis of this addition is unsustainable and the same is directed to be deleted.

16. The other issue to be adjudicated in ITA No.684/Bang/2020 is ground No.3 which reads as follows:

“3. The learned CIT[A] is not justified in upholding the addition of Rs.50,000/- as unexplained expenditure u/s. 69C of the Act being the LIC Premium paid by the appellant's daughter Dr.M.K.Girija based on a receipt that was found and seized in course of search without appreciating that the said premium was not paid by the appellant especially since the premium related to the policy belonging to the appellant's daughter who is a Doctor and hence the addition made in the hands of the appellant is unjustified and ought to have been deleted.”

17. This ground is similar to ground decided in the earlier paragraph with regard to contribution to LIC premium. For the reasons stated therein, the addition made by the AO confirmed by the CIT(A) is directed to be deleted.

18. In ITA No.685/Bang/2020, ground No.3 raised by the assessee reads as follows:

“3. The learned CIT[A] is not justified in upholding the addition of Rs.28,000/- made in the hands of the appellant as unexplained expenditure being the investment in NSC by the appellant's daughter Dr.M.K.Girija based on a NSC certificate found and seized in course of search without appreciating that the said investment was not made by the appellant especially since the investment was standing in the name of the appellant's daughter who is a Doctor and hence the addition made in the hands of the appellant is unjustified and ought to have been deleted.”

19. From the reading of the aforesaid ground, it will be clear that the NSC certificate found in the course of search admittedly stood in the name of Dr. M. K. Girija and therefore the assessee cannot be asked to explain the source. I am therefore of the view that this addition cannot be sustained and the same is directed to be deleted.

20. Ground No.4 raised by the assessee in this appeal is as follows:

“4. The learned CIT[A] is not justified in upholding the addition of Rs. 2,50,000/- being the Fixed Deposit made by the appellant that was found and seized in course of search without appreciating that the appellant is aged about 80 years and the said FD is made out of his past savings and consequently, the addition made deserves to be deleted.”

21. In the course of search, a fixed deposit for Rs.2,50,000/- was found and this fixed deposit stood in the name of the assessee. The assessee was called upon to explain the source of investment and the assessee submitted that it is out of past savings. Since no documentary evidence was filed, the AO treated the sum of Rs.2,50,000/- was unexplained investment which the CIT(A) confirmed. It is the plea of the assessee that the assessee is a 80 years old person and his savings to the extent of Rs.2,50,000/- cannot be doubted. After considering rival submissions, I am of the view that the plea of the assessee in this regard has to be accepted. Admittedly, the fixed deposit in question was issued on 02.06.2010 and matured for payment on 02.06.2012. Considering the income returned by the assessee in the past, I am of the view that the plea of the assessee that the source of funds for making investments in fixed deposit is out of past savings deserves to be accepted. Accordingly, this addition is also deleted.

22. In the result, all the appeals are allowed.

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

Sd/-

(N. V. VASUDEVAN)
Vice President

Bangalore.

Dated: 06.01.2022.

/NS/*

Copy to:

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| 1. Assessee | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.