

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

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

ITA No.583/Bang/2020
Assessment Year: 2008-09

Shri R.C. Bhaskar Sri Rameshwari Supari Traders A-10, APMC Yard Shimoga  <b>PAN NO : AHQPBS105Q</b>	<b>Vs.</b>	The Addl. CIT Shimoga Range Shimoga
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri V. Srinivasan, A.R.
<b>Respondent by</b>	:	Shri Venudhar Godesi, D.R.

<b>Date of Hearing</b>	:	19.07.2022
<b>Date of Pronouncement</b>	:	19.07.2022

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal by assessee is directed against order of CIT(A) dated 7.2.2020. The grounds of appeal raised by the assessee are as follows:-

*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 learned CIT[A] is not justified in upholding the addition of Rs.11,01,453/- in respect of outstanding balances of certain sundry creditors, which had been brought to tax invoking the provisions of section 41[1] of the Act under the facts and in the circumstances of the appellant's case.*

2.1 *The learned CIT[A] ought to have appreciated that there was no case to presume or infer cessation of liability u/s 41(1) of the Act under the facts and circumstances of the appellant's case, in as much as the balances due to sundry creditors were still outstanding and the appellant was liable to discharge the same and hence, the addition sustained by the learned CIT[A] is misconceived both on facts and in law.*

3. *The learned CIT[A] is not justified in upholding the aggregate sum of Rs.16,05,130/- added u/s 68 of the Act, treating the same as "unexplained cash credits" under the facts and in the circumstances of the appellant's case.*

3.1 *The learned CIT[A] is not justified in upholding the addition of Rs.2,05,130/- as unexplained cash credit u/s 68 of the Act on account of the alleged difference in the brought forward opening balance in the cash book on 17/09/2007 under the facts and in the circumstances of the appellant's case.*

3.2 ~~The~~ *Ld. CIT(A) is not justified in upholding the addition of Rs4,50,000/- as unexplained cash credit u/s 68 of the Act, being the amount realized by the appellant from M/s Bindu Promoters upon the failure of allotment of land to the appellant, which advance given by the appellant was duly disclosed in the financial statements of the earlier years under the facts and in the circumstances of the appellant's case.*

3.3 *The learned CIT[A] is not justified in upholding the addition of Rs.9,50,000/- as unexplained cash credit u/s 68 of the Act, being the amount of cash deposited in the bank on 14/03/2008 that came to be recorded in the cash book on 24/03/2008 due to the absence of the accountant especially when the source of cash received was explained from a receipt of Rs. 10,00,000/- from M/s Om Traders, Kanpur that was also similarly recorded on 24/03/2008 when the cash book was updated by the accountant after his return 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.9,51,000/- as unexplained investment u/s 69 of the Act out of the original addition of Rs.19,02,709/- after deleting a*

*sum of Rs. 9,51,709/- under the facts and in the circumstances of the appellant's case.*

*4.1 The learned CIT[A] erred in upholding the addition of Rs. 9,51,000/- out of an addition of Rs. 19,02,709/- made by the learned A.O. in respect of a house which was still under construction by the appellant and for which there were numerous outstanding bills yet to be discharged..2 The learned CIT[A] erred in placing reliance on the report of the valuer dated 25/09/2007 wherein the valuer had arrived at the interim value of the house by considering the market value of land as on the date of valuation as opposed to the amount actually invested by the appellant in the said land.*

*5. 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.234-8 and 234•C of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.*

*6. 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."*

2. First ground is with regard to the addition made u/s 41(1) of the Act at Rs.11,01,453/-. Facts of the case are that the assessee's books of accounts shows sundry creditors of Rs.11,01,453/- from the following parties:-

Sl.No.	Party	Amount (Rs.)
1	KPV Trading Company, Kottur	5,23,504/-
2	Ramya Traders, Birur	40,660/-
3	Balaji Trading, Kottur	5,13,240/-
4	Tungabadra Adake Mandi	7,409/-
5	M/s. Lakshminarayana Betelnut	16,640/-
	Total	11,01,453/-

2.1 The assessee has not filed the confirmation from these parties before the lower authorities. This balance is outstanding since 3 to 4

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years. According to the AO, this credit was not proved by assessee. Hence, it is ceased to be existed. Accordingly, he invoked the provisions of section 41(1) of the Act and treated it as income of assessee. Against this, assessee is in appeal before us.

2.2 We have heard the rival submissions and perused the materials available on record. The Ld. A.R. made a submission that AO treated as his income only on the reason that the assessee was not able to file the confirmation letter from these parties. It cannot lead to the conclusion that the debt was ceased to exist on this reason and thereby it cannot be treated as income u/s 41(1) of the Act. In this case the debts were appearing in the assessee's books of accounts and also reflected in the assessee's balance sheet for the year ended on 31.3.2008 and the balance sheet was duly signed by the assessee. Once the assessee signed the balance sheet, it means that all the debts therein was acknowledged by the assessee. As such, these debts cannot be considered as ceased to exist. Further, Hon'ble jurisdictional High Court in the case of CIT Vs. Alvares and Thomas (394 ITR 647), wherein held as under:-

*"There are two requirements for invoking the provisions of section 41. The sine qua non is, the remission or cessation of the trading liability and the additional requirement is, some benefit in respect of such trading liability is taken by the assessee. If these conditions are satisfied, then alone can section 41(1) be invoked by the Assessing Officer. Merely because the creditor could not be traced on the date when the verification was made, is not a ground to conclude that there was cessation of the liability. Cessation of the liability has to be cessation in law, of the debt to be paid by the assessee to the creditor. The debt is recoverable even if the creditor has expired, by the legal heirs of the deceased creditor :*

*Held, that it was not the case of the Department that any benefit in respect of trading liability was taken by the assessee. The fact that the debt could not be verified was not sufficient. Section 41 was not applicable."*

2.3 In view of the above judgement of Hon'ble Karnataka High Court, we are inclined to delete this addition on similar lines.

2.4 This ground with regard to sustaining of addition of Rs.16,05,130/- u/s 68 of the Act, which consists of the following grounds:-

2.4.1.1 Addition of Rs.2,05,130/- on account of alleged difference in the brought forward opening balance in the cash book on 17.9.2007.

2.4.1.2 Facts of this issue are that the closing balance in the cash book on 13.9.2007 was Rs.1,75,770/-. However, the opening balance as on 17.9.2007 was taken at Rs.3,80,900/-. In between, there is one entry on 17.9.2007 with regard to deposit of cash of Rs.2,25,000/-. The A.O. considered the difference between the opening balance taken at Rs.17.9.2007 I.e. Rs.3,80,900/- and closing balance as on 13.9.2007 at Rs.2,05,130/- as unexplained income of the assessee at Rs.2,05,130/-. Against this assessee is in appeal before us.

2.5 We have considered the arguments of both the parties. In our opinion, the closing balance as on 13.9.2007 should be the opening balance as on 17.9.2007 since there was no transaction between these two dates, though there was deposit of Rs.2,25,000/- into bank account on 17.9.2007. Thus, AO has taken only the difference between these two balances as income of the assessee. He ought to have considered the difference at Rs.4,30,130/- (Rs.2,05,130 + Rs.2,25,000/-). We are not enhancing the additions, since the revenue is not in appeal before us. However, we confirm the addition to the extent of Rs.2,05,130/- only. This ground of appeal is dismissed.

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2.6 Next ground is with regard to sustaining addition of Rs.4,50,000/- as unexplained cash credit u/s 68 of the Act.

2.7 The facts relating to this issue are that the assessee shows the receipt of Rs.4.5 lakhs from Bindu Promoters. The assessee has explained before AO that this is the balance outstanding receivable from Bindu Promoters in earlier year and same was reflected in the balance sheet as on 31.3.2007 as outstanding from Bindu Promoters, Bangalore at Rs.4.5 lakhs and same is received the previous year 2007-08 relevant to assessment year 2008-09. However, lower authorities have not agreed with this proposition as the assessee has not filed the confirmation letter from Bindu Promoters, Bangalore. Against this, assessee is in appeal before us.

2.8 We have heard the rival submissions and perused the materials available on record. It is not disputed that there was an outstanding balance receivable from Bindu Promoters, Bangalore as on 31.3.2007 at Rs.4.5 lakhs. The contention of the Ld. A.R. is that the said amount has been given towards purchase of land, which was not materialized and same was returned back to the assessee. The same was shown as receipt from the said party by way of cash. The only reason for treating this amount as unexplained u/s 68 of the Act is that the assessee has not filed the confirmation letter from Bindu Promoters, Bangalore. In our opinion, the balance sheet of the assessee as on 31.3.2007, wherein this amount is duly reflected as receivable and same has been received by the assessee in AY 2008-09. This claim of the assessee cannot be rejected without bringing any material on record to suggest that this is only accommodation entry. The plea of the assessee is to be considered as genuine unless proved otherwise. In the present case, revenue authorities have no material to suggest that the assessee has not received this amount

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from M/s. Bindu Promoters, Bangalore in this AY 2008-09. If the AO had any doubt, he could have very well verified the same with Bindu Promoters, Bangalore, which he failed to do so. In these circumstances, we have no hesitation in deleting addition by the AO to the tune of Rs.4.5 lakhs. Accordingly, this addition is deleted.

2.9 Next ground is with regard to sustaining addition of Rs.9.5 lakhs made u/s 68 of the Act.

2.10 Facts of the issue are that the AO found that the assessee has deposited Rs 9.50 lakhs in his account with SBM on 14-03-2008 there was no cash balance available on that date in cash book of the assessee. The assessee submitted that the cash was deposited into the bank on 14-03-2008 whereas the entry in the cash book was inadvertently made on 24-03-2008 instead of 14-03-2008. It is a purely clerical error and no addition should be made. The AO observed that there was no cash in cash book on 14-03-2008. On 24-03-2008 cash of Rs.10,00,000/- from M/s Om Traders and Rs 9,00,000/- from M/s. Naveen Traders are received. This means the assessee had surplus cash of Rs 9.50 lakhs available on 14-03-2008, which has been deposited in the bank. Thus, the AO added this amount as unexplained cash credit under section 68 of the Act.

2.11 The plea of Ld. A.R. is that this is only clerical error and sought an opportunity to reconcile the entries in the cash book and produce the same before the AO. We acceded to the request of Ld. A.R. Accordingly, this issue is remitted to the file of AO with the direction to the assessee to produce the correct cash book after incorporating all the entries and the AO has to consider the same in accordance

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with law and decide afresh. The issue is remitted back to the AO for fresh consideration.

3. Next ground is with regard to sustaining addition of Rs.9.51 lakhs out of Rs.19,02,709/- after deleting addition of Rs.9,51,709/- by Ld. CIT(A).

3.1 Facts of the issue are the AO found that the assessee has started construction of a house in April 2007 jointly with his wife and the investment up to September 2007 was Rs 30,87,709/- as per valuation report by the registered engineer of the Bank. The AO also noted that as per ledger account submitted, there is investment of Rs 11,85,000/- by the wife of the assessee till September 2007. Thus, the assessee has invested an amount of Rs 19,02,709/- in the construction of the house till September 2007. However, the AO noted that the first installment of bank loan was released on 10-12-2007 and the assessee has drawn from his business account in the month of January 2008 only for investment in the construction of the house. Thus the AO concluded, after considering the reply of the assessee, that the investment of Rs 19,02,709/- by the assessee in the construction of the house upto September 2007 was unexplained investment and added the same u/s 69 of the Act.

3.2 The Ld. CIT(A) observed that the assessee has incurred an expenditure of Rs.19,02,709/-. Out of this, assessee might have paid 50% of the expenditure and balance to be payable. Accordingly, he deleted the addition of Rs.9,51,709/- and sustained addition of Rs.9.51 lakhs out of Rs.19,02,709/-. Against this assessee is in appeal before us.

3.3 We have heard the rival submissions and perused the materials available on record. The plea of the assessee that the AO unilaterally considered the total cost incurred by the assessee excluding land as follows:-

1.	Compound wall	8,00,000/-
2.	Deep Bore with Motor	35,000/-
3.	Power supply cost	10,000/-
4.	Investment in the construction till 24.9.2007	22,42,709/-
	Total	Rs.30,82,709/-

3.4 According to the Ld. A.R., the AO called for the valuation report, wherein there is no mentioning of investment in the construction till 24.9.2007 at Rs.19,02,709/-. According to him, there is no base for such addition made by AO at Rs.19,02,709/- as it was not incurred by the assessee and he submitted that valuation report of construction cannot be called by AO in the middle of construction. He may call the valuation report after completion of the construction. In the middle of the period of construction, it is not possible to ascertain exact amount invested by assessee since some bills are pending to be paid.

3.5 The Ld. D.R. submitted that the AO has considered the bank disbursements made towards the cost of construction and the bank would not have disbursed the amount to the assessee without investing his share of investment. Accordingly, he submitted that addition to be sustained.

3.6 We have heard the rival submissions and perused the materials available on record. In this case, the AO has called for the valuation report from the valuer namely Mr. E. Umesh Sajjan,

Sampath Complex, Vinod Nagar, Shimoga dated 25.9.2007. We have gone through the valuation report placed in paper book at page Nos.53 to 57. There was no mention of this investment made by the assessee. It contains the following details:-

1.	Land	45,91,125/-
2.	Compound wall	8,00,000/-
3.	Deep Bore with Motor	35,000/-
4.	Power supply	10,000/-
	Total	Rs.54,36,125/-

3.7 The A.O. mentioned in the assessment order that since his wife has invested Rs.11,85,600/- in the construction of the house till September, 2007 and as per information collected from the bank u/s 133(6) of the Act, total investment by assessee was Rs.30,87,709/- other than land cost and hence AO inferred that the balance amount was incurred by assessee upto 24.9.2007 worked out at Rs.30,87,709/-. The valuation report collected by the AO from Mr. E. Umesh Sajjan dated 25.9.2007 shows no investment on this count. Hence, the assessee disputing the investment made by assessee at Rs.30,87,709/-.

3.8 On the other hand, the valuation report also does not show the investment made by assessee's wife at Rs.11,85,000/-. Being so, there is inconsistency in the valuation report and the information obtained from the bank. In view of this, we are of the opinion that it is appropriate to remit the issue to the file of AO to consider the issue afresh after furnishing all the details of information collected by AO from bank to the assessee and to decide it afresh.

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

Order pronounced in the open court on 19<sup>th</sup> Jul, 2022

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 19<sup>th</sup> Jul, 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.**