

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

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

<b>ITA No. 663/Bang/2020</b>
<b>Assessment Year : 2014-15</b>

The Assistant Commissioner of Income tax, Circle – 6 (1) (1), Bangalore.	<b>Vs.</b>	M/s. Akash Enterprises, No. 366, 3 <sup>rd</sup> Floor, KMP Arcade, Matadahalli Ext., RT Nagar Main Road, Bangalore – 560 032. PAN: AALFA7883J
<b>APPELLANT</b>		<b>RESPONDENT</b>

&

**C.O.No. 01/Bang/2021  
(in ITA No. 663/Bang/2020)  
(By Assessee)**

Assessee by	:	Shri Rajeev Nulvi, Advocate
Revenue by	:	Smt. Priyadarshini Basaganni, Addl. CIT (DR)

Date of Hearing	:	21-04-2022
Date of Pronouncement	:	03-06-2022

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present cross appeals filed by revenue and assessee against order dated 12.09.2018 passed by Ld.CIT(A)-13, Bangalore for A.Y. 2014-15 on following grounds of appeal:

**Revenue's appeal:**

*“1. The order of the CIT (Appeals) is opposed to law and the facts and circumstances of the case.*

2. On the facts and circumstances of the case, whether the Ld CIT(A) is justified in deleting the additions without giving an opportunity to the Assessing Officer to verify the genuineness of the additional evidences submitted by the assessee as per the provisions of Rule 46A?

3. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A), in so far as it relates to the above grounds may be reversed and that of the Assessing Officer be restored.

4. The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of the appeal.”

### **Assessee's cross objection**

“1. The Appeal filed by the Appellant Deputy Commissioner of Income Tax, Circle-6(1)(1), Bangalore is time barred as the order passed by Commissioner of Income Tax (Appeals)-13, Bangalore u/s 250 of the Income Tax Act, 1961 dated 12/09/2018 was served on the Appellant on 18/09/2018 as admitted by him in the Appeal memo From No. 36. To file the appeal before Income Tax Appellate Tribunal, the time limit is 60 days from the date of the receipt of the order appealed which expires on 17/11/2018. But in this case, the appeal is filed on 21/09/2020. Hence there was a delay of 673 days and filed without petition for condonation of delay.

2. The Appeal filed by the Appellant Deputy Commissioner of Income Tax, Circle-6(1)(1), Bangalore has no jurisdiction over the Respondent to file the said appeal. The order passed u/s 143(3) of the Income Tax Act, 1961 in case of the Respondent was passed by the Assistant Commissioner of Income Tax, Circle-6(3)(1), Bangalore. Hence, the appeal filed by Deputy Commissioner of Income Tax, Circle-6(1)(1), Bangalore is bad in law. Therefore, not admissible

3. The confirmation letter filed before Commissioner of Income Tax (Appeals), though it is additional evidence but the substantial evidence in the form of registered sale agreement dated 23.06.2012 (registered with sub-registrar of Karnataka government) wherein Rs. 3,00,00,000/- advance received was shown through cheque of Rs. 1,00,00,000/- and cash of Rs. 2,00,00,000/-. Hence, the confirmation letter is only a supporting document and not substantial evidence. The substantial evidence of registered sale agreement dated 23.06.2016 was submitted before the Assessing Officer vide letter dated 23/11/2016 which is prior to the assessment order dated

*28/12/2016 wherein it was admitted by the Assessing Officer at Para No. 3 of the Assessment order.*

*4. We would like to bring to your kind notice that the receipt of Rs. 3,00,00,000/- from Mr. B.M. Malikarjunaiah on execution of sale agreement dated 23/06/2012 is relating to Financial Year 2012-13 relevant to Assessment Year 2013-14, not the subject matter of Assessment Year 2014-15. Hence said receipt Rs. 3,00,00,000/- on 23/06/2012 by the Appellant, cannot be brought to tax in Assessment Year 2014-15 as the said transaction is related to Assessment Year 2013-14.*

*5. Each Assessment Year is separate and distinct; the income of the prior period cannot be brought to tax in the subsequent year. The Honourable Commissioner of Income Tax (Appeals) has not disposed of the ground raised at 2.1 of the Grounds of Appeal and also stated at Para 2.2 of the Statement of Fact filed along with appeal memo in this regard before him .*

*6. For these and other reasons which may be urged at the time of the hearing, it's prayed before this Honourable Bench that the order of the Honourable Commissioner of Income Tax (Appeals) may be upheld for substantial cause of justice.*

*7. The Appellant craves leaves, to add, to alter, to amend and to delete any other grounds of cross objection at the time of hearing.”*

2. At the outset we note that, there is a delay of 176 days in filing the present appeal before the *Tribunal* which is due to covid 19 pandemic that persisted at the relevant period when the impugned order was passed by the Ld.CIT(A)-13, Bangalore.

3. Considering the directions by *Hon'ble Supreme Court* that prevailed during the relevant period the delay in filing the present appeal before the *Tribunal* stands condoned.

**4. Brief facts of the case are as under:**

4.1 Assessee filed its return of income for year under consideration on 31.07.2014 declaring Nil income. The return was processed u/s. 143(1), and the case was selected for scrutiny to examine the high ratio of refund to TDS. In response to statutory notices,

authorised representative of assessee appeared before the Ld.AO and filed requisite details. The Ld.AO observed that, main source of income of assessee was from "Income from house property", and during the year under consideration, after claiming interest on borrowed capital u/s. 24B of the Act, the assessee claimed loss of Rs. 60,86,832/-. The assessee claimed entire TDS amount of rent receive as refund. The Ld.AO further observed that, the assessee claimed advance received amounting to Rs. 3crores from Shri B.M. Malikarjunaiah and showed it to be under current liabilities in the balance sheet. During the assessment proceedings, the assessee was called upon to furnish confirmation from Shri B.M. Malikarjunaiah. The assessee filed letter along with sale agreement dated 23.06.2012, however, did not furnish confirmation as called for.

4.2 The Ld.AO issued summons u/s. 131 of the Act to Shri B.M. Malikarjunaiah, to which, no response was received. The non-response to such summons was intimated to the assessee and the Ld.AO also informed the failure to make arrangements to produce Shri B.M. Malikarjunaiah would result in addition to the alleged advance received. The assessee failed to comply with the requirements, and therefore addition of Rs. 3 crores was made in the hands of the assessee, as unexplained; The Ld.AO treated as income from other sources.

4.3 Aggrieved by the order of Ld.AO, assessee preferred appeal before the Ld.CIT(A).

Before the Ld.CIT(A), vide letter dated 04.01.2018, assessee filed additional evidence under Rule 46A, wherein confirmation letter

from Shri B.M. Malikarjunaiah for due payment of Rs. 3 crores as advance towards the purchase of the property was filed. The Ld.CIT(A) after going through the documents filed by assessee as additional evidence observed and held as under:

*“6. I have considered the assessee's contentions. There is force in the argument of the Appellant. After the verification of the submission of the AR and additional evidences produced u/s 46A of the Income Tax Rule, in the form of confirmation letter, I direct to delete the addition of Rs.3,00,00,000/-, which is received in advance for the sale of property, as evident by the registered sale agreement and confirmed by Mr. B.M. Malikarjuknaiah. Hence, the appeal of the assessee is allowed.”*

5. Aggrieved by the order of Ld.CIT(A), revenue is in appeal before this *Tribunal* against which assessee has filed cross objection in support.

6. The Ld.DR, at the outset, submitted that, the additional evidence filed by the assessee was not remanded to the Ld.AO for verification. He submitted that, the Ld.CIT(A) has coterminous power that the assessing officer to carry out independent verification of the additional evidence filed, however the same has not been exercised.

7. The Ld.DR argued that, the Ld.CIT(A) presumed, based on the submissions filed by the assessee, and deleted the addition only relying on the confirmation letter alone. It is an admitted fact that Shri B.M. Malikarjunaiah has not been produced before the Ld.CIT(A), and therefore merely based on a confirmation letter, without verifying the identity of the person being actually Shri.B.M. Malikarjunaiah, the addition should not have been deleted. The Ld.DR submitted that, the issue may be remanded back to the Ld.AO for due verification.

8. On the contrary, the Ld.AR submitted that, the assessee could not produce the confirmation letter during the assessment proceedings due to certain personal issues between the assessee and Shri B.M. Malikarjunaiah that existed during the relevant period. He submitted that, subsequently, Shri B.M. Malikarjunaiah gave the confirmation of having paid Rs. 3 crores as advance, which is just in support of the sale agreement. He thus submitted that, therefore the said letter need not be treated as additional evidence. The Ld.AR relied on the observation of Ld.CIT(A).

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

10. The assessee placed reliance on the Agreement to sale dated 23.06.2012, wherein, advance of Rs. 3 crores was received by the assessee from Shri B.M. Malikarjunaiah, towards the sale of scheduled property, being *New Municipal No. 366, P.I.D. No. 98-170-366, situated at Matadahalli*. It is noted that, the said amount of Rs. 3 crores was received by the assessee by way of cheque bearing 139952 and 018936 dated 23.06.2012 drawn at HDFC Bank, Sadashivanagar Branch, Bangalore, in the denomination of Rs. 2 crores and Rs. 1 crore respectively. In the Agreement to sale, the vendors being assessee before us, has acknowledged the receipt of Rs. 3 crores, against which, the assessee agreed to transfer, grant and convey the scheduled property together with all rights, title and interest, appurtenances and privileges to the purchaser being Shri B.M. Malikarjunaiah.

11. We further note that, the amount of Rs. 3 crores was received by the assessee on 23.06.2012, which pertains to Financial Year 01.04.2012 to 31.03.2013 being A.Y. 2013-14. The present year under consideration is A.Y. 2014-15. Going by this, the alleged amount even if, is to be verified, does not pertain to the relevant year under consideration. We also note that, the Agreement of sale dated 23.06.2012 is a registered document and the acknowledgement of the said amount by the assessee is not in dispute by the revenue. In any event, even if the revenue seeks to verify the payment having paid by Shri B.M. Malikarjunaiah, it is to be done for A.Y. 2013-14 and not for the relevant year under consideration.

12. We therefore do not find any necessity to remand the issue as submitted by the Ld.DR to the Ld.AO for verification of the additional evidence filed by the assessee before the Ld.CIT(A). **Accordingly, we do not find any merit in the appeal filed by the revenue and the same is dismissed.**

**The Cross Objection therefore filed by the assessee becomes infructuous.**

**In the result, the appeal filed by revenue and C.O. filed by assessee stands dismissed.**

Order pronounced in open court on 03<sup>rd</sup> June, 2022.

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 03<sup>rd</sup> 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