

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

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT
AND MS. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.1823/Bang/2019
Assessment Year : 2008-09

Shri. C. N. Babu, Prop: Hotel Chirag, B. M. Road, Bidadi, Ramanagaram Taluk – 562 109. PAN : AJXPB 4497 N	Vs.	ITO, Ward – 1, Ramanagara.
APPELLANT		RESPONDENT

Assessee by	:	None
Revenue by	:	Shri. K. R. Narayana, Addl. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	14.09.2022
Date of Pronouncement	:	14.09.2022

ORDER

Per N. V. Vasudevan, Vice President

This is an appeal by the Assessee against the order dated 21.3.2019 of the CIT(A)-3, Bengaluru, relating to AY 2008-09.

2. In this appeal, the Assessee has challenged the order of the CIT(A) whereby the CIT(A) imposed penalty u/s.271(1)(c) of the Income Tax Act, 1961 (Act) on the Assessee in respect of an addition of Rs.45,91,254/- made by the CIT(A) in exercise of his powers of enhancement u/s.251 of the Act.

3. The facts and circumstances under which the CIT(A) enhanced income of the Assessee and imposed penalty are that the AO made an

addition of Rs.9 lacs to the total income of the Assessee on account of unexplained cash deposited in a Bank Account with Kotak Mahindra Bank. In the appeal against the order of the AO making the aforesaid addition, the assessee explained the source of cash deposit of Rs.9 lakhs in his Kotak Mahindra Bank before CIT(A) by relying on the withdrawn of cash from a bank account with Canara Bank bearing No.22065 and the copy of the said bank account statement was given as Annexure 5 to the written submission of the assessee dated 12.08.2013 filed before the CIT(A). The CIT(A) while examining the aforesaid source noticed that assessee was the first account holder of aforesaid Canara Bank A/c and this account has not been disclosed by him in his return of income. He also noticed that there were the following cash deposits in the aforesaid account of the assessee.

Date	Particulars	Amount of Deposits
17.05.201	Cash	5,000/-
13.06.201	Cash	3,65,000/-
18.06.200	Cash	50,000/-
18.06.200	Cash	2,50,000/-
29.06.200	Cash	4,50,000/-
02.07.200	Cash	2,00,000/-
16.07.200	Cash	31,00,000/-
10.09.200	NNND 3374	8,700/-
14.11.200	Cash	5,000/-
30.11.200	5670	5,670/-
12.12.2007	GL 17921	60,000/-
08.01.200	NNND 3517	72,694
29.01.200	Cash	10,000/-
15.02.200	Cash	7,500/-
26.03.200	Cash	1,690/-
	Total	45,91,254/-

4. The CIT(A), in exercise of his power of enhancement under section 251 of the Act, was of the view that cash deposits in the aforesaid Canara Bank Ac/ should also be added to the total income of the assessee as undisclosed income under section 69 of the Act because the assessee failed

to give a satisfactory explanation with regard to source of funds out of the aforesaid cash deposits were made.

5. The Assessee filed appeal before the Tribunal against the action of the CIT(A) in enhancing the assessment in exercise of his powers u/s.251 of the Act in Shri. C. N. Babu, Prop: Hotel Chirag Vs. ITO, Ward – 1, Ramanagara, in ITA No. 356/Bang/2019 for AY 2008-09. The Tribunal by its order dated 16.08.202 held that powers under Section 251 are wide but cannot go to the extent of displacing powers under Section 147, 148 and 263. The Tribunal held that cash deposit in Canara bank account was never subject matter of assessment or considered by Revenue and details of said bank account were provided by the Assessee before the CIT(A) as otherwise there is no occasion for CIT(A) to have known the existence of said account. The Tribunal held that subject matter of consideration by the CIT(A) in exercise of powers of enhancement cannot include incidental or collateral examination of any matter in process of assessment and there must be something in the assessment order to show that Revenue applied its mind in the particular subject matter or particular source of income with a view of its taxability and in the present case, there has been no incidental or collateral examination of Canara Bank account was done by the AO and therefore the CIT(A) erred in exercising its power of enhancement under Section 251 of the Act. The Tribunal in support of its conclusions relied on decisions of Hon'ble Supreme Court in the case of CIT Vs. Shapoorji Pallonji Mistry 44 ITR 891 and CIT Vs. Rai Bahadur Hardutroy Motilal Chamaria 66 ITR 443 (SC) and distinguished the decision of the Hon'ble Supreme Court in the case of CIT Vs. Nirbheram Daluram 224 ITR 610 (SC) by placing reliance of decision of Hon'ble Delhi High Court CIT Vs. Sardari Lal & Co. 251

ITR 864 (Delhi) and Hon'ble Kerala High Court in the case of CIT Vs. B.P. Sharafudin 252 Taxman 326 (Ker). The addition made by the CIT(A) in exercise of his powers of enhancement u/s.251 of the Act was accordingly deleted by the Tribunal.

6. Since the very addition on the basis on which penalty was imposed on the Assessee has been deleted, the levy of penalty u/s.271(1)(c) of the Act cannot be sustained and the same is directed to be deleted.

7. In the result, the appeal of the Assessee is allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(PADMAVATHY S)
Accountant Member

Sd/-
(N. V. VASUDEVAN)
Vice-President

Bangalore,
Dated: 14.09.2022.
/NS/*

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.