

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

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

ITA No. 802/Bang/2014
Assessment Year : 2008-09

Smt. Nandini V. Kalgutkar, University Medical Centre, Jyothi Circle, Mangalore. PAN: AKBPK2399B	Vs.	The Income Tax Officer, Ward 2 (1), Mangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri S. Srinivas Kamath, CA
Revenue by	:	Shri Sankar Ganesh K, JCIT DR ITAT

Date of Hearing	:	08-08-2022
Date of Pronouncement	:	05-09-2022

ORDER

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

This is an appeal by assessee directed against order of Ld.CIT(A) dated 07/03/2013.

2. The assessee raised following grounds.

“1. The appellate Court i.e. The Commissioner of Income Tax (Appeals) Mysore i.e., has erred in confirming the additions of income made by the Assessing Officer. The order is opposed to Law and Facts. The Hon'ble Commissioner has passed the order mainly presuming that the appellant was not interested in pursuing the appeal as he has failed to respond to the notice. The fact is that the appellant was very much interested in getting relief as the appellant is not having sufficient income even to lead a normal life. But unfortunately, the authorized representative failed in discharging his responsibility for the reasons best known to him.

2. The confirmation of addition of Rs.4,00,000/= to the returned income is not correct as the appellant is working at Kasturba Medical College for the last 20 years. Hence her savings and income received by the husband who was working in S.B.M. are not considered properly by the Assessing Officer.

3. The appellant Commissioner, Mysore has erred in confirming the addition of Rs.2,58,839/= towards Gross profit at 2.5% of closing stock as the same was not available for sale made by A.O. The real fact was that the closing stock was stolen and actually the appellant should have shown it as loss of business. This aspect has not been properly analysed by the assessing officer.

4. The addition of Rs.63,91,760/= being the difference between the book balance and confirmation letter in respect of M/S Meghamani Organics by the assessing office as discharged liability is not based on facts. The appellant's book balance is as on 31.3.2008 and also to creditor failed to confirm all the credits. Hence, the confirmation of additions by C.I.T. appeal is not correct.

For these and other grounds of appeal that may be raised either before or at the time of hearing this appeal may be allowed.”

3. With regard to first ground, facts are that the assessing officer added a sum of Rs. 4 Lakhs towards introduction capital on the reason that assessee has not explained source of capital. The Ld.AR submitted that the assessee was staff nurse cum supervisor working at Kasturba Medical College, Jyothi Circle, Mangalore for the past 20 years and this amount of Rs. 4 Lakhs introduced by assessee as capital and it was also sourced by an amount given by her husband who is working for State Bank of Mysore as Head Cashier.

4. The Ld.DR submitted that assessee has not explained sources from past savings with any reasonable evidence and hence additions needs to be sustained.

4.1 We have heard both the parties and perused the material on record. The contention of the assessee is that earlier the assessee was working as a staff nurse and her husband also working as Head Cashier in State Bank of Mysore. These facts has not been doubted by the department and they are earning members and the introduction of amount of Rs. 4 Lakhs as capital cannot be doubted when it was explained that it was from their past savings. In our opinion, the explanation offered by assessee is very reasonable and in our opinion the source of introduction of capital of Rs. 4 Lakhs is from past savings and it is to be considered as explained. Accordingly, the addition made by the Ld.AO towards introduction of capital of sum of Rs. 4 Lakhs is to be deleted.

5. The next ground of appeal is with regard to estimation of GP of 2.5% of the closing stock on the reason that the stock was not available with the assessee for sale. The assessee explained that the stock has been stolen as it is lying at Bilikere near Ankola as the goods cannot be stored in locked premises. However, the assessing officer not believed the contention of the assessee and hence made addition of 2.5% GP on it. Against this, assessee is in appeal before us.

5.1 We have heard both the parties and perused the material on record. The assessee not able to explain what happened to the closing stock stored at Bilikere near Ankola. No FIR registered with police authorities. In our opinion, assessee has not explained the true facts of this issue and it is reasonably presumed that assessee has sold these goods out of books and shown Nil stock. Being so, estimation of GP on this stock at 2.5% at Rs.2,58,839/- is justified. The addition is sustained. This ground of appeal is dismissed.

6. The last ground is with regard to addition of Rs.63,91,760/- being difference in confirmation letter issued by M/s. Meghamani Organics. Facts of this issue are that as the account of M/s. Meghamani Organics shows the balance of Rs.2,04,74,755/-. However confirmation letter filed by the assessee from that party shown at Rs.1,40,82,995/-. Thus, there was difference of Rs.63,91,760/- and same was added by AO as cessation of liability. In other words, there was a difference between the balance shown by the assessee in her books of account and balance shown by M/s. Meghamani Organics in their books of accounts at Rs.63,91,760/- which was treated as cessation liability by AO.

Against this, assessee is in appeal before us.

6.1 We have heard both the parties and perused the material on record. We have carefully gone through the section 41 of the IT Act which reads as follows:

“Profits chargeable to tax.

41. (1) *Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently during any previous year,—*

(a) the first-mentioned person has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or”

7. On perusal of the said provision, it is evident that it is a sine qua non that there should be an allowance or deduction claimed by the assessee in any assessment in respect of loss, expenditure or

trading liability incurred by the assessee. Then, subsequently, during any previous year, if the creditor remits or waives any such liability, then the assessee is liable to pay tax u/s. 41(1) of the IT Act. The objective behind this section is simple. It is made to ensure that the assessee does not get away with a double benefit once by way of deduction and another by not being taxed on the benefit received by him in the later year with reference to deduction allowed earlier in case of remission of such liability.

8. In the present case, there is no allegation that assessee has claimed this amount as deduction in any assessment year. If it is being so, only on account of difference between the balance shown in assessee's books of accounts and in the books of accounts of M/s. Meghamani Organics cannot lead to conclusion that assessee has derived any benefit in terms of section 41(1) of the IT Act. Further, the said balance is also shown as outstanding in the Balance Sheet of assessee as on 31.03.2008 and showing liability in the Balance Sheet tantamount to acknowledgement of debt and that the liability has neither ceased to exist nor there is a remission of liability in terms of section 41(1) of the IT Act as held by *Hon'ble Delhi High Court* in case of CIT vs. Shri Vardhman Overseas Ltd. reported in 343 ITR 408 and DCIT vs. Karnataka Agro Industries Corporation Ltd. reported in 63 CCH 002 [Bang Trib].

9. In view of this, we are of the opinion that the difference between the balance shown in the accounts of the assessee and balance shown in the accounts of M/s. Meghamani Organics cannot be treated as cessation of liability in terms of section 41(1) of the IT Act. Accordingly this addition of Rs.63,91,760/- is deleted.

10. In the result, the appeal filed by assessee is partly allowed.

Order pronounced in the open court on 05th September, 2022.

Sd/-
(BEENA PILLAI)
Judicial Member

Sd/-
(CHANDRA POOJARI)
Accountant Member

Bangalore,
Dated, the 05th September, 2022.
/MS /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore