

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

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER  
AND SHRI SOUNDARAJAN K, JUDICIAL MEMBER**

ITA Nos.1280, 1281/Bang/2024
Assessment Year : 2010-11

Shri. Manjunath Naregal, No.366, Shiva Krupa 1 <sup>st</sup> B Main, Road 2 <sup>nd</sup> Cross, Jayanagar 7 <sup>th</sup> Block, Bengaluru – 560 082. <b>PAN : ADKPN 2061 M</b>	Vs.	The Income Tax Officer, Ward – 7(2)(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Balram Ro, AR.
Revenue by	:	Shri. Subramanian, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	26.11.2024
Date of Pronouncement	:	20.12.2024

**ORDER**

*Per Laxmi Prasad Sahu, Accountant Member*

These appeals are filed by the assessee against separate Orders dated 10.05.2024 and 27.05.2024 passed by the CIT(A) respectively.

2. Briefly stated, the facts of the case are that it was noticed that the assessee had not filed return of income for the impugned Assessment Year and there is cash deposit of Rs.16,92,000/- from 01.04.2009 to 31.03.2010 in the ICICI Bank bearing account No.65560. Accordingly, a notice under section 148 of the Act was issued to the assessee on 07.11.2013 which was served to the assessee and subsequently, other statutory notices were issued

to the assessee and the assessee has not complied to the said notices. It was also observed that the assessee has maintained bank account in HDFC Bank, Bangalore, bearing account 20777, and on perusal of the above two bank accounts, it was noticed that the assessee has deposited cash as well as cheque and other credits as under:

Sl No.	A/c No.	Cash Credits	Cheque/ other Credits	Total
1	20777	4,39,470/-	6,37,097/-	10,76,567/-
2	65560	16,92,000/-	51,97,462/-	68,89,462/-
	Total	21,31,470/-	58,34,559/-	-

3. Based on the above findings, assessee was given opportunity to explain the source of cash deposit, but there was no response from the assessee's side. Accordingly, the entire cash deposits of Rs.21,31,470/- was brought to tax and for the cheque / other credits of rs.58,34,559/-, was considered as a turnover and applied tax rate @ 8% of its turnover resultantly, there was income computed of Rs.4,66,764/- (8% of Rs.58,34,559/-) was brought to tax. Accordingly, the assessed income was determined at Rs.25,98,234/- and computed the tax.

4. Aggrieved from the above Order, the assessee filed appeal before the CIT(A). The CIT(A) gave various opportunities to the assessee to explain the cash deposits, the assessee filed cash book in which the CIT(A) noted that there is cash deposits and withdrawals from the assessee's two bank accounts and the CIT(A) observed that the assessee is able to explain to the extent of Rs.13,37,500/- and balance amount of Rs.8 lakhs remained as unexplained by observing that there is opening cash balance of Rs.8 lakhs shown by the assessee in the cash book but it was remained unexplained. Further, in respect of the cheque / other credits of Rs.58,34,59/- assessee was

unable to substantiate the details of gifts and loan taken from relatives and friends. Only a letter regarding the gift received by the assessee from his father was submitted which was not accepted by the CIT(A) and CIT(A) confirmed the addition of Rs.4,66,764/- being 8% of the turnover on the total credits in his bank accounts by way of cheque / other credits. Accordingly, he partly allowed the appeal of the assessee.

5. Aggrieved from the above Order, assessee filed appeal before the Tribunal.

6. The learned AR of the assessee submitted that the AO has wrongly made addition towards cash deposits and the CI(A) has partly allowed the cash deposits. The cash books submitted by the assessee was accepted and has not been rejected by the CIT(A). Therefore, the opening cash balance shown by the assessee of Rs.8 lakhs should also have been accepted by the CIT(A). However, in respect of addition of profit on the turnover computed by the AO, he submitted that the assessee's father has gifted for settling the business/occupation of the assessee for which a letter has been submitted before the CIT(A). Later it was submitted before the CIT(A) that any father would always want his children to get established and it is in this context that the assessee was given gift by his father by way of cash which was retained by the assessee. Therefore, it is appearing as an opening balance and he has also received loan from his friends and relatives because of the old case, assessee is unable to prove with cogent documents.

7. The learned DR relied on the Order of the CIT(A) and the learned DR submitted that various opportunities were given for substantiating with documentary evidences but the opening balance could not be proved by the assessee with sufficient evidence/documents and assessee is also unable to

produce the details of the friends and relatives in terms of section 68 of the Act and the assessee has also not produced any financial statements for opening cash balance. Therefore, he requested that the Order of the CIT(A) should be upheld.

8. Considering the above, we note that here the dispute is regarding the cash deposit of Rs.8 lakhs by the assessee and not substantiating the opening balance shown by the assessee. The submission of the assessee is carefully examined and noted that he is unable to produce any credible documents to substantiate the gifts received but considering the submissions of the assessee, accept Rs.4 lakhs shown as opening balance by the assessee taking into consideration the age and status of the family and as submitted that he has received gifts in previous Assessment Years which were kept as cash in hand and later it was deposited into bank account. Therefore, the assessee is given relief of Rs.4 lakhs on this ground. Accordingly, ground No.1 is partly allowed.

9. Further, in respect of ground No.2, we note that the 8% net profit rate on the entire cheque / other credits deposited in the assessee's bank accounts has been considered as turnover for want of any cogent material, in term of section 68 of the income tax act. 1961, we uphold the Order of the CIT(A) on this issue. Accordingly, ground No.2 is dismissed.

10. Ground No.3 is general in nature.

11. **ITA No.1281/Bang/2024**

This penalty appeal filed by the assessee challenging the levy of penalty of Rs.12,66,764/- which is 100% of the tax sought to be evaded which is consequential in nature since we have partly allowed the appeal on

merits as decided above, accordingly, this issue is remitted back to the AO for giving consequential effect of the penalty.

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

13. In the combined result, appeal in ITA No.1280/Bang/2024 is partly allowed and appeal in ITA No.1281/Bang/2024 is allowed for statistical purposes.

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-  
**(SOUNDARAJAN K.)**  
**JUDICIAL MEMBER**

Sd/-  
**(LAXMI PRASAD SAHU)**  
**ACCOUNTANT MEMBER**

Bangalore,  
Dated : 20.12.2024.  
/NS/\*

Copy to:

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

By order

Assistant Registrar  
ITAT, Bangalore.