

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND  
SHRI B. R. BASKARAN, ACCOUNTANT MEMBER**

<b>ITA No.1682/Bang/2019</b>
<b>Assessment Year :2014-15</b>

Shri. Kenche Kumar, 21 <sup>st</sup> Ward, Bellary Road Circle, Hospet- 583 201. <b>PAN : AVSPK 7166L</b>	Vs.	ACIT, Central Circle – 2(1), Bengaluru.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri. V. Srinivasa, Advocate
Revenue by	:	Shri. Sankar Ganesh K, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	15.02.2022
Date of Pronouncement	:	22.02.2022

**ORDER**

***Per N. V. Vasudevan, Vice President :***

This is an appeal by the assessee against the order dated 21.05.2019 of CIT(A) - 11, Bengaluru, relating to Assessment Year 2014-15.

2. The assessee is an individual. The assessee filed return of income declaring income of Rs.7,46,500/-. In the course of assessment proceedings under section 143(3) of the Income Tax Act, 1961 (hereinafter called ‘the Act’), the AO noticed that the assessee in the audited financial statements for Financial Year 2013-14 (Assessment Year 2014-15) had shown an opening capital of Rs.3,25,03,430/-. The assessee explained that the opening capital was arrived at from the closing capital balance for Financial Year 2010-11 (Assessment Year 2011-12) and the accretions to the capital during the Financial Year 2011-12 (Assessment Year 2012-13) and the accretions in the



3.	2012-2013	<p>a. Opening Capital Balance:</p> <p>b. Net Profit made from the M/s. Shri Lakshmi Venkateshwara Minerals and M/s. Shri Lakshmi Venkateshwara Transport</p> <p>c. Income from Partnership Firm i.e., M/s. Shri Lakshmi Venkateshwara Minerals</p> <p>d. Income from Partnership Firm i.e., M/s. Shri Lakshmi Venkateshwara Transport.</p> <p>e. ICICI Prudential Life Insurance redeemed</p> <p>f. Less: Drawings</p> <p>g. Net Credits to the Capital Account</p> <p>h. Closing Capital Balance for the Financial Year 2012-2013.</p>	<p>3,00,740/-</p> <p>2,13,520/-</p> <p>37,500/-</p> <p>2,49,988/-</p> <p><u>(3,10,905)/-</u></p>	<p><u>3,18,77,221/-</u></p> <p><u>6,26,609/-</u></p> <p><u>3,25,03,430/-</u></p>
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3. The AO noticed that the accretions for Financial Year 2009-10 (Assessment Year 2010-11) returns of income had been filed by the assessee for the said AY and accepted by the revenue and to that extent, the AO accepted the capital account balance. But in so far as Assessment Years 2012-13 to 2013-14 is concerned, the AO observed that the assessee did not file return of income and the partnership firms from which the assessee had shown accretions to his capital account as share of income also did not file returns of income. The working of the opening capital balance as was given by the assessee was not accepted by the AO.

4. It can be seen from the capital balance in the table given above that the assessee was a partner in a partnership firm Sri Lakshmi Venkateshwara Minerals and Sri Lakshmi Venkateshwara Transport and the share of income as well as drawing and maturity proceeds from investments has been shown as accretions to the capital account. According to the AO, since the assessee as well as the partnership firms from which the assessee claims to have obtained share of income had not filed its return of income for Assessment Years 2012-13 to 2013-14, the opening capital balance could not be accepted to the extent of Rs.17,78,447/- which was computed by the AO as follows:

*“2.3 As detailed in the Annexure-1, the claims of the assessee regarding the sources for his opening capital for AY 2014-15 being the share of income from his partnership firms and his own income for earlier years cannot be allowed to the extent of returns of income not filed by the assessee or the partnership firms. Some of the returns of income for the years in question have neither been filed within the due date for the respective assessment years nor have they been filed till date. As against the opening capital balance of as arrived at in Annexure-1 to this order being Rs.3,07,24,983/-, the opening capital balance declared by the assessee in Return of Income filed for A.Y.2014-15 is Rs.3,25,03,430/-. Hence there is a shortfall / difference in capital amounting to Rs.17,78,447/-. Hence, the short fall in the capital as tabulated in Annexure-1 amounting to Rs.17,78,447/- is treated as unexplained and added back to the total income. Further, since the claims of the assessee tantamount to concealment of income, penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961, are initiated separately.*

***(Addition : Rs.17,78,447/-)”***

5. The order of the AO was passed on 30.11.2016.

6. The assessee filed an application under section 154 of the Act dated 24.01.2017 wherein the assessee pointed out that the assessee's individual return as well as the returns of the partnership firms Sri Lakshmi Venkateshwara Minerals and Sri Lakshmi Venkateshwara Transport for

Assessment years 2012-13 and 2013-14 had been filed by the assessee and therefore the additions made for the sole reason that the returns were not filed for the aforesaid stated Assessment Years should be deleted. Copy of the returns filed by the assessee in this regard was also filed along with the application under section 154 of the Act. These returns had been filed on 22.01.2017 after the date of the order dated 30.11.2016 which is the date on which the AO passed the Assessment Order making the aforesaid additions and that too in response to notice u/s.148 of the Act issued by the AO. The AO dismissed the application under section 154 of the Act by an order dated 01.02.2017 with a mere observation that the same is rejected as there is no apparent mistake in the order dated 30.11.2016.

7. Against the said order of the AO, assessee filed an appeal before the CIT(A). The CIT(A) upheld the order of the AO by merely observing that the return had been filed by the partnership firms for Assessment Years 2012-13 and 2013-14 after the passing of the Order of Assessment dated 30.11.2016 and therefore the AO was right in not entertaining the assessee's application filed under section 154 of the Act.

8. Aggrieved by the order of the CIT(A), assessee has preferred the present appeal before the Tribunal. We have heard the rival submissions. We are of the view that though the return of income for Assessment Year 2012-13 and 2013-14 of the assessee in his individual capacity and the two partnership firms in which the assessee was a partner, was filed on 22.01.2017 and that too in response to a notice under section 148 of the Act, the fact that the assessee has disclosed the source of accretions of the capital account in these returns has not been doubted or disputed or examined by the AO or the CIT(A). In our view, if the accretions to the capital account emanate from the returns filed by the partnership firms and the assessee in his individual capacity for

Assessment Years 2012-13 and 2013-14 and if the said source is not disputed by the Revenue in a manner known to law, the accretions to the capital account and the corresponding opening balance in the capital account in Assessment Year 2014-15 cannot be doubted or disputed. We are therefore of the view that it would be just and appropriate to set aside the order of CIT(A) and remand the case to the AO for consideration denovo in the light of the returns filed for Assessment Years 2012-13 and 2013-14 and after verification, accept the claim of the assessee, so long as the source of the accretions as declared in the returns for Assessment Years 2012-13 and 2013-14 are not disputed in a manner known to law. With these observations, we allow the appeal of the assessee for statistical purposes.

9. In the result, the appeal is treated as allowed for statistical purposes.

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

Sd/-

**(B. R. BASKARAN)**  
**Accountant Member**

Sd/-

**(N. V. VASUDEVAN)**  
**Vice President**

Bangalore.

Dated: 23.02.2022.

/NS/\*

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

By order

Assistant Registrar,  
ITAT, Bangalore.