

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES "C", BANGALORE**

**Before Shri George George K, JM & Ms.Padmavathy S, AM**

ITA No.557/Bang/2022 : Asst.Year 2016-2017

M/s B B Jewellers and Finance Private Limited, No.818, 8 <sup>th</sup> Block 80 Feet Road, Koramangala Bangalore - 560 095. <b>PAN : AABC6643G.</b>	v.	The Assistant Commissioner of Income-tax, Circle 1(1)(2) Bengaluru.
(Appellant)		(Respondent)

Appellant by : Sri.Madhusudhan, Advocate  
Respondent by : Smt.Priyadarshini Baseganni, Addl.CIT-DR

<b>Date of Hearing : 25.08.2022</b>	<b>Date of Pronouncement : 30.08.2022</b>
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**ORDER**

**Per George George K, JM :**

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 04.05.2022. The order of the CIT(A) arise out of the order dated 09.07.2019 of the A.O. passed u/s 154 r.w.s. 143(3) of the I.T.Act. The relevant assessment year is 2016-2017.

2. The grounds raised read as follows:-

*"1. The order of the learned Commissioner of Income Tax (Appeals) - 11, Bengaluru passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as "Act") dated 04.05.2022 for Assessment Year 2016-17 in so far as it is against the Appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.*

*2. The appellant denies himself liable to be assessed on a total income of Rs. 4,18,00,000/- as against the returned loss of a sum of Rs.1,32,893/- under the facts and circumstance of the case.*

3. *The learned Commissioner of Income Tax (Appeals) is not justified in upholding the addition of a sum of Rs.30,00,000/- made by the learned Assessing Officer in the rectification order passed under section 154 of the Act on the facts and circumstances of the case.*

4. *The learned Commissioner of Income Tax (Appeals) failed to appreciate that the addition of a sum of Rs.30,00,000/- is already included in the addition made of a sum of Rs.3,88,00,000/- and consequently the same has resulted in double addition which is impermissible in law on the facts and circumstances of the case.*

5. *The learned Commissioner of Income Tax (Appeals) is not justified in upholding the addition made of a sum of Rs. 30,00,000/- despite holding that the Assessing Officer whether rightly or wrongly intended to make the addition on the facts and circumstances of the case.*

6. *The learned Commissioner of Income Tax (Appeals) is not justified in only adjudicating the issue of whether the addition of a sum of Rs. 30,00,000/- could be made in a proceedings under section 154 of the Act and not adjudicating the issue of whether the addition itself is sustainable on the facts and circumstance of the case.*

7. *The learned Commissioner of Income Tax (Appeals) is not justified in upholding the addition of a sum of Rs.30,00,000/- ignoring the irrefutable documentary evidences furnished on the facts and circumstances of the case.*

8. *The learned Commissioner of Income Tax (Appeals) erred in holding that the grounds no. 3, 5, and 6 raised before Commissioner of Income Tax (Appeals) are general or arguments in support of ground no.4 and ought to have adjudicated the same on the facts and circumstances of the case.*

9. *The Appellant submits that the calculation of interest by the Assessing Officer under Section 2346 of the Act is incorrect, inter alia, on the Quantum, Period, Rate and method on which it has been calculated.*

10. *The Appellant denies himself liable to be charged interest under Section 234B of the Act on the facts and circumstances of the case.*

11. *The appellant craves for leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.*

12. *For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.”*

3. The brief facts of the case are as follows:

The assessee is a company engaged in the business of trading in gold & diamond jewellery, bullion and silver articles. For the assessment year 2016-2017, the return of income was filed on 16.10.2016 declaring a loss of Rs.1,32,893. Revised return was filed on 03.11.2017 without any change in income / loss declared earlier, but change in cash balance. The assessment was selected for scrutiny and order u/s 143(3) of the I.T.Act was completed vide order dated 22.12.2018 determining the total income of the assessee at Rs.3,86,67,107.

4. Thereafter, the Assessing Officer issued notice u/s 154 of the I.T.Act to rectify the assessment order completed u/s 143(3) of the I.T.Act. The A.O. was of the view that a sum of Rs.30,00,000 needs to be added u/s 68 of the I.T.Act to the total income (since there was an increase of cash in hand by Rs.30,00,000 between original return and the revised return). The assessee sought for a personal hearing, which was duly granted. The assessee raised objections to the rectification notice issued by the A.O. However, the same was rejected and the A.O. passed order u/s 154 of the I.T.Act making an

addition of Rs.30 lakh. The relevant finding of the A.O. in making the addition of Rs.30 lakh reads as follows:-

*“2..... Assessee argument is not acceptable for the reason already discussed in para 5.3 of the assessment order. As per the audited annual report and financials, loan from M/s Motocab finance Pvt. Ltd. is Rs.3.88 cr. After one year, just before announcement of demonetisation, deposition of Rs.30,00,000/- is same as loan amount is not acceptable. Assessee has filed revised return & revised balance sheet only to accommodate the cash deposition made in F.Y.2016-17. Hence, same was not accepted by assessing officer in order u/s 143(3).”*

4. Aggrieved, the assessee filed an appeal before the first appellate authority. Before the first appellate authority, the assessee raised contentions that there is no apparent mistake warranting rectification of assessment order u/s 154 of the I.T.Act. On the merits, it was submitted that the addition made amounting to Rs.30 lakh is already included in the addition of Rs.3.88 crore made in assessment completed u/s 143(3) of the I.T.Act.. The CIT(A), however, rejected the contentions of the assessee and upheld the rectification order passed u/s 154 of the I.T.Act. The relevant finding of the CIT(A) reads as follows:-

*4.4 The submissions of the appellant have duly been considered. A perusal of the details available on records reveals following details:*

- The appellant had shown having taken a loan of Rs3,88,00,000/- from M/s Motocab Finance Pvt Ltd during the year under consideration (Audit report dt. 14.1 0.2016).*
- The cash balance as on 31.03.2016 was shown at Rs 3,48,71,938/-.*
- Later on, the appellant filed a revised return of income by showing cash balance enhanced by Rs 30,00,000/-. The*

*argument of the appellant was that an amount of Rs.30,00,000/- was wrongly treated by it as having been deposited in the bank account although it was not so. The appellant has submitted that the amount of Rs 30,00,000/- deposited in the bank account was actually the loan taken by it from MIs Motcab Finance Pvt Ltd and not cash deposit.*

- As regards the amount of Rs 3,88,00,000/- the AO treated the same as unexplained (see para 5.3 of the assessment order).*
- As regards the enhanced cash of Rs 30,00,000/- in cash book the AO held that the argument of the appellant that it was a mere correction in books, was not acceptable (see para 5.3 of the assessment order).*
- Since in the order the AO had made addition of Rs.3,88,00,000/- only and the addition relating to unexplained cash of Rs.30,00,000/- in the cash book was not made, so he rectified the said order by making the second addition also.*

*4.5 In rectification the most important aspect which needs to be looked into is whether the amendment proposed to be made would fall within the scope of Section 154 or not. Scope of rectification is limited to correcting error of fact or error of law on the basis of material available on records. In the appeal under consideration, this is evident from the assessment order of the AO that he had treated the additional cash availability of Rs 30,00,000/- in the cash book separately from the unexplained loan of Rs 3,88,00,000/- from M/s Motcab Finance Pvt Ltd. Thus whether rightly or wrongly he intended to make the additions on both accounts to the income of the appellant. However, while computing the income of the appellant, he made the addition of Rs.3,88,00,000/- only and missed to make the addition of Rs.30,00,000/- which he had intended to treat as unexplained cash. So on the basis of material available on records it can be said that there was a mistake apparent from record and ongoing through the assessment order it cannot be said that two different opinions are possible. So the action of the AO in passing the rectification order under Section 154 of the Act is correct and the same is upheld.”*

5. Aggrieved, the assessee has filed the present appeal before the Tribunal. The assessee has filed a paper book comprising of 78 pages *inter alia* enclosing therein copies of

the original return, revised return, written submission filed before the CIT(A), confirmation from Motcab Finance Private Limited, copy of the Federal Bank statement, bank ledger account of M/s.Motcab Finance Private Limited, etc. The learned AR reiterated the submission made before the A.O. and the CIT(A).

6. The learned DR, on the other hand, submitted that order u/s 154 of the I.T.Act has been rightly passed, since there was a mistake apparent in the original order in not making addition of Rs.30 lakh. It is submitted by the learned DR that it is surprising that the cash book was not reconciled for a very long period, which is unbelievable, hence, the contentions of the assessee need to be rejected.

7. We have heard rival submissions and perused the material on record. The original return of income was filed by the assessee on 16.10.2016 declaring loss of Rs.1,32,893. Later, revised return was filed on 03.11.2017 without any change in income / loss declared earlier. However, there was change in cash balance due to rectification entry passed in the books of account. Also in the original return and revised return, loans and advances also showed an increase of Rs.30 lakh. The A.O. during the course of assessment proceedings, required the assessee to provide the details and substantiate the following transactions:-

- (i) Entry passed by the assessee in its books of account to rectify an amount of Rs.30,00,000

[which according to the assessee was erroneously shown as cash deposited in to its bank account whereas it was actually a part of the loan received from a Non-Banking Financial Company ('NBFC'), Motcab Finance Pvt. Ltd. ('Motcab')].

- (ii) Details of loan of Rs.3,88,00,000 (which according to the assessee included the above amount of Rs.30,00,000) borrowed from Motcab Finance Pvt. Ltd.

8. The assessee vide submissions dated 14.12.2018, furnished requisite details and documents to the A.O., as under:-

- Explanation for filing revised return of income.
- Copy of cash book before passing the rectification entry.
- Copy of cash book after passing the rectification entry.
- Copy of statement of the assessee's account with Federal Bank.
- Copy of confirmation of account received from Motcab.
- Copy of ledger account of the assessee in the books of account of Motcab.
- Copy of bank account with Federal Bank held by Motcab for the financial year 2015-16.
- Copy of the Income-tax returns of Motcab for AY 2016-17, 2015-16 and 2014-15 (which explain the source of income and other details about Motcab).
- Copy of assessment order of Motcab for AY 2013-14 passed by the ITO Ward 4(2) Kolkata dated 26 Feb 2016 accepting the Return of income filed by it (with minor disallowance).
- NBFC certificate of Registration issued by the Reserve Bank of India to Motcab.

9. The AO made addition of Rs.3,88,00,000 borrowed from Motcab Finance Private Limited treating the same as

unexplained cash credits u/s 68 of the I.T.Act vide assessment order dated 22.12.2018. The addition made by the A.O. u/s 68 of the I.T.Act amounting to Rs.3.88 crore is pending adjudication before the CIT(A). Further, the AO passed rectification order making an addition of Rs.30 lakh. The contention of the assessee that increase in cash in hand by a sum of Rs.30 lakh was to correct the accounting error committed by the assessee's Accountant and the said sum was already included in the addition of Rs.3.88 crore made u/s 68 of the I.T.Act in assessment order completed on 22.12.2018, was rejected by the A.O.

10. The AO, during the course of assessment proceedings, had sought to make an addition of Rs.3.58 crore u/s 68 of the I.T.Act (the amount received by the assessee from Motcab Finance Private Limited) (refer para 4 of the assessment order). The assessee had replied that the cash in hand was mentioned at Rs.3,48,71,938 by inadvertence while filing the original return for the relevant assessment year. It was further stated by the assessee that later during October 2017 while reconciling the balance with various parties with whom the assessee had dealings, it was noticed that there was a difference in balance of Rs.30 lakh in the ledger account of Motcab Finance Pvt. Ltd. against the balance as per their confirmations. Upon verification, the assessee noticed that this amount was paid by Motcab Finance Pvt. Ltd. to the assessee on 14.09.2015, which inadvertently was considered by the assessee's Accountant as cash in hand deposited into

assessee's account, resulting in a decrease in cash balance (Therefore it was submitted that amounts received from Motcab Finance Private Limited was Rs.3.88 crore during the year and not Rs.3.58 crore). Immediately thereafter, revised return was filed on 03.11.2017 with updated schedules. Accordingly, as per the revised return, the AO had completed the assessment by making the total addition of Rs.3.88 crore (3.58 crore + 30 lakh).

11. The original return and the revised return filed by the assessee are placed on record. In the original return, the loans and advances outstanding was disclosed at Rs.9,70,90,675 (refer page 5 of the paper book) and the same was increased by Rs.30 lakh in the revised return to Rs.10,00,90,675 (refer page 36 of the paper book). Further, the cash in hand as per original return was at Rs.3,48,71,938 (refer page 7 of the paper book) and the same was increased by Rs.30 lakh to a sum of Rs.3,78,71,938 (refer page 38 of the paper book). The AO and the CIT(A) had considered the addition of Rs.30 lakh on a standalone basis without reference to the corrections made in the revised return. (increase in cash in hand and loans & advances). Moreover, the addition of Rs.30 lakh is made in a rectification order passed u/s 154 of the I.T.Act. There is no mistake apparent and facts on record only discloses an error in accounting entry by the Accountant, which does not warrant a rectification u/s 154 of the I.T.Act. Further, this amount of Rs.30 lakh is *prima facie* already included in Rs.3.88 crore

while the A.O. making the addition u/s 68 of the I.T.Act. For the aforesaid reasons, we quash the rectification order passed u/s 154 of the I.T.Act. It is ordered accordingly.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 30<sup>th</sup> day of August, 2022.

**Sd/-**  
**(Padmavathy S)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 30<sup>th</sup> August, 2022.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-11, Bangalore.
4. The Pr.CIT (Central), Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore