

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

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER

ITA No. 1954/Bang/2024
Assessment year : 2012-13

Shri Gangaiah Nagaraju, No.85, Veera Anjaneyaswamy, Corporation Bank, Anjanana Vishwaneedam Post, Bengaluru – 560 091. PAN: AHGPN 1276N	Vs.	The Income Tax Officer, Ward 6(2)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Rajeev Nulvi, CA
Respondent by	:	Smt. Neha Sahay, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	20.11.2024
Date of Pronouncement	:	02.12.2024

ORDER

Per Prashant Maharishi, Vice President

1. This appeal is filed by Shri Gangaiah Nagaraju (the assessee/appellant) for the assessment year 2012-13 against the appellate order passed by the National Faceless Appeal Centre, Delhi (NFAC) [Id. CIT(Appeals)] dated 9.8.2024 wherein appeal filed by the assessee against the reassessment order dated 14.9.2021 passed u/s. 143(3) r.w.s. 147 of the

Income-tax Act, 1961 (the Act) by the National Faceless Assessment Centre, Delhi (ld. AO) was partly allowed.

2. The assessee is aggrieved with the same and is contesting the addition made u/s. 69A of the Act as per grounds of appeal.
3. The brief facts of the case show that assessee is an individual wherein information was found that he is a non-filer of return, who has made cash deposit of Rs.49,45,800 in his bank account and further has also received contract income of Rs.3,03,315 on which the tax is deducted at source. Therefore notice u/s. 148 was issued on 29.3.2019 after recording the above reasons.
4. Notice u/s. 133(6) of the Act was issued to Indian Overseas Bank and Corporation Bank to furnish bank statement of assessee on 14.2.2021. Assessee, when questioned, replied that cash is deposited in his bank account by his friend, when he was in a critical situation for construction of a house. The assessee was in shortage of cash and therefore same was borrowed from friends, relatives and deposited in the bank account. After perusing the reply of assessee, a further show cause notice was issued and it was found that even in Corporation Bank statement, cash deposit is Rs.34,04,500 and information is cash deposited of Rs.49,45,800. The assessee was asked to explain the source.
5. Assessee submitted that his return originally filed may be treated as return in response to notice u/s. 148, but the AO could not

find any such return. It was further stated that the notice is issued purely on guess work. In the alternative, the assessee asked the AO to make the peak credit addition of Rs.27,44,432. The Id. AO rejected the same and as assessee failed to show source for cash deposit, made addition of Rs.49,45,800 u/s. 69A of the Act and further made addition of Rs.3,03,325 of contract receipt shown in Form 26AS. Thus the total taxable income of Rs.52,49,115 was determined in the reassessment order passed u/s. 147 of the Act on 14.9.2021.

6. The assessee preferred appeal before the Id. CIT(A) where assessee submitted that assessee is carrying on business and having turnover of Rs.72,04,820. Assessee stated that he is engaged in the business of waste papers and supplying it to the recycling units. He was working as a labourer in a unit where recycling of waste paper was carried out. The business transactions were carried out through cash payment and cash receipts and therefore the deposit of money is from the business income. With respect to contract income, he submitted that a sum of Rs.3,03,325 is also contract receipt which cannot be taxed @ 100%, but profit thereon should have been estimated @ 8%. With respect to deposit of cash, he submitted that a sum of Rs. 34,06,500 is deposited with Corporation Bank and Rs.13,75,300 is deposited with Indian Overseas Bank. Thus, the actual cash deposit is Rs.47,81,800. He therefore submitted that the addition made by the Id. AO is of incorrect amount.

7. The Id. CIT(A) held that assessee is completely changing the stand, did not file any return of income and has not produced any evidence of business, therefore profit cannot be estimated @ 8%. It was further noted that no documentary evidences are produced with relation to business income of assessee, therefore the statement of assessee that he is carrying on business of waste paper recycling cannot be believed. Accordingly addition of Rs.49,45,800 was confirmed. The Id. CIT(A) did not deal with ground No.3 of the appeal of contract income of Rs.3,03,315 added by the Id. AO. Therefore, assessee is aggrieved and is in appeal before us.
8. The Id. AR vehemently submitted that assessee is carrying on business of recycling waste paper. He enclosed a copy of certificate of Karnataka Khadi Gramodyog Samyukta Sangh (KKGS Sangh) dated 08.10.2024 which states that assessee is engaged in the business of collecting waste paper and supplying for recycling units. The KKGS Sangh has given a certificate that assessee has supplied waste paper and other usable scrap amounting to Rs.74,48,810 to them. The Id. AR submitted that this is business turnover of assessee and assessee is entitled to benefit of 8% as presumptive income out of the same. He further submitted that even the cash deposit and cash withdrawal have not been set off by the Id. AO while making the addition. It was further submitted that assessee is also having rental income,

interest income, which are duly accounted for in his bank account. Therefore, the addition deserves to be deleted.

9. Meanwhile, the Id. AR submitted that the certificate produced before us of KKGS Sangh was not produced before the Id. lower authorities which could be verified by them
10. The Id. DR vehemently supported the orders of Id. lower authorities. It was submitted that assessee has constantly changed his stand about explanation of cash deposit. Firstly, it was submitted that he was constructing a house and money borrowed from friends and relatives. Now, assessee has stated that he is carrying on business and therefore the lower authorities in absence of any evidence, did not believe the facts stated by the assessee and therefore the orders of Id. lower authorities need to be upheld.
11. We have carefully considered the rival contentions and perused the orders of Id. lower authorities. The issue involved in this appeal is cash deposit by assessee in his two bank accounts amounting to Rs.49,50,000. The assessee has stated that the above figure stated by the Id. AO is not the correct figure, but lesser than that. Further, he submitted that assessee is engaged in the business of collecting of waste paper which are purchased and thereafter supplied to the recycling unit of waste paper. He submitted before us a certificate from KKGS Sangh dated 08.10.2024 wherein the manager of that unit has certified that

the assessee has supplied the waste paper of Rs.74,48,810. This is a third party evidence produced by the assessee before us for the first time. However, before the ld. lower authorities also, he is continuously submitting that he is carrying on business of purchase of waste paper and supplying the same to recycler unit. If the assessee is carrying on business and the cash deposit in the bank account is generated out of business, naturally the addition made u/s. 69A of the Act by the ld. AO cannot be sustained. But the assessee must show that he is really carrying out any business as the ld. lower authorities have doubted the explanation of the assessee because of his changing stand and not filing return of income. Therefore, in the interest of justice, we restore ground nos. 2, 3 & 4 of the appeal of the assessee, back to the file of ld. AO, with a direction to the ld. AO to examine whether assessee is really carrying on any business as claimed. If the AO is satisfied and it reveals that the above business stated by assessee is his business really, as per ground No.5 the AO will compute the total taxable income of assessee. Ground No.5 is also allowed and restored to the file of the ld. AO accordingly. Thus, ground nos. 2 to 5 are restored to the file of ld. AO.

12. The other grounds are merely general and supportive, hence dismissed.

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

Pronounced in the open court on this 02nd day of December, 2024.

Sd/-

(PRAKASH CHAND YADAV)
JUDICIAL MEMBER

Sd/-

(PRASHANT MAHARISHI)
VICE PRESIDENT

Bangalore,
Dated, the 02nd December, 2024.

/Desai S Murthy/

Copy to:

1. Appellant 2. Respondent 3. Pr. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.