

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

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA Nos. 2056 & 2057/Bang/2018
Assessment Years : 2012-13 & 2013-14

Shri K. Harsha Reddy, # 1814, 1 st Main, 9 th Cross, Vidyanagar, Davangere – 577 044. PAN: ABUPH1199J	Vs.	The Income Tax Officer, Ward – 1[2], Davangere..
APPELLANT		RESPONDENT

Assessee by	:	Shri V. Srinivasan, Advocate
Revenue by	:	Smt. Priyadarshini Besaganni, Addl. CIT (DR)

Date of Hearing	:	02-06-2022
Date of Pronouncement	:	30-06-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals have been filed by assessee against two separate orders dated 26.03.2018 passed by Ld.CIT(A), Davangere for A.Ys. 2012-13 & 2013-14 on following grounds of appeal:

Assessment Year : 2012-13:

“1. The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The order of re-assessment is bad in law and void-ab-initio for want of requisite jurisdiction especially, the mandatory requirements to assume jurisdiction u/s 148 of the Act did not exist and have not been complied with and consequently, the re-assessment requires to be cancelled.

3. Without prejudice to the above, the CIT[A] is not justified in sustaining the addition of a sum of Rs.6,24,160/- in respect of income from real estate business that was declared by the appellant on estimate basis at Rs.2,75,840/-and thus sustaining the income estimated at Rs.9,00,000/- under the facts and in the circumstances of the appellant's case. The aforesaid addition sustained by the learned CIT[A] is purely on suspicion and surmises, assumptions and presumption and therefore, the same deserves to be deleted.

4. The learned CIT[A] is not justified in upholding the addition of Rs.13,00,420/- as unexplained investment made by the appellant in agricultural lands and other properties purchased although the benefit of telescoping was allowed against the income from real estate sustained in appeal under the facts and in the circumstances of the appellant's case.

4.1 The learned CIT[A] ought to have appreciated that there was no such unexplained investment made by the appellant at all and the source for the investments made were duly explained alongwith documentary evidence and consequently, the addition made ought to have been deleted.

4.2 The learned CIT[A] ought to have appreciated that the addition to the extent of Rs.6,00,000/- ought to have been deleted in as much as, one of the investments made by the appellant was erroneously considered at Rs.16,16,990/- instead of Rs.10,16,990/- and consequently, the extent of unexplained investment was overstated and liable to be deleted to that extent.

5. The learned CIT[A] is not justified in sustaining the addition of Rs.7,22,274/- as undisclosed deposits in the bank account under the facts and in the circumstances of the appellant's case. He failed to appreciate that the appellant had explained that the said bank account did not relate to him and at any rate, the appellant's father had explained the sources of the deposits made and thus, the addition made is opposed to law and facts of the appellant's case the same deserves to be deleted.

6. The learned A 0 is not justified in adding a sum of Rs.75,000/- towards inadequate drawings under the facts and in the circumstances of the appellant's case.

7. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234-A and 234-B of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.

8. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly

prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

Assessment Year : 2013-14:

“1. The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The order of re-assessment is bad in law and void-ab-initio for want of requisite jurisdiction especially, the mandatory requirements to assume jurisdiction u/s 148 of the Act did not exist and have not been complied with and consequently, the re-assessment requires to be cancelled.

3. Without prejudice to the above, the learned CIT[A] is not justified in upholding the addition of Rs. 1,18,300/- in respect of credits in the bank account under the facts and in the circumstances of the appellant's case.

4. The learned CIT[A] is not justified in sustaining the addition of Rs. 2,38,000/- as Gift receipt under the facts and in the circumstances of the appellant's case.

5. The learned CIT[A] is not justified in sustaining the addition of Rs. 6,50,000/- towards Real estate commission under the facts and in the circumstances of the appellant's case.

6. Without prejudice to the above, the learned authorities below ought to have telescoped the addition made towards real estate commission with the additions made towards unexplained bank deposits and gift received under the facts and in the circumstances of the appellant's case.

7. Without prejudice to the right to seek waiver with the Hon' ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s 234-B and 234C of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.

8. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

The Ld.AR submitted that for A.Ys. 2012-13 & 2013-14, the appeals are filed before this *Tribunal* with a delay of 14 days. An affidavit of the assessee dated 23/06/2018 has been filed before this *Tribunal*.

Copy of the same is scanned and reproduced as under:

AFFIDAVIT FOR CONDONATION OF DELAY IN FILING THE APPEAL

I, K. HARSHA REDDY, son of Sri K.Srinath Reddy aged about 30 years, residing at Davangere, do hereby solemnly affirm and say on oath as under:-

1. That being aggrieved by the order of assessment passed u/s.143[3] rws 147 by the learned Income-tax Officer, Ward-1[2], Davangere, for the aforesaid assessment year 2011-12, I had instituted an appeal before the learned Commissioner of Income-tax [Appeals], Davangere in ITA No.CIT[A]161/DVG/2015-16.

2. That, the learned Commissioner of Income-tax [Appeals], Davangere, vide order in ITA No.CIT[A]161/DVG/ 2015-16 dated 26/03/2018 disposed of the appeal by partly allowing the appeal and the said order of the learned CIT[A] was received by me on 05/04/2018 and therefore, the appeal ought to have been filed before the Hon'ble Tribunal on or before 03/06/2018.

3. That, the appeal against the said appellate order came to be instituted before the Hon'ble Income-tax Appellate Tribunal, Bangalore Bench, Bangalore on 18/06/2018 and thus, there is a delay of 14 days in filing the appeal. The reason for the delay in filing the appeal is explained hereinafter.

4. That, soon after receiving the above appellate order, I was pre-occupied with paternity duties since my wife was expecting our child and was staying in Bangalore and therefore, I had to travel from Davangere where I am based to visit her in Bangalore frequently until the time we were blessed with a baby girl on 17/05/2018.

5. That, even after the birth of the child, I was pre-occupied with certain religious and other functions like naming ceremony etc., and on account of these factors, the matter of placing the appellate order received in the hands of my Auditor & Tax Consultant, for further instruction in the matter escaped my attention.

6. That, recently while going through the Income-tax files, I noticed the appellate order and immediately, I approached M/s. S. Venkatesan & Co., Chartered Accountant, Bengaluru, for further advice in the matter, and after through the papers, they advised me to file an appeal against the order of the CIT [A] in ITA No.CIT[A]161/DVG/2015-16 dated 26/03/2018, immediately by seeking condonation of delay in filing the appeal and accordingly, the appeal papers were prepared and filed.

7. That, the delay in filing the appeal was due to reasons mentioned above and was beyond my control and the delay was neither intentional, willful nor deliberate and was occasioned on account of the reasons stated above. It is, therefore, prayed that the delay in filing the appeal may kindly be condoned and the appeal may kindly be admitted and disposed off on merits for the advancement of substantial cause of Justice.

DATED THIS THE 23 DAY OF JUNE, 2018; AT DAVANGERE.

We note that there is a reasonable cause that precluded the assessee to file the appeal on or before 03/06/2018. We therefore, condone the delay and take up the appeal to be disposed off on merits.

Accordingly, the application for condonation of delay stands allowed for A.Ys. 2012-13 & 2013-14.

2. Brief facts of the case are as under (A.Y. 2012-13):

2.1 The assessee is an individual and derives income from real estate business. There was a survey u/s. 133A of the Act,

conducted in the premises of the assessee's father Shri K. Srinath Reddy on 05.08.2013. During the course of survey, it was found that, the assessee made investments in purchase of immovable properties. For the year under appeal, the assessee had not filed any return of income, for year under consideration.

2.2 The Ld.AO issued notice u/s. 148 of the Act on 06.11.2013 calling upon the assessee to file his return of income for the above assessment year. In response to the aforesaid notice, the assessee e-filed his return of income on 08.01.2014 declaring total income at Rs.2,75,840/-. The Ld.AO issued statutory notices calling upon the assessee to file various details which were furnished by the assessee from time to time.

2.3 While concluding the assessment proceedings u/s. 143(3) rws 147, the Ld.AO made following additions / disallowances:-

- (a) Difference in real estate income – Rs.6,24,160
- (b) Unexplained investment in agricultural – Rs.13,00,420
- (c) Unexplained investment in agricultural – Rs. 1,16,79,500
- (d) Unexplained investment in agricultural – Rs. 1,34,52,500
- (e) Undisclosed deposits in the bank account – Rs. 7,22,274
- (f) Under the head low drawings as discussed – Rs. 75,000

2.4. Aggrieved by the order of the Ld.AO, assessee filed appeal before the Ld.CIT(A). The Ld.CIT(A) upheld the additions made by the Ld.AO.

2.5. Aggrieved by the order of the Ld.CIT(A), assessee filed appeal before this *Tribunal*.

3. The Ld.AR submitted that **Ground no.1** is general in nature.

3.1. The Ld.AR submitted that assessee do not wish to press the issue raised in **Ground no.2**.

Accordingly this ground raised by assessee is dismissed as not pressed.

4. Ground No. 3 raised by the assessee is submitted to be covered by the decision of the *Coordinate Bench* of this *Tribunal* in assessee's own case for A.Y. 2011-12, wherein this *Tribunal* observed as under:

"4.5. We have perused the submissions advanced by both sides in light of records placed before us.

We note that it is not the case of revenue that assessee had suppressed turnover. Further that assessee had himself estimated his income. Merely because assessee estimated his income does not mean that the Ld.AO cannot arbitrarily estimate the same at a higher income. The estimation by the Ld.AO is not based on the income earned by the assessee in the preceding assessment years. Further we note that there is nothing relied by the revenue to hold the estimation by assessee to be false. We are therefore of the opinion that the estimated addition by the Ld.AO do not hold good the tests of law."

4.1 Nothing contrary has been argued by Ld.DR in respect of this issue.

Therefore respectfully following the above view, we hold that the addition made on estimation cannot be sustained and the same deserves to be deleted.

Accordingly ground no. 3 raised by assessee stands allowed.

5. Ground No. 4 – The Ld.AR submitted that, various materials to substantiate the claim of assessee were filed by the assessee before Ld.CIT(A). However the same were not considered.

On the contrary, the Ld.DR relied on orders passed by authorities below.

5.1 We have perused the submissions advanced by both sides in the light of records placed before us.

5.2 We note that, the evidence filed by the assessee has been rejected without there being any basis by the Ld.CIT(A) and the

opinion is very cryptic. Therefore in the interest of justice, we remand this issue to the Ld.AO to consider the claim in the light of evidence filed by the assessee. The Ld.AO is directed to carryout necessary verification in accordance with law. Needless to say that appropriate opportunity of being heard must be granted to assessee.

Accordingly, ground no. 4 raised by assessee stands allowed for statistical purposes.

6. Ground no. 5 raised by assessee is submitted to be covered by the decision of the *Coordinate Bench* of this *Tribunal* in assessee's own case for A.Y. 2011-12, wherein this *Tribunal* observed as under:

“6.7 We have perused the submissions advanced by both sides in light of records placed before us.

We note that assessee had filed letter from K.Srinath Reddy, father of assessee, and various documents to explain the source of funds. It is the submission of the assessee that assessee's name appears second to the fathers name and the bank account originally belongs to his father which is an admitted position in the letter dated 13/03/2015. Neither the Ld.CIT(A), nor the Ld.AO carried out necessary verification in respect of the evidences filed by assessee supporting the cash deposits.

6.8 In the interest of justice we therefore remand the issue back to the Ld.CIT(A) to carryout necessary verification. The Ld.CIT(A) is directed to pass a detailed order on merits after considering the details filed by assessee. Needless to say that proper opportunity of being heard may be granted to assessee in accordance with law.”

6.1 The Ld.DR could not controvert the above observation. Accordingly, respectfully following the above view, we remand this issue to the Ld.AO to carry out necessary verifications in the light of evidences filed and to consider the claim in accordance with law. Needless to say that appropriate opportunity of being heard must be granted to assessee.

Accordingly, ground no. 5 raised by assessee stands allowed for statistical purposes.

7. Ground No. 6 – Inadequate drawings – Rs. 75,000/-

7.1 We have heard both sides. We note that the assessee had shown drawings to the extent of Rs. 50,000/-. And the Ld.AO estimated it at Rs. 75,000/-. Considering the fact that this is on an estimate basis and that assessee is a bachelor who stays along with his parents, the estimated addition by the Ld.AO is not justified, without any cogent reasons. There is no basis for such estimation by the revenue and the same deserves to be deleted.

Accordingly this ground raised by assessee stands allowed for statistical purposes.

8. Ground No. 7 is consequential in nature and Ground no. 8 is general and therefore do not require any adjudication.

The appeal filed by assessee for A.Y. 2012-13 stands partly allowed.

9. For A.Y. 2013-14, both sides submitted that facts are identical with the facts considered by this *Tribunal* for A.Y. 2012-13 hereinabove.

10. The Ld.AR submitted that **ground nos. 1 & 8** are general in nature and therefore do not require adjudication.

11. Ground no. 2 is not pressed by assessee and therefore is to be dismissed as observed hereinabove in para 3.1.

Accordingly ground no. 2 raised stands dismissed as not pressed.

12. Ground nos. 3-4 is in respect of addition made in respect of bank credits and gift received by the assessee, for which, there is no substantial evidence with the assessee. The Ld.DR submitted that Ld.CIT(A) while considering this issue observed that the assessee

has not been able to provide any details in support of the claim, and therefore, the addition deserves to be upheld.

12.1 We have perused the submissions advanced by both sides in the light of records placed before us.

12.2 Before us, the Ld.AR has not been able to file any material evidence in support of the claim and therefore we have no reason to interfere with the observations of Ld.CIT(A).

We note that the Ld.CIT(A) decided this issue by observing as under.

Sl. No.	Date	Amount of deposit	Mode of deposit
01	10/04/2012	12,000	Clearing
04	19/06/2012	50,000	Clearing
05	23/06/2012	15,000	Clearing
07	30/06/2012	25,000	Clearing
11	19/07/2012	25,000	Clearing
13	01/08/2012	6,300	Clearing
	Total	1,18,300	

6.2 *The assessee has not explained the sources for credit deposits made on various dates amounting to Rs.1,18,300/- though specifically asked to furnish sources for the same. In the absence of the above, the credit deposits made to the extent of Rs.1,18,300/- is brought to tax under the head unexplained deposits in the bank account."*

8b. *The appellant in his written submissions submits as under:*

4.1 *In course of assessment proceedings the learned A.O. called for an explanation with regard to the source of the aforesaid deposits. The appellant submitted a detailed explanation and in so far as the amounts received by cheque aggregating to Rs. 1,18,300/-, the same represented certain advances received by the appellant from various parties through cheque for sale of property. However, due to the passage of time, the appellant was not in a position to furnish any further details before the learned A.O. in these circumstances, the impugned addition came to be made.*

4.2 *It is submitted that the learned A.O. is not justified in making the aforesaid addition of Rs.1,18,300/-. The fact that the aforesaid amount was received by cheque and they were capital receipts being advance for the proposed*

sale of property has not been appreciated by the learned A.O. The addition made is therefore opposed to law and facts of the appellant's case and requires to be deleted. It is prayed accordingly."

8c. After perusing the assessment order and the submissions made by the appellant, I find no infirmity in the order of the AO. Therefore, the addition sustains. Thus, the ground fails.

9. In ground no.4, treating of gifts received as bogus gifts is contested. The AO upon verification of ledger extract found the assessee to have credited Rs.2,38,000/- on 10/05/2012 as cash gift. Upon confrontation, the assessee did not file details of cash gift with material evidences for verification. Accordingly, the AO treated the receipt of cash gift credited to drawings account as bogus and brought it to tax.

9a. The AR in this regard has filed written submissions which is reproduced below. .

"Ground No.4 : Vide ground No.4, the appellant has challenged the addition of Rs.2,38,000/- being the cash gift received that was shown in the cash book. In course of assessment proceedings, the learned A.O. called for an explanation and it was submitted that the said cash gifts was received from near and dear relatives on several occasions during the year. Ultimately, the amounts received on several dates in small amounts was consolidated and recorded in the books of accounts on 10/05/2012. Having regard to the fact that the appellant has received the cash gifts receiving on numerous occasions during the year, the same ought not to have been disbelieved. It is submitted that the addition has been made purely on suspicion and surmise, assumptions and presumptions and by disbelieving the bonafide explanation tendered by the appellant supported by entries in the cash book of the appellant. Hence, the addition made is opposed law and facts of the appellant's case and consequently, the addition made requires to be deleted. It is prayed accordingly."

9b. Upon perusal of the material before me, I am of the opinion that the AO has rightly treated cash gift as bogus and no interference in this regard is called for. Thus, the ground fails."

We do not find any infirmity in the above view and the same is upheld.

Accordingly, these grounds raised by assessee stands dismissed.

13. Ground no. 5 raised by assessee is submitted to be covered by the decision of the *Coordinate Bench* of this *Tribunal* in assessee's own case for A.Y. 2011-12 wherein this *Tribunal* observed as under:

"4.5. We have perused the submissions advanced by both sides in light of records placed before us.

We note that it is not the case of revenue that assessee had suppressed turnover. Further that assessee had himself estimated his income. Merely because assessee estimated his income does not mean that the Ld.AO cannot arbitrarily estimate the same at a higher income. The estimation by the Ld.AO is not based on the income earned by the assessee in the preceding assessment years. Further we note that there is nothing relied by the revenue to hold the estimation by assessee to be false. We are therefore of the opinion that the estimated addition by the Ld.AO do not hold good the tests of law."

13.1 Nothing contrary was argued by Ld.DR. Therefore respectfully following the above view, we hold that the addition made on estimation cannot be sustained and the same is deleted.

Accordingly ground no. 5 raised by assessee stands allowed.

In the result, the appeal filed by assessee for A.Y. 2013-14 stands partly allowed as indicated hereinabove.

In the result, both the appeals filed by assessee are partly allowed.

Order pronounced in the open court on 30th June, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 30th June, 2022.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore