

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

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No.629/Bang/2023
Assessment Year: 2017-18

Shri Dinesh Acharya Partner Sri Kantheshwara Jewellers Main Road Moodbidri 574 227 Karnataka PAN NO : ADEPA3724C	Vs.	ITO Ward-2(2) Mangaluru
APPELLANT		RESPONDENT

Appellant by	:	Ms. Harsha J., A.R.
Respondent by	:	Shri Ganesh R Ghale, Standing Counsel for Revenue

Date of Hearing	:	26.12.2023
Date of Pronouncement	:	01.01.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC for the assessment year 2017-18 dated 2.8.2023 passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”). The assessee has raised following grounds of appeal:

1. *“The Order of the learned Commissioner passed under section 250 of the Act is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.*
2. *The assessment order passed by the learned AO is bad in law for want of requisite jurisdiction on the facts and circumstances of the case.*
3. *The Appellant denies to be assessed to tax on total income as determined by the learned AO of Rs. 21,51,450 as against the total income reported by the Appellant of Rs.8,34,450 on the facts and circumstances of the case.*

4. *The learned Commissioner of Income-tax (Appeals) has erred in law by changing the section of addition from Section 68 as held by AO to Section 69A of the Act in the absence of powers conferred u/s 251 of the Act.*
5. *The learned Commissioner of Income-tax (Appeals) erred in law on the facts of the case that the agricultural income declared in the return is non-genuine disregarding the evidence of agricultural land holdings and crop information submitted by the Appellant*
6. *The learned Commissioner of Income-tax (Appeals) erred in law on the facts of the case that the agricultural income declared in the return is non-genuine disregarding the fact that he has declared agricultural income consistently over the years.*
7. *The learned Commissioner of Income-tax (Appeals) erred in law on the facts of the case that non-existence of purchase in the address shown in the purchase memo cannot be the reason to believe that there is no agricultural income earned by the Appellant.*
8. *The learned Commissioner of Income-tax (Appeals) erred in upholding the addition of Rs. 13,17,000 while the net agricultural income was only Rs. 677,000 disregarding the fact that Rs. 650,000 represented opening cash balance as confirmed by the AO.*
9. *Without prejudice to the right to seek waiver with the Hon'ble Chief Commissioner of Income Tax/Director General of Income Tax, the Appellant denies itself liable to be charged to interest under section 234B and 234C of the Act which under the facts and circumstances of the case deserves to be cancelled. The calculation of interest under section 234B and 234C is not in accordance with law as the rate, amount and method for calculating interest is not discernible from the order of assessment.*
10. *The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.*
11. *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."*

2. The assessee for assessment year 2017-18 declared income of Rs.8,34,450/- which also included agricultural income of Rs.6.77 lakhs. In the assessment year under consideration, assessee has deposited Rs.12 lakhs to assessee's bank account with Vijaya Bank, Moodbidri branch. The ld. AO has called for explanation for the agricultural income, which is not explained. Hence, ld. AO considered Rs.6.67 lakhs of agricultural income declared by the assessee and Rs.5.5 lakhs agricultural income and balance amount of Rs.1 lakhs deposited to assessee's bank account as unexplained

income u/s 68 of the Act totalling of Rs.13.17 lakhs as unexplained income of the assessee. Against this, assessee is in appeal before us.

3. The ld. D.R. submitted that assessee has not substantiated the agricultural income. Hence, addition is made. At the best, it may be remitted to the file of ld. AO in the light of order of the Tribunal in ITA No.233/Jaipur/2019 dated 7.8.2019 in the case of Manish Kumar Mukim, wherein held as under:

“5. We have considered the rival submissions as well as relevant material on record. In the return of income the assessee has shown profit of Rs. 79,170/- in the proprietorship concern M/s Sunmangal and loss of Rs. 90,251/- of M/s Mukta Arts therefore, net result from the business is declared at Rs. 11,081/-. It is also not in dispute that the cash deposit in the different bank account as many as 7 accounts were not declared by the assessee in the return of income. The details of the cash deposit has been given by the AO at page 2 as under:—

1. *“ICICI Bank account 032101582093 Rs. 11,000/-*
 2. *AXIS Bank account 00505010200070373 Rs. 64,45,280/-*
 3. *AXIS Bank account 005010200070285 Rs. 65,38,280/-*
 4. *ICICI Bank account 000605020401 Rs. 3,02,69,565/-*
 5. *ICICI Bank account 054005000833 Rs. 3,33,00,408/-*
 6. *HDFC Bank account 10158620000271 Rs. 59,80,600/-*
 7. *HDFC Bank account 10158620000264 Rs. 37,21,200/-*
- Total Rs. 8,62,66,333/-”*

It is pertinent to note that the assessee has claimed to have done business of trading of fabrics under the name and style of two proprietorship concerns M/s Sunmangal and M/s Mukta Arts only during the year under consideration. Neither any such business was done by the assessee in past nor any such activity is carried out in future. Thus only during the year consideration the assessee has claimed to have done the business of trading in fabric. The assessee claimed that this business was done at Kolkata under these two proprietorship concerns however, in the books of account there is nothing as fixed assets of the assessee and only the rent of Rs. 10,000/- in case of each proprietorship concerns has been claimed. The assessee claimed to have achieved turnover of more than Rs. 13 crores during the year under consideration. It is pertinent to note that the assessee has commenced these business activities during the year itself and closed the same during the year itself. During this short period the assessee has achieved the turnover of more than Rs. 13 crores that too the entire of sale claimed in cash without having any details or particulars of the persons to whom the sale was made. The assessee has not produced a single document of sale having any detail or particulars of the purchaser. This magnitude of turnover is not possible while doing retail sale to individuals and therefore, if the sale is made in wholesale then the particulars of purchaser should have been produced by the assessee. Thus the assessee has failed to substantiate the claim that the deposit made in the bank account is out of sale proceeds. Further, The AO deducted the enquiry by issuing the commission to Addl./Joint DIT(Investigation) Wing, Kolkata vide letter dated 06.12.2017. In the report received vide letter dated

22.12.2017 it was stated that the enquiry conducted in respect of 10 parties from whom the assessee claimed to have purchased the materials were not found at the given address. The peculiarity of the facts and circumstances of the case as well as result of the enquiry conducted by the AO through Investigation Wing, Kolkata clearly established that the claim of the assessee is not genuine. The ld. CIT(A) has adjudicated this issue in para 5.3 and 5.4 as under:-

“ 5.3 I have perused the assessment order as well as submissions made by the appellant. Following facts have emerged;

- 1. That the appellant has claimed to have been engaged in the business of Fabric trading under the name of M/s Sumangal & M/s Mukta Arts during the year under consideration and declared income of Rs.1,39,500/-.*
- 2. That the A.O had found cash deposits to the tune of Rs. 8,62,66,333/- in various bank accounts during the year under consideration.*
- 3. That the appellant has claimed that such cash deposits were made out of cash sale proceeds to various clients.*
- 4. That in order to verify the source of such cash deposits, the A.O had issued notices under section 133(6) of the Act. However, notices were received back with the postal remarks "No such persons lives on the address given".*
- 5. That the department has further deputed the Inspector of Income Tax to verify the existence of such persons at the given addresses. No such persons or firms have been found at the given address.*
- 6. That the A.O had given opportunity to the assessee to produce such persons but assessee did not avail the opportunity.*
- 7. That the A.O had added the cash deposits of Rs. 8,62,66,333/- as income of the assessee as unexplained cash credits.*
- 8. That during the appellate proceedings also the appellant failed to submit any cogent evidences in support of the claim.*

5.4 I have considered the assessment order and the appellant's submission. So far as the issue of cash credit is concerned, various court judgments have settled the parameters and the scope of onus to be discharged by the assessee. In this regard, Supreme Court in CIT v. Lovely Exports Pvt. Ltd.(supra), has held that the initial burden is upon the assessee to explain the nature and source of the share application money and in order to discharge this onus, the assessee should prove (a) the identity of shareholder; (b) genuineness of the transaction; and (c) creditworthiness of shareholders. It was further observed that for discharging the above burden, the assessee must file some documents or produce the shareholder to prove his identity. In the case of subscriber being a company details in the form of registered address or PAN identity, etc. would suffice. The genuineness of the transaction may be demonstrated by showing that the assessee had, in fact, received money from the applicant shareholder and that it had come not from the coffers of the assessee but from that of the applicant shareholder. As to the

creditworthiness or financial strength of the subscriber, the proof could include banks statements of the subscriber showing sufficient balance in its kitty to enable it to subscribe.

The Hon'ble Rajasthan High Court in the case of The Commissioner of Income Tax, Ajmer Vs Shri Jai Kumar Bakliwal, Date of Order: 06/02/2014 has held that

"In our view as well, three things are required to be proved by recipient of money i.e. (1) identity of the creditor (2) capacity of the creditor to advance money and (3) genuineness of the transaction. From the facts emerging on the face of record, we notice that it is an admitted fact that all the above cash creditors (12 in number) are assessed to income tax and they provided a confirmation as well as their permanent account number. They have their own respective bank accounts which they have been operating and it is not the claim of the AO that the respondent-assessee was operating their bank accounts rather they have categorically stated that they issued cheque to the respondent-assessee., in our view, stood discharged as he was able to prove identity of the creditors. Once the amount was advanced by account payee cheque from their respective own bank accounts and were being assessed to income tax, then in our view, capacity of the creditor and genuineness of the transaction stood proved. In so far as the respondent-assessee is concerned, it is correct that he is not required to prove source of the source and if the AO had any doubt, then the AO, assessing the respondent-assessee, could have sent the information to the AO, assessing the cash creditors for appropriate action in their cases but in so far as the respondent- assessee is concerned, in our view, the respondent-assessee has been able to discharge the burden which lay upon him. Thus, the High Court has laid down following parameters to be discharged by the assessee on the applicability of section 68 of the Act on share application money; The assessee has to prima facie prove;

- 1. the identity of the creditor/subscriber;*
- 2. the genuineness of the transaction, namely, whether it has been transmitted through banking or other indisputable channels;*
- 3. the creditworthiness or financial strength of the creditor/subscriber.*
- 4. If relevant details of the address or PAN identity of the creditor/subscriber are furnished to the Department it would constitute acceptable proof or acceptable Explanation by the assessed*
- 5. The Department would not be justified in drawing an adverse inference only because the creditor/subscriber fails or neglects to respond to its notices;*
- 6. the onus would not stand discharged if the creditor/subscriber denies or repudiates the*

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transaction set up by the assessed nor should the AO take such repudiation at face value and construe it, without more, against the assessed.

7. *The Assessing Officer is duty-bound to investigate the creditworthiness of the creditor/subscriber the genuineness of the transaction and the veracity of the repudiation. "*

In view of the above mentioned judgments and parameters, I found that the appellant has not been able to discharge even the basic onus to prove the genuineness of cash credits in his bank accounts. Therefore, in my considered view when the existence of the source of such cash deposits is not proven then the A.O is fully justified in treating such cash deposits as unexplained and liable to be taxed.

Accordingly, the addition of Rs. 8,62,66,333/- is sustained and the appellant's ground of appeal on the issue is dismissed."

We find that the finding of the AO as well as the ld. CIT(A) is based on the specific facts detected during the enquiry conducted by the AO whereas the assessee has failed to produce any evidence which can be independently verified in support of his claim. Accordingly, in view of the above facts and circumstances of the case as well as the decision relied upon the ld. DR, we do not find any error or illegality in the impugned order of the ld. CIT(A).

In the result, the appeal of the assessee is dismissed."

4. I heard the rival submissions and perused the materials available on record. In my opinion, the assessee has deposited SBN notes to Vijaya Bank, Moodbidri branch to the tune of Rs.12 lakhs. The assessee has explained it that assessee is having agricultural income and source of deposit is agricultural income. In my opinion, these facts are required to be examined at the end of ld. AO for which assessee has to produce necessary details of agricultural land holdings, crops grown and details of sales and amount saved out of agricultural income. Accordingly, in the interest of justice, I remit the entire issue in dispute to the file of ld. AO for reconsideration after giving an opportunity of hearing to the assessee.

5. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 1st Jan, 2024

**Sd/-
(Chandra Poojari)
Accountant Member**

Bangalore,
Dated 1st Jan, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**