

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE**

**Before Ms.Padmavathy S, Accountant Member
&
Shri Prakash Chand Yadav, Judicial Member**

ITA No.1511/Bang/2024: Asst.Year : 2018-2019

Sri.Dhanaraja Babu Ganesh 25/1, Shankara Park Road Basavanagudi Bangalore – 560 004. PAN: ADOPB9339C.	vs.	The Income Tax Officer Ward 2(1)(3) Bangalore.
(Appellant)		(Respondent)

Appellant by: Sri.H.Guruswamy, ITP
Respondent by: Ms.Neha Sahay, JCIT-DR

Date of Hearing : 24.10.2024	Date of Pronouncement: 29.10.2024
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ORDER

Per Prakash Chand Yadav, JM :

The present appeal of the assessee is arising from the order of the learned CIT(A) dated 24th July, 2024 and relates to assessment year 2018-2019, having DIN & Order No.ITBA/NFAC/S/250/2024-25/1066976856(1).

2. The assessee has raised six grounds of appeal. Out of which ground Nos.1 and 6 are general in nature and in ground No.s2 and 3, the assessee has challenged the correct year of taxability of the impugned amount added by the Assessing Officer in the impugned proceedings. In ground No.4, the assessee has challenged the legality of the present proceeding on the ground that without there being any substantive assessment, protective assessment is not permissible in

law. Ground No.5 is relating to the merits of the addition made by the A.O.

3. Undisputed facts as coming out from the records are that the assessee is an individual has filed his return of income for the impugned year on 31.03.2019 declaring an income of Rs 7,48,360/- .On the basis of an information, the case of the assessee for the impugned year has been reopened u/s.148 of the Income-tax Act, 1961, and accordingly the case of the assessee was reopened. It is alleged by the AO that the assessee has given a cash loan of Rs.4,75,00,000 to one Sri.Madhukar during the financial year 2017-2018. It is pertinent to mention here that the Verification Unit of the Income Tax Department has also conducted inquiries in this matter during the reassessment proceedings in pursuance to a commission issued by the A.O. u/s.131(1)(d) of the Act. The Verification Unit in its report has made an observation that the transaction was done in financial years (F.Y) 2015-2016 and F.Y 2016-2017. However, the A.O. ignoring the observations of Verification Unit as well as the submission of the assessee has added the entire sum advanced as loan, by the assessee as unexplained cash credit u/s.68 of the Act. It is also pertinent to note here that there was an order of Civil Court in this regard dated 31.01.2020 wherein the Civil Court has granted a decree in favour of the assessee and confronted that the assessee had given a cash loan and the lender has to repay the loan to the assessee. In the order of the Civil Court, the learned Magistrate has also observed that the transaction has happened somewhere in A.Y. 2016-2017.

4. Aggrieved with the order of the A.O, the assessee preferred appeal before the learned CIT(A) and contended that the A.O. has erred in taxing the impugned amount during the year under consideration because the facts as coming out from the report of Verification Unit and from the decree of the Magistrate are abundantly clear that the transaction happened somewhere in A.Ys. 2016-2017 and 2017-2018 and not in the impugned year. Besides this, the assessee has also challenged the initiation of reassessment proceedings u/s.148 of the Act. However, the ld.CIT(A) dismissed all the contentions of the assessee and affirmed the order of the A.O.

5. Aggrieved with the order of the CIT(A), the assessee has come up in appeal before us. The learned Counsel for the assessee vehemently argued that the authorities below have erred in not appreciating that the transaction involved does not relate to the impugned year.

6. The learned Departmental Representative relied upon the orders of the authorities below.

7. After considering the rival submissions, we observe that in this case the assessee has advanced a cash loan of Rs.4.75 crore to one person and has taken a cheque in his own name as a security against the amount lend. The date of the cheque was 21st August, 2017, which means the borrower has to repay the loan in the impugned assessment year. We further observe that there are categorical observations of Verification Unit of the Income Tax Department and of the Civil Court that the assessee has advanced the loan somewhere in assessment years 2016-2017 and 2017-2018. Therefore, we find force in the arguments of the assessee that AO would not have taxed

this sum in this year, as it settled position of law that provisions of section 68 are applicable to the current year's0 credits and not to the amount advanced by an assessee in previous years. If there are transactions of previous years then there are remedies available to the department for taxing such sums. It is also settled position of law that correct income is to be taxed in correct year. Therefore, we have no hesitation in holding that the AO has erred in taxing the impugned amount in the year under consideration and that too on protective basis. So far as the contention of the assessee that there cannot be any protective assessment without any substantive assessment, we think that this issue becomes academic, further the assessee has neither raised this ground before the CIT(A) nor filed any application for admission of this ground. Therefore we are not deciding that ground.

8. In the result, the appeal filed by the assessee is allowed as indicated above.

Order pronounced in the open court on 29th October, 2024.

Sd/-
(Padmavathy S)
Accountant Member

Sd/-
(Prakash Chand Yadav)
Judicial Member

Bangalore; Dated: 29th October, 2024
Devadas G*

Copy to:

1. The Appellant.
2. The Respondent.
3. The CIT(A) Concerned.
4. The DCIT concerned.
5. The Sr. DR, ITAT, Bangalore.
6. Guard File.

Asst.Registrar
ITAT, Bangalore