

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

**BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.1418/Bang/2012
Assessment Year : 2008-09

Shri. Wilfred D'Souza, Prop. M/s. Karnataka Cashew Corporation and M/s. Great India Finance Corporation, Kemmai, Puttur, D. K. – 574203. PAN : ABFPD 3142 C	Vs.	The Income Tax Officer, Ward - 1, Puttur.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Narendra Sharma, Advocate
Revenue by	:	Capt. Pradeep Arya, CIT(DR)(ITAT), Bengaluru

Date of hearing	:	06.10.2022
Date of Pronouncement	:	06.10.2022

ORDER

Per George George K, Judicial Member :

This appeal was originally disposed off by the Tribunal vide its Order dated 22.08.2014. The issue raised before the Tribunal was the year of taxability of capital gains whether it is in the relevant Assessment Year or in the Assessment Year 2009-10. The assessee had also raised additional ground assailing the validity of reopening of the assessment. The Tribunal dismissed the appeal of the assessee on merits as well as the issue of validity of reopening of the assessment. The assessee, being aggrieved, filed appeal before the Hon'ble Karnataka High Court under section 260A of the Income Tax Act, 1961. The Hon'ble High Court, vide its judgment dated 30.06.2022 in ITA

No.12/2015, decided the issue of validity of reopening in favour of the assessee. The Hon'ble High Court set aside the order of the Tribunal dated 22.08.2014.

3. We heard the rival submissions and perused the material on record. The Hon'ble Karnataka High Court had decided the issue of reopening in favour of the assessee. The relevant finding of the Hon'ble High Court in this regard reads as follows:

“19. In the case on hand, relevant paras of the MOU read as follows:

"1) In pursuance of the aforesaid understanding the Second Party has paid to the First Party a sum of Rs.2,00,00/- (Rupees two lakhs only) by cheque No.009754 dated 01-07-2006 drawn on Karnataka Bank, Dongerkery branch, Mangalore, towards the advance consideration with regard to his claim on the Schedule properties, receipt of which sum the First Party acknowledges herewith.

2) It is agreed between the parties that the balance consideration of Rs. 2,30,00,000/- (Rupees two crore thirty lakhs only) shall be paid by the Second Party to the First party within one year from this date, subject to withdrawal of the suit in O. S. No.100/2004 by the First Party and the Second Party shall obtain proper receipt from the First Party as and when the payment is made.

3) That in pursuance of the aforesaid understanding the First Party has agreed to withdraw the Suit in O.S.No.100/2004 which is pending before the II Addl. Civil Judge (Sr.division), Mangalore.

4) That the First Party hereby assures and declares that he will not make any claim of whatsoever nature in the schedule property or against the aforesaid previous owners with whom he had entered into Agreement for Sale and also against the present owners namely M/S MANGALORE INTERNET CITY (P) LTD.

5) *That the First Party hereby assures and confirms with the Second party that, except the above mentioned balance consideration of Rs.2,00,00,000/-(rupees two cores only), the First Party shall not make any additional claim with the Second Party or its aforesaid owners hereafter for any reason."*

20. *Shri. Aravind has contended that para 5 of the MOU gives an impression that Rs.30 Lakhs was received in the relevant year. The communication dated 30.10.2012 by the Income tax Officer reads thus:*

*"Shri Wilfred D'Souza
Prop: Karnataka Cashew Corporation
Chikkamudnur, Kemmai
Puttur
574201*

*Sub: Reasons for re-opening the assessment procedure -
A.Y. 2008-09 - in your own case - reg
Ref: 1) Your letter dated 25/10/2012 filed on 26/10/2012*

Please refer to the above.

Reason recorded for re-opening the assessment procedure u/s 147 by issuing 148 of the I. T. Act is as under.

"The assessee Sri. Wilfred D'Souza has received payment of Rs.30,00,000/- in the F.Y. 2007-08 from Sri. Rohan Monteiro as per Memorandum of understanding dated 1/10/2007. On verification of the records, the assessee has not filed return of income for the 2008-09 till date.

Therefore, I have reason to believe that the income chargeable to tax has escaped assessment within the meaning of section 147 of the I. T. Act."

Yours faithfully

*(PARIMELAZHAGAN P.J.)
Income-tax Officer.
Ward-1, Puttur."*

21. *Except stating that assessee had received Rs.30 Lakhs in the financial year 2007-08 from Rohan Monteiro, the ITO has not recorded any reasons much less, 'reasons to believe' while issuing notice under Section 148 of the Act.*

22. *Shri. Shankar is right in his submission that payment received in every transaction cannot be construed as Income, but the ITO in this case, has issued notice only on the premise that assessee had received Rs.30 Lakhs in financial year 2007-08. Such notice is not sustainable in law. It is also relevant to note that on completion of transaction, the assessee has filed his return for the financial year 2008-09 and the same is not disputed.*

23. *In view of the above, this appeal merits consideration. Hence, the following:*

Order

(a) *Appeal is **allowed**.*

(b) *The substantial questions of law raised are answered in favour of the assessee.*

(c) *The order dated 22.08.2014 in ITA No.1418(Bang)2012 passed by the ITAT, Bengaluru 'C' Bench relating to A.Y. 2008-09 is set-aside.*

4. In view of the above order of the Tribunal, the issue of the reopening has been decided in favour of the assessee and the appeal filed before the Hon'ble High Court has been allowed. Therefore, there is a mistake in the Registry of ITAT in posting this case before the ITAT. In consonance with the Hon'ble High Court's judgment, we allow the appeal of the assessee. It is ordered accordingly.

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

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

Sd/-

(PADMAVATHY S)
Accountant Member

Sd/-

(GEORGE GEORGE K)
Judicial Member

Bangalore.

Dated: 06.10.2022.

/NS/*

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

By order

Assistant Registrar,
ITAT, Bangalore.