

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

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER  
AND  
SHRI. LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

<b>ITA No. 40/Bang/2021</b>
<b>Assessment Year : 2008-09</b>

Smt. Hemavathi, No. 25, Manchammahal, Dollar's Colony, Nandini Layout, Bangalore – 560 022. PAN: ABIPH5181J	<b>Vs.</b>	The Deputy Commissioner of Income Tax, Central Circle – 1[4], Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Pranav Krishna, Advocate
Revenue by	:	Shri Priyadarshi Mishra, Addl. CIT (DR)

Date of Hearing	:	26-05-2022
Date of Pronouncement	:	30-06-2022

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal is filed by assessee against order dated 01.12.2020 passed by Ld.CIT(A)-11, Bangalore for A.Y. 2008-09 on 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 herself liable to be assessed over and above the returned total income declared by the*

*appellant of Rs. 3,45,650/- on the facts and circumstances of the case.*

*3. The learned CIT [A] erred in confirming the order u/s. 153C r.w.s. 143 [3] of the learned Assessing Officer without adjudicating the contentions taken by the Appellant on the issue of assumption of jurisdiction under Section 153C of the Act without even calling, examining the records, on the facts and circumstances of the case.*

*4. The learned CIT [A] failed to appreciate that the notice issued under Section 153C of the Act is bad in law, for want of requisite jurisdiction especially the mandatory requirements to assume jurisdiction under Section 153C of the Act have not been complied with and consequently the assessment is liable to be cancelled on the facts and circumstances of the case.*

*5. The learned CIT [A] failed to appreciate that the assessment is further bad in law as reasons for issue of notice under Section 153 C of the Act have not been given and the Appellant has reasons to believe that the same has not been recorded and consequently the assessment is bad in law. The Appellant submits that mandatory conditions to assume jurisdiction is to record reasons and in the absence of the same the assessment is bad in law and liable to be cancelled.*

*6. The learned CIT [A] failed to appreciate that the notice issued under Section 153C of the Act is further bad in law when learned Assessing Officer mentioned in the notice that he proposes to assess/reassess the income (highlighted portion 'assess/reassess your income'), learned assessing officer issued a notice without specifically specifying by what he is proposing whether he is proposing to assess or reassess and there is no specific what he is proposing in the notice and consequently the entire proceedings initiated by the said invalid notice the assessment order passed is not valid and void-ab-initio.*

*7. The learned CIT [A] erred in confirming the addition of Rs. 60,10,000/- made by the learned assessing officer as unexplained investment in the hands of the Appellant on the facts and circumstances of the case.*

*8. The learned CIT [A] erred in confirming the addition made as undisclosed capital gains by adopting sale consideration at Rs. 20,18,000/- by invoking 50C of the Act on the facts and circumstances of the case.*

9. *The learned CIT [A] erred in passing the appellate order dated 01/12/2020 without admitting additional evidence under Rule 46A of the Income tax Rules, 1962 filed on 06/06/2018 in support of the Appellant's case and thereby passed a perverse order under the facts and circumstances of the case.*

10. *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.*

11. *The appellant contends that the levy of interest under section 234 B and 234C of the Act is also bad in law as the period, rate, quantum and method of calculation adopted by the learned assessing officer on which interest is levied are not discernible and are wrong on the facts of the case.*

12. *The appellant craves leave to add, alter, amend, substitute or delete any or all of the grounds of appeal urged above.*

13. *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. At the outset, the Ld.AR submitted that the legal issue raised challenging the jurisdiction of notice issued u/s. 153C has not been decided by the Ld.CIT(A). Referring to the grounds raised before the Ld.CIT(A) i.e. reproduced in the impugned order at page 6, the Ld.AR submitted that, nothing has been expressed on the legal issue challenged by assessee. Further, the Ld.AR filed before us, an application under Rule 46A, wherein, copy of the ledger account demonstrating payments made to Shri Ramdas from the group concerns of assessee has been filed. The Ld.AR submitted that these additional evidences demonstrates that payments were made by the assessee and her husband for purchase of property

form the available cash balance in the group concern, in which, both of them were active. The Ld.AR emphasised that, the assessee could not procure these details at the time of assessment proceedings and therefore the same were not could not be submitted even before the Ld.CIT(A). He thus prayed for the admission of additional evidence now filed before this *Tribunal*.

3. The Ld.DR on the contrary, opposed for the admission of these documents. The Ld.DR in respect of the legal issue that the same has not been adjudicated by the Ld.CIT(A) submitted that the same may be remanded to the Ld.CIT(A).

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

5. We note that the ledger accounts filed before this *Tribunal* is submitted to be in support of the alleged payments made by the assessee towards land purchase. We are therefore of the opinion that, these additional evidences would be necessary to adjudicate the additions made in the hands of the assessee pertaining to the unexplained investments. These documents were admittedly filed before Ld.CIT(A), however were not considered. Accordingly, we admit the additional evidence filed by assessee which is placed at pages 67 to 74 of the paper book.

6. Based on the submissions made by both sides, we are of the opinion that all the issue needs to be remanded to the Ld.CIT(A) for fresh consideration. The Ld.CIT(A) shall pass a reasoned order in respect of all the issues raised based on necessary verification and evidences filed by assessee. The Ld.CIT(A) shall call upon the details required to adjudicate the issues alleged by the assessee. The Ld.CIT(A) is directed to pass a detailed order on all the issues

challenged after granting proper opportunity of being heard to assessee.

Accordingly, the grounds raised by assessee before this *Tribunal* stands partly allowed for statistical purposes.

**In the result, the appeal filed by the assessee stands party allowed for statistical purposes.**

Order pronounced in open court on 30<sup>th</sup> June, 2022.

Sd/-  
(LAXMI PRASAD SAHU)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 30<sup>th</sup> June, 2022.  
/MS /

**Copy to:**

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|---------------|------------------------|
| 1. Appellant  | 4. CIT(A)              |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT        | 6. Guard file          |

By order

Assistant Registrar,  
ITAT, Bangalore