

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

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT

ITA No.481/Bang/2023
Assessment Year : 2016-17

Shri. G. Y. Prakash, No.1, S. D. Plaza, Gandhinagar, Bengaluru – 560 009. PAN : AAAHG 6940 F	Vs.	ITO, Ward – 5(2)(5), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. H. Guruswamy, ITP
Revenue by	:	Shri. Ganesh R Ghale, Advocate, Standing Counsel for Revenue.

Date of hearing	:	04.10.2023
Date of Pronouncement	:	04.10.2023

ORDER

This appeal at the instance of the assessee is directed against CIT(A)’s order dated 05.06.2023, passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’). The relevant Assessment Year is 2016-17.

2. Brief facts of the case are as follows:

Assessee is a HUF. For the Assessment Year 2016-17, the return of income was filed declaring total income of Rs.3,46,200/-. The assessment was selected for scrutiny under section 143(2) of the Act on 18.09.2017. During the course of assessment proceedings, the AO issued several notices under section 142(1) of the Act, calling for specific information with regard to export of goods / products. The last show cause notice issued was on 04.12.2018. The relevant portion reads as follows:

“On perusal of the details available with this office, it is seen that during the F. Y. 2015-16, relevant to the A.Y. 2016-17, you had exported goods/products valued at Rs. 26,85,607/- however no details have been furnished till date, with respect to the same. Accordingly you are required to show cause as to why a sum of Rs. 26,85,607/- should not be added in your returned income.

Your reply should reach this office on or before 07/12/2018, failure to which it will be considered that you have no details to furnish and no explanation to offer to substantiate your claim and accordingly the assessment will be concluded by making an addition of Rs. 26,85,607/- u/s 69C of T Act 1961.”

3. There was no response to the show cause notice issued under section 142(1) of the Act. Since assessee failed to explain the source of details of the exports made to the tune of Rs.26,85,607/-, the same was added to the income of the assessee under section 69C of the Act.

4. Aggrieved, assessee filed appeal before the First Appellate Authority. Before the CIT(A), it was submitted that assessee has not done any export on his HUF PAN. But the exports were made in case of individual PAN and offered as income under section 44AD of the Act. The assessee furnished bank statement of HUF wherein there are no entries / receipts with regard to export of goods. The CIT(A), not convinced with the assessee’s contentions, dismissed the appeal of the assessee. The relevant finding of the CIT(A) reads as follows:

“8.3.3 From the above reply, it is apparent that the appellant has not furnished any other document in support of its claim of having made the export turnover in its individual capacity and disclosed in its return of income, as specifically enquired in the notice u/s,250. The appellant has filed a bank statement for the A/c.No.54051179848 in the name of G Y Prakash, where the entries are merely to the tune of Rs.5000/- or Rs.10,000/- or Rs.20,000/- and do not support the claim of the appellant of the export turnover in the hand of individual PAN. The second bank account is in the name of Madhu Fabrics for

A/c.No.54051171420 in State Bank of India but no further details or relevance of the same to the submission of the appellant or how the same is related to the export turnover under question. In absence of any such details, it has to be considered that the appellant has not substantiated the above export turnover in the assessment proceedings and even in the appellate proceedings. The onus lies on the appellant that he must explain such transactions which are on record with documentary evidence. Despite the opportunity given to the appellant to show how the above export turnover is reflected in the individual accounts or return of income as claimed by the appellant as against the addition made in the hands of PAN of its HUF, the appellant has not brought forth any evidence in support of its such claim. Under such circumstances, I have no basis to interfere with the order of the A.O. The ground of appeal is dismissed.”

5. Aggrieved by the order of the CIT(A), assessee has filed the present appeal before the Tribunal. Assessee has filed a Paper Book enclosing therein copy of the bank statement of SBI in the status of individual, copy of the export turnover, copy of the return filed in the case of the individual and the HUF and the case laws relied on. The learned AR, during the course of hearing, submitted that if the issue on merits is adjudicated, the legal grounds raised with reference to grounds 2, 3 and 4 may be left open. The learned AR reiterated the submission made before the income tax authorities.

6. The learned Standing Counsel submitted that assessee, HUF, has not produced any evidence to show exports were done in individual PAN. In absence of details, the learned Standing Counsel submitted that the appeal of the assessee needs to be dismissed.

7. I have heard the rival submissions and perused the material on record. The grounds raised on merits viz., grounds 5, 6 and 7 reads as follows:

5. *Without prejudice to Ground No. 2, 3 and 4, the Ld. CIT(A) has erred in dismissing the appeal in holding that the AO has*

completed the assessment on the basis of information available with him and the same was erroneously considered.

6. *The Ld. CIT(A) has erred in dismissing the appeal without appreciating the fact that the export turnover was related to a proprietorship concern in Individual Status and the said export turnover was in no way related to the HUF Appellant, without appreciating the fact that the AO has also misconstrued the facts in the course of assessment proceedings.*
7. *The Ld. CIT(A) has erred in dismissing the appeal without considering the Bank Account submitted in which the alleged export turnover was not found credited.*

8. With reference to the above grounds, assessee has placed on record copies of the export invoices totaling to Rs.28,52,628/-. These exports are to Poppy fabrics and Bobby fabrics based in Singapore. Assessee has also placed on record bank statement in the status of HUF wherein there are no receipts out of export turnover. Whereas, in the bank statement in the status of individual, there are receipts of export turnover. In the interest of justice and equity, the matter needs to be examined by AO. The AO is directed to examine whether the export turnover has been disclosed in the bank statement in the status of individual and if it is found so, the addition made in the assessee i.e., HUF cannot be sustained under section 69C of the Act. With the aforesaid observation, we restore the matter to the AO. The assessee is directed to co-operate with the Revenue and shall furnish the necessary details and shall not seek unnecessary adjournments. The AO is directed to afford reasonable opportunity of being heard before a decision is taken in the matter. It is ordered accordingly.

9. In the result, appeal filed by the assessee is allowed for statistical purposes.

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

Sd/-

(GEORGE GEORGE K)
Vice President

Bangalore.

Dated: 04.10.2023.

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Copy to:

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| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR, ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.