

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'A', BANGALORE**

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI LALIT KUMAR, JUDICIAL MEMBER**

**ITA No.1045(Bang) 2015
(Assessment year : 2007-08)**

The Asst. Commissioner of Income Tax Officer,
Circle-8(1),
Bangalore

Appellant

Vs

Shri D. Ramesh Babu,
No.11, 9th Street,
Basaveshwaranagar,
Bangalore-560 079
Pan No.ABYPB7395L

Respondent

**Revenue by : Shri Kamaladhar, Standing Counsel for Dept.
Assessee by : Shri Cuddapah Ramesh, CA**

**Date of hearing : 20-12-2016
Date of pronouncement: : 23-12-2016**

ORDER

PER SHRI A.K.GARODIA, AM

This is revenue's appeal directed against the order of the ld. CIT(A)-V, Bangalore dated 05-12-2013 for the assessment year 2007-08.

2. The grounds raised by the revenue are as under:

"1. The order of the CIT(A), is opposed to the facts and of the case.

2. On the facts of the case, the ld.CIT(A) erred in deleting the addition made u/s 68, despite the reasoning brought

out in the interim report about the inconsistencies in financial statements with respect to individual account statements owing to which additions were made.

3.The ld. CIT(A) erred in appreciating the facts and circumstances under which additions were made, when complete details of transactions were not produced during the course of assessment proceedings.

4. The appellant craves leave to add, alter, amend or delete any other grounds of appeal at the time of hearing of the case with a prayer to restore the order of the AO. .

3. The ld. DR of the revenue supported the assessment order. He also submitted that there is no finding of the ld., CIT(A) regarding the credit worthiness of these two creditors and therefore, his order is not sustainable and the same should be reversed and that of the AO should be restored.

4. The ld. AR of the assessee supported the order of the ld. CIT(A).

5. We have considered the rival submissions. We find that the issue is dispute has been decide by the ld. CIT(A) as per para-10.1, 10.2 & 10.3 of his order which are reproduced herein below for the sake of ready reference;

“10.1 As seen from the cryptic assessment order of Rs.30,60,000/-has been added on account of excess payment to Mr.V. Santosh u/s 68 of the Acct to whom the assessee advanced Rs.154,00,000/-on the basis of receipt and payment account. It is not the case of the AO that the assessee had no source to advance or the transaction is not genuine. The transaction being through

the bank, and for the purpose of advancing money for the purpose of land to Mr.V.Santosh could not taxed as unexplained or unaccounted. Hence, the addition is deleted.

10.2 Further, the assessee has shown outstanding balance of Rs.110,80,619/- payable to Mr.V.Santosh as on 31-03-2007. It is the case of the appellant that he initially advanced Rs.154,00,000/- to Mr.Santosh during the year and after considering other debits amounted to Rs.1,75,99,381/-. It is demonstrated in the ledger accounts that the total amounts received from Mr. Santosh during the year amounted to Rs.2,86,80,000/- which were through Bank and duly reflected in the statement of affairs. It is explained that the assessee had received Rs.325,00,000/- in total from M/s P.R.Properties as advance in April-May 2006(credited in HSBC account of the appellant) for the purpose of land S.No.159 & 160 at Mandur Village, Bidarahalli Hobli measuring 42 acres 32 guntas and 23 guntas of karab land belonging to Mr. Chandrasekhar Gowda and others. From this amount only, advances were made to Mr. Santosh and Mr.Sandesh for purchase of land in their names. After the land was purchased in the name of Mr. Santosh and Mr. Sandesh, the said advance from P.R Properties was transferred to their account equally i.e.Rs.162,50,000/- and was payable to them. Hence, in case of Mr. Santhosh, the outstanding balance payable as on 31.3.2007 stood at Rs.110,80,619/-. The credit balance was holly explained. The addition ofRs.110,80,619/- on account of unexplained credits is not sustainable in the facts of the case and hence deleted.

10.3 Similarly, in the case of Mr. V. Sandesh, addition of Rs.45,50,000/- on account of excess payment and Rs.8020,375/- on account of credit balance, totaling Rs.131,70,375/- has been made by the AO. As explained by the ld. AR, it was the assessee who initially advanced Rs.153,00,000/- to Mr. Sandesh in May 2006. Other debts during the year were also accounted. Payments from Mr.Sandesh and credits to his account totaling to Rs.296,00,000/- were accounted during the year, leaving a balance of Rs.86,20,375/- as on 31-3-2007 payable by the appellant to Mr. Sandesh. The credit balance was wholly explained. The addition of Rs.131,70,375/- on account of unexplained credits is not sustainable in the facts of the case and hence deleted”.

6. From the above paras re-produced from the order of the ld. CIT(A), we find that regarding the deletion of Rs.30.60 lakhs on account of excess payment to Mr. V.Sandesh, a clear finding has been given by the ld. CIT(A) that this is not the case of the AO that the assessee has no source to advance or the transaction is not genuine. Hence, this addition is to be deleted. Similarly, regarding the deletion of Rs.40.50 lakhs on account of excess payment to the other creditor Mr. V.Sandesh also, a similar finding has been given by the ld. CIT(A) and after considering the facts of the present case, we find no infirmity in the order of the ld. CIT(A) on this aspect because admittedly, these payments were made by the assessee to these two persons from disclosed bank account of the assessee and this is not the case of the AO that the source of payment is

not explained by the assessee. This is also not a case of the AO that these transactions are not genuine. Therefore, regarding deletion of these two amount of Rs.30.60 lakhs and Rs.45.50 lakhs by the ld. CIT(A), we decline to interfere in his order.

7. Regarding deletion of two additions of Rs.110,80,619/- and Rs.86,20,375/- in respect of credits received from Mr. V.Santhosh and Mr. V.Sandesh respectively, we find that these additions are in respect of outstanding credit balance in the name of these two persons of whom, the ledger account is available on pages 18-19 of the paper book. The said credit balances were out of the credits received during the present year and not out of the opening credit balance. The ld. CIT(A) has not given any finding regarding the credit worthiness of these two persons who advanced these two amounts to assessee and therefore, we are of the considered opinion, that the matter should go back to the file of the ld. CIT(A) to decide this aspect of the matter afresh. Therefore, we set aside the order of the ld. CIT(A) on this aspect of the matter and restore the matter back to the file of the ld. CIT(A) for a fresh decision. The assessee should bring on record relevant material to establish the credit worthiness of these two persons and the ld. CIT(A) should pass a speaking and reasoned order particularly, regarding the credit worthiness of these two persons and the genuineness of the transaction. He should pass necessary order as per law and as per above discussion after providing adequate opportunity of being heard to both sides.

8. In the result, the appeal filed by the revenue is partly allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(LALIT KUMAR)
JUDICIAL MEMBER

Place: Bangalore:

D a t e d : 23.12.2016

am*

Copy to :

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

Sd/-
(A.K. GARODIA)
ACCOUNTANT MEMBER

By order

AR, ITAT, Bangalore

1. श्रुतलेख की तारीख.....
DATE OF DICTATION.....
2. तारीख, जिस पर टाइप किया हुआ मसौदे, संबंधित सदस्य के सामने रखा गया है
DATE ON WHICH TYPED DRAFT IS PLACED BEFORE THE DICTATING MEMBER.....
3. तारीख जिस पर अनुमोदित मसौदे व. निजी सचिव/निजी सचिव के पास वापस आए
DATE ON WHICH THE APPROVED DRAFT COMES TO THE PS/Sr.PS.....
4. घोषणा के लिए आदेश संबंधित सदस्य के सामने रखने की तिथि
DATE ON WHICH THE ORDER IS PLACED BEFORE THE DICTATING MEMBER FOR PRONOUNCEMENT.....
5. आदेश नि.सचिव/व.नि.सचिव के पास वापस आने की तिथि
DATE ON WHICH THE ORDER COMES BACK TO THE PS/Sr.PS.....
- 6 आदेश अपलोड करने की तिथि
DATE OF UPLOADING THE ORDER ON WEBSITE.....
7. अगर अपलोड नहीं किया तो, उसका कारण
IF NOT UPLOADED, FURNISH THE REASON FOR DOING SO.....
8. बेंच लिपिक के पास फाइल जाने की तिथि
DATE ON WHICH THE FILE GOES TO THE BENCH CLERK.....
9. आदेश ज़ेरोक्स/पृष्ठांकन के लिए भेजने की तिथि
DATE ON WHICH ORDER GOES FOR XEROX & ENDORSEMENT.....
10. फाइल मुख्य लिपिक के पास जाने की तिथि
DATE ON WHICH THE FILE GOES TO THE HEAD CLERK.....
11. आदेश पर हस्ताक्षर के लिए फाइल सहायक रजिस्ट्रार के पास जाने की तिथि
THE DATE ON WHICH THE FILE GOES TO THE ASSISTANT REGISTRAR FOR SIGNATURE ON THE ORDER.....
12. अधिकरण आदेश के प्रेषण के लिए फाइल प्रेषण विभाग में जाने की तिथि
THE DATE ON WHICH THE FILE GOES TO DESPATCH SECTION FOR DESPATCH OF THE TRIBUNAL ORDER.....
13. आदेश की प्रेषण की तिथि
DATE OF DESPATCH OF ORDER.....