

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH " A "**

**BEFORE SHRI ABRAHAM P GEORGE, ACCOUNTANT MEMBER AND  
SHRI VIJAY PAL RAO, JUDICIAL MEMBER**

I.T.A. No.662/Bang/2011 (Assessment Year : 2008-09)		
Shri Suresh Kannan N No.476, Ground Floor, 7 <sup>th</sup> Main, Amarjyothi Layout, Domlur Inner Ring Road, Bangalore-560 071 PAN AFXPK 4121Q	Vs.	Dy. Commissioner of Income Tax, Circle 5(1), Bangalore.
Appellant		Respondent.

Appellant By : Shri H. Guruswamy, ITP Respondent By : Shri K.R. Narayan, JCIT (D.R)
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Date of Hearing : 30-06-2016.  
Date of Pronouncement : 25.7.2016.

**O R D E R**

**Per Shri Vijay Pal Rao, J.M. :**

This appeal by the assessee is directed against the order dt.28.3.2011 of  
Commissioner of Income Tax (Appeals) for the Assessment Year 2008-09.

2. The assessee has raised the following grounds :

1. The order of the learned DCIT Circle -5(1), Bangalore is  
opposed to facts and circumstances of the case.

2. The order is passed in haste and without providing sufficient and reasonable opportunity to adduce evidence.
3. The order is passed much against to the principal of natural justice and thus liable to be quashed.
4. Without prejudice to the above, the learned DCIT Circle -5(1), Bangalore is not justified in adding Rs. 12,31,545/-, the difference in the statement of affairs, as unexplained income. The addition purely as suspicion, surmise, assumptions and presumptions and without appreciating the evidence adduced by the appellant and therefore, the aforesaid additions requires to be deleted.
5. The Appellant also appeal for granting relief for the amount of tax credit of Rs. 1,20,9851/- being the difference between tax credits as per Annual Tax Credit statement in Form 26AS of Rs. 3,89,717/- from the Income Tax Department and tax credit given by the A.O. Rs.2,68,732.
6. The appellant appeal for granting of an amount of Rs. 26,3501/- the refund granting by the A.O. for the Assessment year 2011-12 but was withheld by the A.O. and adjusted towards the demand due for the Assessment year 2008-09, for which appeal is filed.
7. The appellant appeals that interest under Section 234A, 234B and 234C of the Income Tax Act, 1961 shall not be charged because of the facts given in para 4 and 5 above. As per para 4 and 5 above there will not be any tax payable by the Assessee and hence interest under these sections requires to be deleted.
8. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.+  
3. Ground Nos.1 to 4 are regarding the addition of Rs.12,31,545 being the difference in statement of affairs. The assessee is an individual and a Chartered

Accountant by profession. The assessee filed his return of income for the Assessment Year 2008-09 on 31.3.2009 declaring a total income of Rs.13,27,580. On scrutiny of the details and records, the Assessing Officer noted that there is a difference in the statement of affairs between the Assessment Years 2007-08 and 2008-09. The Assessing Officer analysed the Balance Sheet for the Assessment Years 2007-08 & 2008-09 and found that there is an increase in the capital and the same is not explained by the assessee to the extent of Rs.12,31,545. The assessee challenged the action of the Assessing Officer before the CIT (Appeals). The CIT (Appeals) given relief to the extent of rental income of Rs.2,16,000 and sustained the addition to the extent of Rs.10,15,545. Aggrieved by the order of the CIT (Appeals), the assessee filed the present appeal before the Tribunal.

4. The learned Authorised Representative of the assessee has submitted that for the Assessment Year 2007-08 the assessee filed combined Balance Sheet including business as well as personal capital whereas for the Assessment Year 2008-09 the assessee has segregated the Balance Sheet being personal as well as professional. He has pointed out that the Assessing Officer has committed an error in taking increase in the capital, this does not represent the actual

capital difference but it was of other liabilities such as loan borrowals, receipt of rental income, gifts from wife, withdrawal from capital account and difference between the opening account and statement of affair as on 31.3.2007. He has pointed out that there is a difference between the capital account and statement of affairs as on 31.3.2007 of Rs.3,56,843. Further, there is a loan received from friends of Rs.2 lakhs and from the customers of Rs.1,70,000. There is a gift received from wife of Rs.1,50,000 and a sum of Rs.1,38,702 is withdrawn from business. Therefore the assessee has explained the source of the difference worked out by the CIT (Appeals) after granting the relief in respect of rental income. The learned Authorised Representative has further contended that the Assessing Officer has posted the case for hearing on 14.10.2010 and adjourned the same on 21.12.2010. Thereafter the case was posted on 27.12.2010 by letter dt.23.12.2010 in which the assessee was called upon to submit the explanation for the difference to be reconciled. The learned Authorised Representative has pointed out that only 4 days were given to the assessee for furnishing the details out of which 2 days are holidays for Christmas and therefore the Assessing Officer allowed only two days time to submit the details which was not sufficient for furnishing the necessary details

for reconciliation. Accordingly, the assessee could not furnish the necessary details within two days time, in the meantime the Assessing Officer passed order on 29.12.2010. The learned Authorised Representative has pointed out that the authorities below have not taken into consideration the cash on hand as on 31.3.2007 of Rs.3,56,843 while computing the difference in the capital account. He has filed the confirmation letter regarding the loan as well as gifts from the wife being an additional evidence and pleaded that the matter may be remitted to the Assessing Officer for examination of the same.

5. On the other hand, the learned Departmental Representative has vehemently objected to the additional evidence filed at this stage when the Assessing Officer and CIT (Appeals) granted sufficient opportunity to the assessee and the assessee has failed to discharge the onus. The assessee cannot be allowed to set up a new case at this stage.

6. We have considered the rival submissions as well as the relevant material on record. Apart from the additional evidence filed by the assessee, we note that the Assessing Officer as well as CIT (Appeals) has not taken into consideration the cash on hand available as on 31.3.2007 of Rs.3,56,843. Therefore the working out of the difference increase in the capital is not free

from the error committed by the authorities below. Further the assessee has produced the confirmation letters along with the bank statements to show that the assessee received loans from the clients, gift from wife and withdrawal from business capital. Thus the assessee has explained the difference as under :-

i)	Difference between opening capital account & statement of affairs as on 31.3.2007.	Rs.3,56,843
ii)	Loan received from friend	Rs.2,00,000
iii)	Loan received from customer	Rs.1,70,000
iv)	Gift received from wife	Rs.1,50,000
v)	Withdrawals from business capital	Rs.1,38,702
	Total :	Rs.10,15,545.

In the facts and circumstances of the case when the assessment order was framed without giving sufficient effective opportunity of hearing to the assessee, as it is clear that the assessee was given only two effective days for filing the necessary details therefore in the interest of justice, we set aside this issue to the record of the Assessing Officer to re-examine and verify the record properly and also examine the additional evidence filed by the assessee.

7. Ground No.5 is regarding short tax credit.

8. We have heard the learned Authorised Representative as well as learned Departmental Representative and considered the relevant material on record. The assessee has submitted that the Assessing Officer has granted short tax credit of Rs.1,20,985 being the difference between the tax credit as per the annual tax credit statement in Form 26AF and tax credit given by the Assessing Officer. Since this is only a matter of verification, therefore, we direct the Assessing Officer to verify the claim of the assessee and consider the correct tax credit if the assessee's claim is found correct.

9. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 25<sup>th</sup> day of July, 2016.

Sd/-  
**(ABRAHAM P GEORGE)**  
Accountant Member

Sd/-  
**(VIJAY PAL RAO)**  
Judicial Member

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