

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

**BEFORE SMT BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 629/Bang/2024
Assessment Year : 2016-17

Shri Govindappa Balappa Dandagi, Plot No. 256, Gokul Road Radhakrishna Nagar, Dharward, Karnataka – 580 030. PAN: AOIPD5796C	Vs.	The Income Tax Officer, Ward – 1(2), Hubli.
APPELLANT		RESPONDENT

Assessee by	:	Shri Siddesh .N. Gaddi, CA
Revenue by	:	Shri Subramanian .S, JCIT-DR

Date of Hearing	:	11-06-2024
Date of Pronouncement	:	28-06-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 12.03.2024 passed by NFAC, Delhi for A.Y. 2016-17 on following grounds of appeal:

“1. The impugned order passed by the learned Income Tax Officer ward 1(2) Hubballi (hereinafter referred to as "AO"), as upheld by the National Faceless Appeal Centre (CIT(A)/NFAC), to the extent prejudicial to the Appellant, is

not justified in law and on the facts and circumstances of the case.

2. The Learned AO/CIT(A) have erred in law and on facts in making additions u/s 69 of the Act to the extent of Rs 2,00,00,000/-;

3. The Learned AO/CIT(A) has erred in law and on facts in not appreciating that in the absence of jurisdictional fact being satisfied, there is no question of invoking provisions of section 69 of the Act.

4. The learned AO/CIT(A) erred in invoking the provisions of section 69 of the Act, in respect of amount, which is disclosed in the return, Audited Financial Statement of Accounts.

5. The Learned AO/CIT(A) have erred in making disallowance of interest expenses Rs 5,00,000/- incurred during the course of business.

6. The Learned AO/CIT(A) has erred in making ad-hoc disallowance of interest expenses.

*7. The learned AO/CIT(A) erred in charging interest u/s 234B of the Act with reference to the enhanced amount of demand arrived on the disputed additions.
(Total tax effect: Rs.61,50,000/-)*

On the basis of the above grounds and other grounds which may be urged at the time of hearing with the consent of the Honourable Tribunal, it is prayed that the order passed under section 250, to the extent it is against the Appellant, be quashed and the relief sought to be granted.”

2. Brief facts of the case are as under:

2.1 Assessee is an individual and is carrying on the business of General Fabrication and canopy works in the name and style of Anjayan Enterprises and Tirumala Enterprises. It is also noted by the Ld.AO that, the assessee carried out investment activities by investing in shares and securities. For the year under consideration, the assessee filed return of income on 17.10.2016

declaring total income of Rs. 27,13,220/-. The return was processed u/s. 143(1) of the act accepting the returned income.

2.2 Subsequently, the case was selected for scrutiny and notice u/s. 143(2) was issued to the assessee to verify the investment and income related to securities transactions that were duly disclosed.

2.3 From the details filed by the assessee, the Ld.AO observed that the assessee made investment in shares to the extent of Rs.2 crores and declared loss of Rs.1,55,40,729/-. The assessee filed reply dated 14.12.2018 and 18.12.2018 etc., wherein the details of investment, loans taken, interest expenses paid and the utilisation of the loans were furnished. It was submitted before the Ld.AO that, the assessee invested with Kotak Securities amounting to Rs. 2 crores, arising out of an overdraft and loans from bank. The Ld.AO however did not agree with the submissions of the assessee, and made disallowance of the investment made of Rs. 2 crores as unexplained investment.

2.4 The Ld.AO noted that assessee claimed indirect expenses as under:

1. Interest – Karnataka bank Over draft – Rs.11,54,920/-
2. Interest on KSFC loan (TE) 094390 – Rs. 20,03,116/-

2.5 In respect of the same it was submitted that, the assessee used the amount of Rs. 2 crores from the bank OD for investment

purposes against which the interest was paid. The Ld.AO disallowed the interest to the extent of Rs. 5 Lakhs.

2.6 Aggrieved by the additions made by the Ld.AO, assessee preferred appeal before the Ld.CIT(A).

2.7 The Ld.CIT(A) upheld the addition of Rs. 2 crores by observing as under:

“6.4 As seen in assessment order, the appellant failed to provide any corroboratory evidence as regards the source of the investment made by him. sufficient opportunities were granted to the appellant to respond to the notices. The appellant's response to the source of share transactions made were without any documentary evidence/details. The appellant's attitude is clear that he did not want to furnish the details called for as those details, if furnished, would turn against him. For a moment leaving aside the proceedings of the AO, the appellant's attitude is proved to be similar even before the FAA (First Appellate Authority). In fact, sufficient time was given even by the FAA. Multiple opportunities were given seeking clarifications and certain details. In response to the same, the appellant has merely submitted partial details without any supporting documents. If the appellant had really missed to submit any evidences to the Id.AO in his support, he could have very well submitted them before the FAA because the appellate authorities, except the Constitutional Courts, are the fact finding authorities. In the course of appeal by either party to the dispute, new facts can be discovered by the Appellate Authorities so as to know the truth of the matter. However, he remained non-compliant and non-serious in prosecuting his appeal before the FAA, only for the purpose of hiding the facts and to conceal the truth.”

2.8 In respect of the interest disallowed, the Ld.CIT(A) observed that, as the loans and the OD were out of the business account, proportionate disallowance of interest income has been rightly made by the Ld.AO.

2.9 Aggrieved by the order of the Ld.AO, assessee is in appeal before this *Tribunal*.

3. Ground no. 1 raised by the assessee is general in nature and therefore do not require adjudication.

4. Ground nos. 2-4 are in respect of the addition made u/s. 69 of the act amounting to Rs. 2 crores.

4.1 The Ld.AR submitted that the assessee had multiple sources of receipts and also borrowed funds from OD account and KSFC. Copies of the bank account were provided to the authorities below. Placing reliance on the observations of the Ld.CIT(A) in para 6.2, the Ld.AR submitted that, the documentary evidences in respect of the OD account and the loan taken is available with the authorities and has been referred to and relied by the authorities below.

4.2 It is the submission of the Ld.AR that provisions of section 69 under such circumstances cannot be invoked as the necessary precondition to make the addition under section 69 is not satisfied. It is submitted by the Ld.AR that, the assessee made the investment which is recorded in the books of accounts maintained by the assessee and explanation was offered by the assessee during the assessment proceedings which was not accepted by the authorities below. He placed reliance on the information called by the Ld.AO u/s. 133(6) of the act from the

Kotak Securities Bank that has been recorded in para 10 of the assessment order. The Ld.AR further submitted that the explanation offered by the assessee has not been found to be false.

4.3 On the contrary, the Ld.DR relied on the orders passed by the authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

4.4 Admittedly, the OD taken by the assessee, and the loan taken from KSFC Bank stands completely disclosed which was cross verified by the Ld.AO. There is no allegation of the Ld.AO against the details furnished by the assessee which was cross verified by the bank u/s. 133(6). Under such circumstances, provisions of section 69 cannot be invoked. We accordingly are of the opinion that no addition can be made in the hands of the assessee u/s. 69 of the act in respect of Rs. 2 crores.

Accordingly, ground nos. 2-4 raised by the assessee stands allowed.

5. Ground nos. 5-6 are in respect of adhoc disallowance made of interest expenses amounting to Rs. 5 Lakhs. We have considered the submissions of both the sides.

5.1 Admittedly, the loan and the OD account pertains to the business of the assessee. The assessee made investment out of such loan and OD account which cannot be considered as an

expenditure u/s. 28 of the act. As the Ld.AO has only made disallowance of Rs. 5 Lakhs we do not find any infirmity in respect of the same which has been upheld by the Ld.CIT(A). Even otherwise, at the time of argument, the Ld.AR could not justify the said interest expenditure u/s. 28 of the act and the same stands dismissed.

Accordingly, ground nos. 5-6 raised by the assessee stands dismissed.

In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced in the open court on 28th June, 2024.

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 28th June, 2024.
/MS /

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore