

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA Nos.145,146, 201 & 202/Bang/2024
Assessment Years : 2013-14, 2014-15 & 2018-19

Mala Chandrasekaran, L/R of Late Vijayan Chandrashekaran, Flat No.001, No.30, Shiva Apartment, 1st Main, Nagarbhavi Village, Nagarbhavi First Main Road, Bengaluru-560 072. PAN – ACJPC 5285 C	Vs.	The Dy. Commissioner of Income Tax, Central Circle-1(3), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Siddesh N Gaddi, CA
Revenue by	:	Shri Saravanan B, CIT (DR)

Date of hearing	:	29.04.2024
Date of Pronouncement	:	.05.2024

ORDER

PER BENCH :

All these four appeals are filed by the assessee. Two appeals are in representative capacity and two appeals are in individual capacity against the order passed by the Id. CIT(A)-11, Bangalore dated 27/11/2023 in DIN No. ITBA/APL/M/250/2023-24/1058243435(1) for the assessment year 2013-14, ITBA/APL/M/250/2023-24/1058243450(1) for

the assessment year 2018-19 and order dated 08/12/2023 in ITBA/APL/M/250/2023-24/1058575894(1) for the assessment year 2014-15 and ITBA/APL/M/250/2023-24/1058576008(1) for the assessment year 2018-19.

2. Since common issues/facts for consideration are involved in all the years under consideration except for the figures, all the appeals are being disposed of by way of a common order. Therefore, the view to be taken for assessment year 2013-14 will also apply *mutatis mutandis* to the assessment years 2014-15 and 2018-19. We, first, take up appeal No. 145/Bang/2024 for the assessment year 2013-14.

3. At the outset, we note that there was nonappearance from the assessee's side before the AO and the Id. CIT(A). The assessee filed an Affidavit dated 11/03/2024, explaining the reason for nonappearance. It was submitted that there was nonappearance during the assessment proceedings due to short notice given by the AO. Regarding the non appearance before the Id. CIT(A), the assessee submitted as under:-

"4. The Appellant was not able to represent during Appellate proceedings due to the sudden demise of the Appellant's husband Mr. Vijayan Chandrashekar who was responsible for tax matters and the arrest of the son Mr. Sukesh Chandrashekar. The Appellant is currently dealing with a multitude of health and financial challenges on her own and is not in a position to focus on IT proceedings. The Appellant is also burdened with multiple litigations (in her name, her son's name and also in her husband's name), the same also caused a delay in filing these documents before the Revenue Authorities."

4. Besides the above, the assessee has filed an application before us for the admission of the additional documentary evidence. It was reiterated that for the reason stated in the Affidavit, the impugned

additional documents were not filed before the authorities below. In view of the above, the Id. AR for the assessee prayed before us to admit the additional evidence and set aside the issue to the file of the AO for fresh adjudication as per the provisions of law.

5. Per contra, the Id. DR opposed to extend one more opportunity to the assessee. It was the contention of the Id. DR for the assessment year 2018-19 that the addition was made on account of cash deposit, which is being explained by the assessee now out of the gold loan. According to the Id. DR, had there been information about the gold held by the assessee during the assessment proceedings, then the Revenue could have enquired about the source of gold, but the assessee deliberately did not bring this fact to the notice of Revenue authorities so as to avoid explaining the source of gold.

6. The Id. AR in his rejoinder submitted that there was search conducted at the premises of the assessee dated 12/10/2017 and no document of incriminating nature was found about the gold as apprehended by the Id. DR. Furthermore, the assessee is furnishing the additional evidence now as there was sufficient cause, which prevented him from supplying the same during the proceedings.

7. Heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the explanation was sought by the AO from the assessee vide notice dated 07/12/2109 u/s 142(1) of the Act about the sale of immovable property, whereas the assessment was completed dated 29/12/2019. Thus, it is transpired that the explanation was sought by the AO at the fag-end of the assessment proceedings. As such, the assessee was given the time barely for 20 days only for the compliance and that too at

the fag-end of the assessment proceedings. Thus, we find that there was violation of the principles of natural justice at the level of the AO.

8. Considering the reasons furnished by the assessee for nonappearance before the Id. CIT(A), we hold that there was sufficient cause, which prevented the assessee appearing before the Id. CIT(A) and consequently the relevant documents were not filed. Accordingly, under the authority granted in Rule 29 of the ITAT Rules 1963, we exercise our power and admit the additional documents filed by the assessee.

9. Regarding the contention of the Id. DR for granting the opportunity to the assessee, we find force that in the set aside proceedings, the AO cannot question about the source of the gold as such issue was not there at the time of original proceedings but the fact that there was no document of incriminating nature found during the search proceedings cannot be ignored. Therefore, we do not find any merit in the argument advanced by the Id. DR and accordingly, we reject the same. In addition to the above, we also note that the Id. DR did not advance any argument with respect to the delay for the AY 2013-14.

10. In addition to the above, we also note that the AO in the asst. year 2013-14 has made the addition of the gross value of Rs. 31,00,000/- being sale consideration of the immovable property. This fact can be seen from the extract of the assessment order reproduced as under:-

"7. During the course of search proceeding u/s.132 on 12.10.2017 at the residence of the assessee, documents pertaining to the sale of property, bearing V P Katha Old No. 63, New No. 21, Present Corporation No. 63-21, 5th Cross, Bhavani Layout, Suddaguntepalya, 58(A), Division of Bangalore City Corporation, Bangalore for a sum of Rs.39,00,000/- was found and seized as A/SCS/01, Page no 20 to 28. On perusal of the return of income filed by the assessee for the A.Y.2013-14, it is seen that same has not been reflected in your return of income."

11. It is admitted position of law that the gross amount of sale does not represent the income, as such, it is the only element of profit amount, which can be made subject to the addition. Thus, it is transpired that the assessment made ex-parte is not based in a scientific manner. On this reasoning alone, the assessment framed by the AO needs to be revisited as per the provisions of law.

12. In view of the above, after considering the facts in totality, and in the interest of justice and fair play, we are inclined to extend one more opportunity to the assessee to represent his case before the AO. It is also directed to the assessee to co-operate during the asst. proceedings and not to seek any further adjournment without just cause.

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

Coming to the ITA Nos. 146/Bang/2024 – Asst. Year 2018-19, 201/Bang/2024 – Asst. Year 2014-15 and 202/Bang/2024 – Asst. Year 2018-19

14. The facts of the case on hand for the assessment years 2014-15 and 2018-19 are identical to the facts of the case discussed above for the assessment year 2013-14. At the time of hearing the Id. AR and the DR also agreed that whatever will be the findings for the AY 2013-14 will also be applicable for the other captioned years. Therefore, respectfully following the same, we are inclined to set aside the issue to the file of AO for fresh adjudication in the light of the above stated discussion and as per the provisions of law. Hence, the grounds of appeals of the assessee are allowed for statistical purposes.

15. In the result, all the appeals of the assessee in personal/ representative capacity are allowed for statistical purposes.

16. In the combined result, all the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in court on 9th day of May, 2024

Sd/-

(GEORGE GEORGE K)

Vice President

Bangalore,

Dated, 9th May, 2024

/ vms /

Sd/-

(WASEEM AHMED)

Accountant Member

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore