

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.37/Bang/2024
Assessment Year: 2016-17

Sri N.J. Bharthesh Chartered Accountant Near Durgigudi School Park Extension, 3 <sup>rd</sup> Cross Shimoga 577 201  <b>PAN NO : AAEHN1009E</b>	<b>Vs.</b>	ITO Ward-1 Shimoga
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Sri V. Srinivasan, A.R.
<b>Respondent by</b>	:	Smt. S. Praveena, D.R.

<b>Date of Hearing</b>	:	01.07.2024
<b>Date of Pronouncement</b>	:	01.07.2024

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal by assessee is directed against order of NFAC passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”) dated 9.11.2023 for the assessment year 2016-17. The assessee has raised following grounds of appeal:

1. *“The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
2. *The learned CIT[A] is not justified in upholding the total addition of Rs.1,20,40,012/- made u/s. 68 of the Act rejecting the bonafide explanation tendered by the appellant for opening balance of cash as on 01/04/2015 and 2 other cash receipts during the year that was in the cash account drawn up and submitted in course of the assessment proceedings under the facts and in the circumstances of the appellant's case.*

- 2.1 *The addition made u/s.68 of the Act with regard to the opening cash balance of Rs. 21 is opposed to law and facts of the appellant's case in as much as, the appellant had duly substantiated the said opening balance of cash with reference to the agricultural income earned in the earlier year and at any rate, no addition could be made in respect of opening balance of cash in the assessment proceedings for the year under appeal and therefore, the addition made ought to have been deleted.*
- 2.2 *The additions made u/s. 68 of the Act with regard to the advance received for sale of sites of Rs. 19,80,000/- and amount received from the HUF of the appellant's brother of Rs. 79,31 ,000/- are also opposed to law and facts of the appellant's case in as much as the appellant had produced documentary evidence in support of these cash receipts during the year, which have been rejected on slender and unsustainable grounds and therefore, the additions made of Rs.19,80,000/- and Rs. 79,31 ,000/- ought to have been deleted.*
- 2.3 *The learned CIT[A] ought to have appreciated that the entire addition made was purely on suspicion and surmise, assumptions and presumptions and without rebutting the documentary evidence tendered by the appellant that are also supported by duly sworn Affidavits of the creditors especially since these creditors were not examined by the learned A.O. and therefore, the additions made ought to have been deleted.*
3. *The learned CIT[A] is not justified in upholding the disallowance of Rs.1,95,986/- being the interest paid on housing loan borrowed for house construction under the facts and in the circumstances of the appellant's case.*
4. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234-A and 234-B of the Act, which under the facts and in the circumstances of the appellant's case and the same deserves to be cancelled.*
5. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.*

**2.** Facts of the issue are that the assessee in the assessment year under consideration made a deposit of Rs.1,30,51,500/- to assessee's bank account. The assessee explained the source of deposit as follows:

a) Opening cash balance	-	Rs. 21,40,012/-
b) Advance received from side sales	-	Rs. 19,80,000/-
c) Amount received from M.J. Sarat(HUF)-		<u>Rs. 79,31,000/-</u>
Total:	-	<b><u>Rs.1,20,51,012/-</u></b>

**2.1** In support of this, the above assessee filed the required evidence in the form of balance sheet explaining the opening balance and confirmation letter from the parties and agreement copy showing the amount received from the site sales and also explained the amount received from N.J. Sushrut (HUF) and confirmation letter from him. According to the ld. A.R., the lower authorities have not taken note of this evidence though there was confirmation letter in affidavit. As such, he prayed that due credence to be given to the various evidences submitted before lower authorities and addition to be deleted.

**3.** On the other hand, ld. D.R. submitted that the assessee though stated that opening balance available to deposit to bank account at Rs.21,40,012/-, which is not supported by earlier returns filed by the assessee before the department even the parties who has given the advance for sales to the assessee were not income tax assesseees. Their source of income is doubtful. Regarding the amount received from N.J. Sushrut (HUF), there was no proper return of income filed by this assessee also and hence, no credence has been given. He submitted that addition to be sustained.

**4.** We have heard the rival submissions and perused the materials available on record. In the present case, there was an addition of Rs.1,20,40,012/- to assessee's bank account. Assessee explained the source as follows:

a) Opening cash balance - Rs.21,40,012/-

**4.1** Advance towards site sales received from various parties as follows:

- (i) Sri P.S. Rudrappa
- (ii) Sri Shekarappa
- (iii) Sri Adarsha
- (iv) Sri Mahendra

**4.2** The assessee has filed various evidences before the lower authorities as follows:

Sl.No.	Particulars	Pages from	To	Filed/available before AO/CIT(A)
	<b>Annexure-1:-</b>			
3(a)	Copy of the statement of Affairs as at 31.3.2015.	31	31	AO&CIT(A)
	<b>Annexure-2:-</b>			
3(b)	Copy of the acknowledgement for having filed the return of income for the assessment year 2015-16	32	32	AO&CIT(A)
	<b>Annexure-3:-</b>			
3[c]	Copy of Sale Agreement dated 17/04/2015[in vernacular]	33	37	AO & CIT[A]
3[d]	Copy of the Free English translation of the above Sale Agreement dated 17/04/2015.	38	41	-
3[e]	Copy of Sale Agreement dated 13/04/2015[in vernacular]	42	46	AO & CIT[A]
3[f]	Copy of the Free English translation of the above Sale Agreement dated 13/04/2015.	47	50	-
3[g]	Copy of Sale Agreement dated 05/05/2015[in vernacular]	51	55	AO & CIT[A]
3[h]	Copy of the Free English translation of the above Sale Agreement dated 05/05/2015.	56	59	-
3[i]	Copy of Sale Agreement dated 11/05/2015[in vernacular]	60	64	AO & CIT[A]
3[j]	Copy of the Free English translation of the above Sale Agreement dated 11/05/2015.	65	68	-
	<b>ANNEXURE - 4:-</b>			
3[k]	Copy of the Receipts issued to the person from whom the advances were received.	69	78	AO & CIT[A]
	<b>ANNEXURE - 5:-</b>			
3[l]	Copy of the Affidavit of Sri P S Rudrappa	79	80	AO & CIT[A]
3[m]	Copy of the Affidavit of Sri Shekarappa	81	82	AO & CIT[A]
3[n]	Copy of the Affidavit of Sri Adarsha	83	84	AO & CIT[A]
3[o]	Copy of the Affidavit of Sri Mahendra	85	86	AO & CIT[A]
	<b>ANNEXURE - 6:-</b>			
3[p]	Copies of the documents to prove source of Income [Pahani] [in vernacular]	87	97	AO & CIT[A]
3[q]	Copies of the Free English translation of the above documents to prove source of Income[Pahani].	98	108	-
	<b>ANNEXURE - 7:-</b>			
3[r]	Copy of the Affidavit of N J Sushrutha.	109	110	AO & CIT[A]
	<b>ANNEXURE - 8:-</b>			
3[s]	Copy of the General Power of Attorney of N J Sushrutha	111	119	AO & CIT[A]
	<b>ANNEXURE - 9:-</b>			
3[t]	Copy of the Notice U/s 131 of the Act dated 05/05/2015 issued by the learned Deputy Director of Income-tax[Inv], Mysore.	120	120	AO & CIT[A]
	<b>ANNEXURE - 10:-</b>			
3[u]	Copy of the property possession handover Agreement dated 27/12/2014 [ in vernacular]	121	129	AO & CIT[A]

3[v]	Copy of the free English translation of the above property possession handover Agreement dated 27/12/2014.	130	137	AO & CIT[A]
	<b>ANNEXURE - 11:-</b>			
3[w]	Copies of the ledger account copy of Housing Loan in the books of Sri N J Bharathesh [HUF] and Sri Vinayaka Agencies in the books of Sri N J Bharathesh [HUF].	138	130	AO & CIT[A]
4	Copy of the Assessment Order passed U/s 147 rws 144B of the Act dated 26/03/2022 for the assessment year 2016-17 in the case of Sri Nirvanappa Jayappa Shivakumar.	140	145	AO & CIT[A]
5	Copy of the letter dated 05/03/2022 for the assessment year 2016-17 filed along with the following Annexures before the learned Assessing Officer, National Faceless Assessment Centre, Delhi in the case of Sri Nirvanappa Jayappa Shivakumar.	136	149	AO & CIT[A]
	<b>ANNEXURE - A:-</b>			
5[a]	Copy of the details of transactions with narration in Bank account with State Bank of Mysore, Mysore Branch.	150	151	AO & CIT[A]
	<b>ANNEXURE - 1:-</b>			
5[b]	Copy of the details of Name, extent in Guntas, Amount received and Development charges.	152	152	AO & CIT[A]

**4.3** However, the lower authorities have not verified these documents filed by the assessee before Id. AO as well as the Id. CIT(A). Without verifying the genuineness of the above documents, they outrightly made addition which is not proper. In our opinion, these documents are required to be examined at the end of Id. AO. Accordingly, the assessee has to prove the impugned sources of deposit to the bank. Accordingly, the issue in dispute is remitted to the file of Id. AO for de-novo consideration.

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

Order pronounced in the open court on 1<sup>st</sup> July, 2024

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

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

Bangalore,  
Dated 1<sup>st</sup> July, 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.**