

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU “B” BENCH, BENGALURU**

Before Shri Laxmi Prasad Sahu, Accountant Member

IT(IT)A No. 99/Bang/2023 & SP No. 09/Bang/2023 (Assessment Year: 2017-18)		
Shri Kishore Kandikere 6th Floor, Divyasree Chambers Off Langford Road, Shantinagar Bengaluru 560025 PAN – ALQPK6495G (Appellant)	vs.	The Income Tax Officer - 1(2) (International Taxation) BMTc Building, 80 FT Road 6th Block, Koramangala Bengaluru 560095 (Respondent)

IT(IT)A No. 100/Bang/2023 & SP No. 10/Bang/2023 (Assessment Year: 2017-18)		
Rekha Channabasappa Kandikere 6th Floor, Divyasree Chambers Off Langford Road, Shantinagar Bengaluru 560025 PAN – ALQPK6495G (Appellant)	vs.	The Income Tax Officer - 1(2) (International Taxation) BMTc Building, 80 FT Road 6th Block, Koramangala Bengaluru 560095 (Respondent)

Assessee by:	Shri Ravishankar S.V., Advocate
Revenue by:	Shri Ganesh R. Ghale, Standing Counsel

Date of hearing:	20.03.2023
Date of pronouncement:	21.03.2023

ORDER

Per: Laxmi Prasad Sahu, A.M.

These appeals have been filed by two different assessee’s against separate orders passed by the CIT(A)-12, Bengaluru vide DIN No. ITBA/APL/M/250/2022-23/1043375089(1) and ITBA/APL/M/250/ 2022-23/1043374813(1)

dated 08.06.2022. The relevant AY is 2017-18. Assesseees have also filed stay applications for this assessment year.

2. There is a delay of 52 days in filing both the appeals by the assesseees. The assesseees have filed an affidavits through GPA holders, Shri Prabhushankar G.P and Shri Channabasappa, both dated 20.02.2023 in which they have explained the delay in filing these appeals before the Tribunal and the reasons given in the affidavits are bonafide and properly explained by the assesseees. Therefore, following the Supreme Court decision of Collector, Land Acquisition Vs. MST. Katiji and Others (1987) 167 ITR 471 (SC), I am of the view that there was reasonable cause for the delay in filing these appeals and condone the delay.

3. Since the issue in both these appeals are common in nature except in figures, for the sake of convenience and brevity I am adjudicating the appeal in IT(IT)A No. 99/Bang/2023 and this decision shall apply mutatis mutandis to the appeal in IT(IT)A No. 100/Bang/2023. The grounds raised in IT(IT)A No. 99/Bang/2023 reads as follows: -

- “1. The order passed by the Ld. CIT(A) u/s 250 of the Act, is opposed to law, equity, weight of evidence, natural justice, probabilities, and facts and circumstances of the Appellant's case.*
- 2. The appellant denies himself to be assessed at an income of Rs. 21,19,774/- under Section 69 of the Act when there has been no income earned in India, during the year, on the facts and circumstances of the case.*
- 3. Addition of Rs. 13.15,0007-**
 - a. The learned CIT(A) was not justified in confirming the addition of Rs. 13,50,000/- as unexplained income under Section 69 of the Act which is 50% of total amounts deposited of Rs. 26,30,000/- in the hands of the appellant, on the facts and circumstances of the case.*

- b. *The learned CIT(A) failed to appreciate that the Appellant has discharged the primary onus upon him by explaining the sources of deposits and the credits in the bank account and therefore the order has been passed without appreciating the material on record, on the facts and circumstances of the case.*
- c. *The learned CIT(A) failed to appreciate that the appellant being a non-resident had no source of income that was taxable in India and consequently, the order of CIT appeals has been passed without application of mind, on the facts and circumstances of the case.*
- d. *The learned CIT(A) was not justified in summarily rejecting the explanation of the appellant, without giving any cogent reasons or rebutting the evidence filed and thus the impugned order is perverse which is liable to be set aside, on the facts and circumstances of the case.*
- e. *The learned CIT (A) failed to appreciate that the order of assessment was ex parte, and a remand report of the data filed ought to have been obtained from the assessing officer, before proceeding to reject the appeal, on the facts and circumstances of the case.*
- f. *The learned CIT (A) ought to have appreciated that appellant and his wife purchased a site in an open auction held by Mysore Urban Development Authority and constructed a residential house during 2013 -2016 for the benefit of their parents; that it was for the said construction huge monies were withdrawn from the very same accounts while appellant and his wife had come to India and utilized by Sri Channabasappa, the GPA holder and the father of Smt. Rekha Channabassappa (wife of appellant) who was looking after the entire construction activities and that after the completion of the construction the remaining amounts were deposited by the said GPA holder on 5.12.2016. The said fact was recorded in the declaration given to the bank at the time of deposit, that was made available during assessment and appellate proceedings, however the authorities below have completely ignored the said evidence, and consequently on this count alone, the additions made were required to be deleted, on the facts and circumstances of the case.*
- g. *The learned CIT(A) failed to appreciate that the appellant and his wife were non-residents since 2008 earning income taxable*

in United Kingdom and consequently, the assessing officer had no jurisdiction to tax the income allegedly credited in the NRE/NRO accounts of appellant and his wife in the absence of any evidence to prove the source of income in India, on the facts and circumstances of the case.

- h. On the facts and in the circumstances of the case it is submitted that source of income of the assessee is admittedly out of salary income earned outside India and the cash was withdrawn from out of the amounts transferred to the joint account with HSBC Bank during construction of house at Mysore in the name of the Appellant. Therefore the evidence in this regard could not have been disregarded by the CIT(A) especially when the source is explained, the cash deposits during demonetization could be accepted as held by **Hon'ble ITAT B Bench Chennai in the case of R Raju Vs ITO disposed on 11.1.2023.***
- i. The order passed by the learned CIT (A) is without application of mind in so far as the rejection of the grounds of appeal without proper adjudication of the fact that the amounts withdrawn in the years 2013 and 2014 could not be the source for cash deposited during December 2016 and such a finding is bald, arbitrary and whimsical, thus the order of the learned CIT (A) is not a speaking order and is required to be set aside as bad in law, on the facts and circumstances of the case.*
- j. The learned CIT(A) failed to appreciate the bank statements which reflect huge cash withdrawals during 2013 and 2014 and the deposit of the remaining cash during December 2016 were duly produced before the appellate authority, which corroborate with the statement made by appellant that huge amounts were withdrawn and kept at home for utilisation towards construction of residential house during the period 2013-2016 and consequently the order passed is bad in law, on the facts and circumstances of the case.*
- k. Without prejudice it is submitted that the additions based on the alleged cash deposits during the demonetisation period is beyond the jurisdiction of the assessing officer and one without authority of law. The provisions of the Income Tax Act do not empower the respondent authorities to draw an inference by disallowing the deposits during the demonetization period since the restrictions if any were imposed by the Central Government while exercising powers under the provisions of Section 26 (2) Of the Reserve Bank of India Act, 1934*

4. Addition of Rs. 8,04,774/-

- a. *The learned CIT(A) was not justified in confirming the credits of Rs. 8,04,774/- being bank transfers as being unexplained income, on the facts and circumstances of the case. The learned CIT(A) has not even adjudicated this grounds of appeal which is arbitrary and unjustified on the facts and circumstances of the case.*
- b. *The authorities below failed to appreciate that the deposits were interbank transfers in the accounts of appellant and his wife and that they were deposits in the nature of capital receipts such as fixed deposits and payments to beneficiaries via bank transfers and none of the credits were in the nature of income accrued or arise in India, on the facts and circumstances of the case.*
- c. *On the facts and in the circumstances of the case, the learned CIT(A) ought to have appreciated that the monies deposited in the two accounts of the appellant and his wife were earned in United Kingdom and thus are not liable to be taxed in India merely because there are a couple of inter-bank transfers.*
- d. *The order of the learned CIT(A) in upholding the order of the AO without appreciating the relevant material facts and the applicable law on the issue, is erroneous and arbitrary. Therefore, the said order is liable to be set-aside.*

5. Section 69

- a. *The learned CIT (A) ought to have appreciated that the remittances in the 2 bank accounts maintained by appellant and his wife were admittedly income received at the first instance, outside the taxable territory of India, or accrued outside the taxable territory of India and it was thus beyond the scope and jurisdiction of the assessing officer in making addition under section 69 of the Act as unexplained investment.*
- b. *It is also admitted by the authorities below that at the time of deposit of money, neither the appellant nor his wife were present in India. The learned CIT (A) ought to have appreciated that both the appellant and his wife are nonresidents living in United Kingdom since 2008 and therefore there is no income that is received or accrued which could be subjected to tax in India for the relevant assessment year.*

- c. *It is not the case of the Assessing Officer that the appellant had other sources of income in India and out of the said sources cash was deposited by appellant. In the absence of any material evidence to substantiate any such claim of the respondents, the authorities below ought to have accepted the plausible and credible explanation offered by appellant.*
- d. *The invoking of the provisions of Section 115BBE of the Act is bad in law, on the facts and circumstances of the case.*
- e. *Without prejudice to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of **Karanvir Singh 349 ITR 692**, Appellant denies himself liable to be charged to interest under Sections 234A and 234B of the Act in view of the fact and circumstances of the case. Further the levy of interest under Sections 234A and 234B of the Act is also bad in law as the rate, period and on what quantum the interest has been levied and method of calculation on which interest is levied is not discernible from the order and hence deserves to be cancelled on the facts and circumstances of the case.*
6. *The appellant craves leave to add, alter, modify, delete or substitute any or all of the grounds and to file a paper book at the time of hearing the appeal.*
7. *In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.”*

4. The brief facts of the case are that the assessee, an individual, deposited cash of Rs.26,30,000/- in account No. 175-027317-007 of HSBC bank during demonetisation period. This account is jointly held by the assessee along with his wife, Smt. Rekha Channabasappa Kandikere, who is also in appeal before the Tribunal. It was also noted by the Assessing Officer (AO) that the assessee had not filed return of income. The assessee is a NRI. Subsequently notice under Section 142(1)(i) of the Income Tax Act, 1961 (the Act) was issued to the assessee calling for return of income but no response was received from the assessee's side. Again a letter dated 07.08.2019 was issued to the assessee for furnishing the source of cash deposits made. It was duly served upon the

assessee but no reply was received. The AO called information from the HSBC bank by issuing notice under Section 133(6) of the Act and the bank filed the details. On perusal of the details submitted by the bank authorities, it was noted that the assessee has given authorisation to Shri Channabasappa to deposit cash of Rs.13,15,000/- into bank. The AO also observed that there was other deposit also and another show cause notice was issued to the assessee but there was no response received from assessee's side and final show cause notice was issued to the assessee but no response was received. Since the account maintained with the HSBC bank was a joint account, 50% of the cash deposited during the demonetisation period was added to the income of the assessee as unexplained investment. The AO further noted that there was another bank account in which cash of Rs. 8,04,774 /- was deposited and the same was also added a unexplained investment under Section 69 of the Act for want of proper explanation from assessee's side.

5. Aggrieved by the order of the AO assessee filed appeal before the CIT(A). During the appellate proceedings the assessee filed written submissions. After considering the submissions the CIT(A) dismissed the appeal of the assessee.

6. Aggrieved, assessee filed appeal before the Tribunal. The learned A.R. submitted that the AO has not granted sufficient time for submitting the documents, since the assessee is an NRI residing outside India. During the appellate proceedings the assessee sent a letter to the CIT(A) on 25.05.2022 as under : -

*“From,
Mr. KISHORE KANDIKERE,
PAN: ALQPK6495G
29 Beaulieu Drive London,
PINNER,
UNITHD KINGDOM*

To
Officer
CIT (A).Bengaluru- 12
Koramangala Bangalore.

Respected Sir,

Subject: Submission of documentary evidence for appeal (AY 2017-18). Appeal Reference Number: CIT (A), Bengaluru-12/10491/2016-17

DIN: ITBA/APL/F/APL_1/2022-23/1043049660(1).

We are in receipt of notice under section 250 of the IT Act 1961 for submission of supporting documents and ground wise written submission for appeal preferred for the AY 201 7-1 8. being a NRI and staying out of India I could not make of physical hearing for the said notice so we herewith submitting the documents through online for your perusal also we are authorizing Mr CA Vanraj Shetty, a Practicing Chartered Accountant to appear before your office on 27/05/2022 to submit the documents and to act as my representative and authorised to represent, appear, provide data, evidence, information to Income Tax Department to conduct the scrutiny/appeal.

Request you to acknowledge the same,

Please do the needful.

*Sd/-
Mr. KISHORE KANDIKERE*

*Date: 25-05-2022
Place: UNITED KINGDOM”*

6.1 The learned A.R. also submitted that notice was issued on 17.05.2022 fixing the case for hearing on 26.05.2022 whereas the assessee himself has informing the CIT(A) by way of letter noted supra that he has authorised to Mr. CA Vanraj Shetty, Chartered Accountant to appear before the CIT(A) on 27.05.2022 but the CIT(A) did not grant sufficient time and the appeal was

disposed off on 08.06.2022. Therefore, he requested that the matter may be sent back to the AO for fresh consideration.

7. The learned D.R. opposed the request made by the assessee and he submitted that sufficient opportunities were granted to the assessee but in spite of which the assessee could not submit the documents and he requested that the assessee should pay cost for redoing the same exercise by the Revenue authorities.

8. Considering the rival submissions I noted that there is cash deposits during demonetisation period in the HSBC bank account noted supra of Rs.26,30,000/- and the bank account is a joint account. The assessee is NRI. Several opportunities were granted by the AO but the assessee did not respond and the AO also observed that there are other cash deposits in various bank accounts which were unexplained. I noted from the small paper book filed by the learned A.R., containing pages 1 to 5, in which it has been mentioned that notice was issued to the assessee on 17.05.2022 by the CIT(A) and response due date was on 26.05.2022. The assessee also wrote a letter to the CIT (A) as noted supra. I noted that the assessment has been completed under Section 144 of the Act and as per the submission of the learned A.R. the assessee could not file the documents before the CIT(A) also. In view of this, considering the prayer of the learned A.R, I accept the prayer of the assessee, during the course of hearing the ld. D.R. stated that the cost should be imposed upon the assessee for redoing the same exercise, the matter is restore to the file of the AO with a cost of Rs.5,000/- for fresh consideration in the light of CBDT Circular dated 09.08.2019 in F.no.225/145/2019 ITA II. The assessee shall deposit the amount with proper challan within one month from the receipt of this order and will submit necessary evidence before the concerned Income Tax Officer. The assessee is also directed to submit the documents for

substantiating his case and not to seek unnecessary adjournments without genuine reasons for early disposal of the case. The AO shall grant three effective opportunities to the assessee. With these directions the appeal of the assessee is allowed for statistical purposes in above terms.

9. Since identical issue is raised in IT(IT)A No. 100/Bang/2023, the above decision shall apply *mutatis mutandis* to this appeal also.

10. Since I have disposed of the quantum appeals in above terms, the stay petitions filed by the assessees do not require any adjudication.

11. In the result the appeals filed by the assessees are allowed for statistical purposes and the stay petitions are dismissed.

Order pronounced in the open Court on 21st March, 2023.

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Bengaluru, Dated: 21st March, 2023

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -12, Bengalkuru*
4. *The CIT - (Intl. Taxn.), Bengaluru*
5. *The DR, ITAT, Bengaluru*
6. *Guard File*

By Order

//True Copy//

Assistant Registrar
ITAT, Bengaluru

n.p.