

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH : BANGALORE**

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

ITA No.2649/Bang/2019
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Assessment year : 2016-17
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Mr. Ravichandran, Residing at Ville No.28, Anugraha Green Ville, Haragadde, Jigani, Anekal Road, Bengaluru-560 105. <b>PAN – AGAPR 2980 C</b>	Vs.	The Asst. Commissioner of Income-tax, Circle-4(2)(1), Bengaluru.
Appellant		Respondent

Revenue by	:	Shri Ananda H, Addl. CIT (DR)
Assessee by	:	Shri Hariprasad Nayak, C.A & Shri Pradeep Kumar S, C.A

Date of hearing	:	03.01.2022
Date of Pronouncement	:	03.01.2022

**ORDER**

*Per Chandra Poojari, Accountant Member*

This appeal by the assessee is directed against the order of the CIT(A) dated 27/11/2019 for the assessment year 2016-17.

2. The issue in this appeal is with regard to sustaining the addition of Rs.1,27,14,959/-. In this case the Form No.26AS show an amount of Rs.13723917/- and TDS amount of

Rs.137268/-. The assessee disclosed gross receipts at Rs.10,08,958/-, hence the AO treated an amount of Rs.1,27,14,959/- as deemed income of the assessee u/s 69A of the Act. On appeal, this was confirmed by the CIT(A). Against this, assessee is in appeal before us.

3. The contention of the ld.AR is that the said amount of Rs.1,37,23,917/- is the gross receipts and out of this, assessee incurred an expenditure of Rs.1,27,14,959/- and shown net amount of Rs.10,08,958/- as net receipts in its return of income. Being so, there was no understatement of the income of the assessee. The ld.AR prayed that the addition may be deleted.

4. We have heard both the parties and perused the materials on record. In our opinion, similar issue came up for consideration before this Tribunal in ITA No.2323/Bang/2019 in the case of Sri Venkataswamy Manjunath vide order dated 13.3.2020 for the assessment year 2016-17, wherein held as under:-

*“5. I have heard the rival submissions and perused the material on record. I find that similar issue came up for consideration before the ITAT Madras Bench in the case of Shri P.K Rajasekar V. ITO in ITA No.121/Mds/2016. The Tribunal vide order dated 15.09.2016 held as follows:-*

*4. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee claims that the*

*credit of `58,36,556/- said to be given on 01.07.2010 is a wrong entry and the company, namely, M/s Tulip Telecom P. Ltd. failed to rectify the TDS return filed electronically. The Revenue claims that the letter addressed to M/s Tulip Telecom P. Ltd. was not responded. Therefore, the Assessing Officer found that the assessee has not established the claim. Accordingly, the Assessing Officer treated the particulars contained in Form 26AS as genuine and the difference of Rs.61,99,459/-, as per the credit shown in Form 26AS, was taken as undisclosed receipt by the assessee. The main grievance of the assessee is that the credit entry found on 01.07.2010 to the extent of Rs.58,36,556/- is a wrong entry.*

*5. Under the scheme of Income-tax Act, the assessee is expected to pay tax after completion of assessment. In order to ensure the recovery of tax, the Income-tax Act provides payment of tax in advance, before completion of assessment and also provides for deduction of tax at source. When the payer deducted the tax as per the scheme of the Income-tax Act in respect of the payment made by them, the amount deducted by the payer towards TDS has to be treated as payment of tax. If the assessee claims that there was wrong entry and wrong credit, the Assessing Officer has to examine the same with open mind and find out whether there was a genuine credit as found in Form 26AS. M/s Tulip Telecom P. Ltd. is also a tax payer in this country. Therefore, the Revenue cannot shift the burden to the assessee on the ground that M/s Tulip Telecom P. Ltd. could not be contacted. M/s Tulip Telecom P. Ltd. is a company registered under the provisions of Companies Act and the Directors can very well be contacted by the Assessing Officer and find out what is the error*

*in TDS return.*

*6. This Tribunal is of the considered opinion that even though the burden of proof is initially on the shoulder of the assessee, the Assessing Officer is also equally responsible to find out whether the credit entry found on 01.07.2010 is genuine or not. The Assessing Officer cannot take advantage of the ignorance or handicap of the assessee and say that there was undisclosed receipt by the assessee. When the assessee claims that the entry as on 01.07.2010 is a wrong entry, the Assessing Officer in all fairness has to examine the same and find out whether there was genuine entry or not. The Assessing Officer was conferred the power of civil court to examine and find out the real nature of transaction. If the Assessing Officer could not exercise the power conferred on him, it is not known how the individual citizen of this country will be able to find out the genuineness of the transaction. Therefore, in order to meet the ends of justice, this Tribunal is of the considered opinion that the Assessing Officer has to find out the address of M/s Tulip Telecom P. Ltd. and its Directors and thereafter find out whether so-called credit of Rs.58,36,556/- said to be given on 01.07.2010 is a genuine transaction or it is a wrong entry. Thereafter, the Assessing Officer has to decide the same in accordance with law. Accordingly, the orders of the authorities below are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh in the light of the material available on record and thereafter decide the same in accordance with law after giving a reasonable opportunity to the assessee.*

*7. In the result, the appeal filed by the assessee*

*is allowed for statistical purposes.”*

6. *Since the facts and circumstances of the above case considered by the ITAT Madras Bench are similar to that of the issue under consideration, respectfully following the same, we remit the entire issue under dispute to the files of the Assessing Officer, with a direction to make proper inquiry with regard to the deemed income of the assessee, after giving proper opportunity of being heard to the assessee.*

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

5. In view of the above order of the Tribunal, we are inclined to remit the issue to the file of the AO for fresh consideration on similar direction and to decide the issue in accordance with law.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 3<sup>rd</sup> January, 2022.

Sd/-

**(GEORGE GEORGE K)**  
Judicial Member

Sd/-

**( CHANDRA POOJARI)**  
Accountant Member

Bangalore,  
Dated, 3<sup>rd</sup> January, 2022

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation .....
2. Date on which the typed draft is placed before the dictating Member .....
3. Date on which the approved draft comes to Sr.Ps .....
4. Date on which the fair order is placed before the dictating Member .....
5. Date on which the fair order comes back to the Sr. P.S. ....
6. Date of uploading the order on website.....
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13. Date of Despatch of Order .....