

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

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

ITA No.687/Bang/2020
Assessment Year: 2009-10

Smt. Raju Paruthi L/R of Late Sri Vinod Kumar Paruthi No.65/9-10, N.R. Road Bengaluru 560 002. PAN NO : ACAPP6712G	Vs.	ITO Ward-11(1) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Sri Pranav Krishna, A.R.
Respondent by	:	Sri Narayana K.R., D.R.

Date of Hearing	:	16.06.2022
Date of Pronouncement	:	16.06.2022

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of CIT(A) dated 28.8.2020 for the assessment year 2009-10. The assessee has raised following grounds of appeal:-

1. *“The order of the learned Commissioner of Income-tax [Appeals] passed under Section 250 of the Act in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.*
2. *The Appellant denies himself liable to be assessed over and above the returned total income declared by the appellant of Rs. 8,83,250/- on the facts and circumstances of the case.*

3. *The learned Commissioner of Income Tax [Appeals] erred in confirming a portion of the addition made by the learned assessing officer to the extent of Rs. 33,37,652/- as unexplained creditors under Section 68 of the Act instead of deleting the entire addition made by the learned assessing officer on the facts and circumstances of the case.*
4. *The learned Commissioner of Income Tax [Appeals] erred in not appreciating the additional evidence filed by the appellant, being the loan confirmations filed during the course of the first appellate proceedings on the facts and circumstances of the case.*
5. *The learned Commissioner of Income Tax [Appeals] erred in making an addition of Rs. 19,67,418/- as unexplained creditors under Section 68 of the Act thereby enhancing the income of the Appellant without fulfilling the mandatory conditions and the parameters as specified in the provisions of Section 251 of the Act on the facts and circumstances of the case.*
6. *The learned Commissioner of Income-tax [Appeals] failed to appreciate that the learned assessing officer in the impugned order of assessment having considered the details and documents submitted as regard to the unsecured loans totaling to Rs. 19,67,418/- out of which the learned assessing officer made an addition to the extent of only Rs. 4,19,379/- [i.e. Rs. 19,67,418/- minus Rs. 15,48,039/-], the learned Commissioner of Income-tax [Appeals] was not correct in enhancing the addition to Rs. 19,67,418/- on the facts and circumstances of the case.*
7. *The learned-Commissioner of Income Tax [Appeals] erred in directing the learned assessing offer to re - compute the disallowance of interest on the creditors confirmed amounting to Rs. 33,37,652/- on the facts and circumstances of the case.*
8. *Without prejudice to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies itself liable to be charged to interest under Section 234 B of the Income Tax Act under the facts and circumstances of the case.*
9. *The appellant contends that the levy of interest under section 234B, 234C of the Act is also bad in law as the period, rate, quantum and method of calculation adopted*

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by the learned assessing officer on which interest is levied are not discernible and are wrong on the facts of the case.

10. *The appellant craves leave to add, alter, amend, substitute or delete any or all of the grounds of appeal urged above.*
11. *For the above and other grounds to be urged during the course of hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice”.*

2. Facts of the case are that the assessee Late. Mr. Vinod Kumar Paruthi was an individual. The assessee is a proprietor of M/s. Alfa Industries and is carrying on the business for past may years. Assessee derived income from salaries, business and other sources for the relevant assessment year. The assessee for the impugned Assessment Year 2009-10 filed his return of income declaring a total income of Rs.8,83,250/- on 30/09/2009. The assessee is filing his return of income regularly and paying the taxes to the Government regularly. The case was selected for scrutiny and upon issuance of statutory notices; the assessee through his authorized representative furnished the details called for. The assessing officer concluded the assessment under Section 143(3) of the Act vide order dated 27.12.2011 assessing the total income of the assessee at Rs.90,81,428/- as against the income reported by the assessee of Rs.8,83,250/-. The learned assessing officer has made the following additions and disallowance while concluding the assessment which details are as under:

Income declared by the assessee	Rs. 8,83,250/-
Additions made:	
Disallowance u/s 68	Rs.70,11,777/-
Disallowance of interest	<u>Rs.11,86,401/-</u>
Total assessed income	<u>Rs.90,81,428/-</u>

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3. Against this assessee carried the appeal before Ld. CIT(A). Before Ld. CIT(A), assessee filed confirmation letter from creditors. Since these evidences were not produced before AO during the assessment proceedings, the Ld. CIT(A) sent these confirmation letters to AO and asked to furnish the remand report. The AO sent the remand report to Ld. CIT(A) on 27.1.2016. On examination of the remand report, Ld. CIT(A) observed that an amount of Rs.36,74,125/- has been accepted by AO as genuine. Further, Ld. CIT(A) observed that there are unsecured loans to the tune of Rs.1,52,98,698/- obtained in the name of proprietary concern. Out of these loans, confirmation amounting to Rs.87,06,250/- was already filed. For the remaining amount of Rs.65,92,398/- no confirmations were filed. Further, no evidences were produced for business loans amounting to Rs.5,61,999/-. Accordingly, AO added Rs.70,11,777/-. The Ld. CIT(A) deleted a sum of Rs.36,74,125/- since confirmation letters were filed to that extent only out of Rs.70,11,777/- and sustained addition of Rs.33,37,652/-. Against this assessee is in appeal before us by way of ground Nos.3 & 4.

4. The contention of the Ld. A.R. is that the assessee has filed the confirmation letter before the Ld. CIT(A) regarding these credits, which are totally overlooked by him. According to him, had he considered these confirmation letters, which are placed at paper book page Nos.74 to 109, there could have been no addition be sustained by Ld. CIT(A). He prayed that issue may be remitted for reconsideration.

5. The Ld. D.R. relied on the order of Ld. CIT(A).

6. We have heard the rival submissions and perused the materials available on record. In our opinion, as seen from the paper book page Nos.74 to 109, the assessee has produced the copies of

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confirmation letters from various parties confirming the credits. These are very much necessary to examine the issue by the lower authorities. Accordingly, in the interest of justice, we remit this issue to the file of AO for fresh consideration. This issue is partly allowed for statistical purposes.

6. Ground Nos.5 & 6 are with regard to sustaining addition of Rs.19,67,418/-. In the assessment order, the AO observed that an unsecured loan of Rs.19,67,418/- obtained by assessee in his individual capacity. These are unconfirmed personal loans. According to Ld. CIT(A), the AO failed to make addition on this count, which is a mistake committed by AO. Accordingly, he directed the AO to add this amount of Rs.19,67,418/- as income u/s 68 of the Act. Against this assessee is in appeal before us.

7. The Ld. A.R. submitted that making addition on this count amounts to enhancement of assessment for which Ld. CIT(A) has not given any opportunity of hearing to the assessee.

8. On the other hand, Ld. D.R. relied on the order of Ld. CIT(A).

9. We have heard the rival submissions and perused the materials available on record. The assessee not shown any material to suggest that Ld. CIT(A) has not brought this issue to the knowledge of the assessee or his authorized representative at the time of proceeding before Ld. CIT(A). Hence, in the interest of justice, we remit this issue to the file of Ld. CIT(A) to consider this issue after giving opportunity of hearing to the assessee in accordance with law.

10. The last ground in this appeal in ground No.7 is with regard to disallowance of interest on creditors. This is consequential in nature as the issue relating to the quantum addition u/s 68 of the Act is remitted back to the Ld. CIT(A). This issue is also remitted to Ld.

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CIT(A) for fresh consideration to decide it in accordance with law while adjudicating the quantum addition with regard to the creditors.

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

Order pronounced in the open court on 16th June, 2022

Sd/-
(George George K.)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 16th June, 2022.
VG/SPS

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.