

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH 'B', BANGALORE

SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

I.T.A No.1518/Bang/2014  
(Assessment Year : 2008-09)

Shri. Suresh Muntramaswamy,  
No.16/17, 'Sridhiva Krupa',  
Subramanyapura Road, Chikkalasandra,  
Uttarahalli, Bengaluru 560 061 .. Appellant  
PAN : AOFPM1976C

v.

Income-tax Officer,  
Ward – 10(2), Bengaluru .. Respondent

Assessee by : Shri. Narendra Sharma, Advocate  
Revenue by : Smt. Swapna Das, JCIT

Heard on : 21.06.2016  
Pronounced on : 26.07.2016

**ORDER**

**PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :**

In this appeal filed by assessee it assails an addition of  
Rs.23,32,750/- made by the AO which was confirmed by the CIT (A).

02. Facts apropos are that assessee deriving income from other sources, filed his return for the impugned assessment year declaring income of Rs.6,78,790/-. During the course of assessment proceedings it was noted by the AO that assessee had deposited a sum of Rs.23,50,550/- in its account with M/s. Thyagaraja Cooperative Bank Ltd, ('TCBL' in short). Assessee for proving the source produced before the AO a copy of a sale agreement entered by him with one Shri. P. Suresh on 18.10.2006. As per the assessee, he had on 18.10.2006 paid a sum of Rs.20 lakhs to Shri. P. Suresh for acquiring a property from him. Contention of the assessee was that acquisition did not go through and therefore Shri. P. Suresh returned the sum of Rs.20 lakhs during the relevant previous year. As per the assessee, such amount was deposited by him in his account with TCBL. With respect to the balance sum of Rs.3,50,550/-, contention of the assessee was that he had accumulated funds over the years, which was available with him . AO was not impressed. According to him, for cash deposits in excess of Rs.10,000/-, assessee could not give any explanation. He made an addition of Rs.23,32,750/- and completed the assessment.

03. Aggrieved assessee moved in appeal before the CIT (A). Argument of the assessee was that similar to what he had taken before the AO.

Assessee also filed a copy of his bank statement for F. Y. 2006-07 which reflected cash withdrawals of Rs.20 lakhs. As per the assessee there was a withdrawal of Rs.19 lakhs by self-cheque on 17.06.2006 and Rs.1 lakh on 19.10.2006, which were used for giving advance to Shri. P. Suresh. As per the assessee, the sums were returned by Shri. P. Suresh on the following dates :

Date of refund	Amount refunded in Rs.
17.07.2007	3,00,000
02.08.2007	1,00,000
23.09.2007	2,50,000
02.11.2007	1,50,000
20.11.2007	3,00,000
07.12.2007	1,50,000
20.01.2008	4,00,000
29.02.2008	1,00,000
09.03.2008	1,00,000
15.03.2008	1,50,000
<b>Total</b>	<b>20,00,000</b>

Contention of the assessee once again was that the sum of Rs.20 lakhs returned by Shri. P. Suresh was used for making the deposit in the bank account during the relevant previous year.

04. However, CIT (A) was not impressed by the above arguments. According to him, the amounts which were deposited by the assessee in the bank account during the relevant previous year did not tally with the refunds mentioned in table (supra). Opinion of the CIT (A) was that the amounts refunded by Shri. P. Suresh, if at all there were any actual refund, would have been deposited by the assessee on the same day or the very next day. CIT (A) noted that the deposits in the bank account during the relevant previous year were made only to honour the cheques issued by assessee. But for such deposits the cheques issued by the assessee would have bounced. As per the CIT (A), a normal person would not have kept huge cash balance with himself without depositing in the bank. CIT (A) also noted that agreement for sale produced by assessee though it mentioned a refund made by Shri. P. Suresh on the back page, did not bear signature of any witness. He thus refused to accept the contentions of the assessee in this regard. In so far as the accumulated cash of Rs.3,32,750/- was concerned, finding of CIT (A) was that assessee could not file any cash-flow statement for earlier years to prove such sources. He thus confirmed the order of the AO.

05. Now before us, Ld. AR assailing the orders of the authorities below, submitted that the agreement with Shri. P. Suresh was never doubted. Agreement clearly showed the refund given by Shri. P. Suresh. The refunds were disbelieved just for a reason that deposits in bank account were of amounts smaller than what were received as refunds. In any case as per the Ld. AR, AO never examined Shri. P. Suresh before coming to the conclusion that the agreement could not be relied upon.

06. Per contra, Ld. DR supported the orders of lower authorities.

07. I have heard the rival contentions and perused the material on record. There is no dispute that assessee had produced before the lower authorities, agreement dt.18.10.2006 with Shri. P. Suresh. It is also not disputed that during the preceding financial year 2006-07, assessee had withdrawn Rs.19 lakhs on 17.10.2006 and Rs.1 lakh on 19.10.2006 from his bank account. Agreement with Shri. P. Suresh was entered on 18.10.2006. Therefore there is every possibility that the sum of Rs.20 lakhs withdrawn on 17.10.2006 and 19.10.2006 were used for giving advance of Rs.20 lakhs to Shri. P. Suresh. Claim of the assessee is that the said amount was returned by Shri. P. Suresh during the relevant previous year. In support assessee produced the notings of the refund on the back side of such agreement.

CIT (A) disbelieved such notes because there were no witness to such refunds. There is nothing on record to show how the lower authorities verified the genuineness of the agreement. In any case, in my opinion, unless and until Shri. P. Suresh is examined, correctness of the claim cannot be ascertained. In the circumstances, I am of the opinion the matter requires a fresh look by the AO. AO has to issue summons to Shri. P. Suresh and assessee has to ensure his attendance before the AO. AO shall examine the veracity of the claims made by assessee. He shall thereafter proceed in accordance with law.

08. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 26<sup>th</sup> day of August, 2016.

Sd/-

(ABRAHAM P GEORGE)  
ACCOUNTANT MEMBER

MCN

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order  
Assistant Registrar

