

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

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

I.T.A. No.567/Bang/2015 (Assessment Year : 2009-10)		
Shri Krishna T Mariappa, No.90/8, 3 rd Stage, 5 th Cross, 1 st Main, KEC Colony, Basaveshwaranagar, Bangalore-560 079 PAN AEIPT 0191D	Vs.	Income Tax Officer, Ward 8(3), Bangalore.
Appellant		Respondent.

Appellant By : Smt. Prathibha, Advocate. Respondent By : Shri Sunil Kumar Agarwala, JCIT (D.R.)
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Date of Hearing : 12.11.2015.

Date of Pronouncement : 18.11.2015.

O R D E R

Per Shri Vijaypal Rao, J.M. :

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-2, Bangalore dt.9.2.2015 for Assessment Year 2009-10.

2. We have heard the learned Authorised Representative and learned Departmental Representative and perused the material available on record. The assessee is an individual

who derives income from commission on sale of furniture. The assessee filed his return of income on 23.1.2010 declaring taxable income of Rs.1,60,790. The case was selected for scrutiny under CASS and accordingly notice under Section 143(2) and 142 of the Income Tax Act, 1961 (in short 'the Act') were issued by the Assessing Officer. Since none has appeared on behalf of the assessee in response to the notices under Section 143(2) and 142 of the Act, the Assessing Officer proceeded to frame the assessment under Section 144 of the Act. The assessment was completed under Section 144 of the Act vide order dt.29.12.2011 thereby the Assessing Officer has made an addition of Rs.28,83,460 on account of unexplained cash credit in the bank. The assessee challenged the action of the Assessing Officer before the CIT (Appeals) and contended that both the assessee and his wife are working and therefore the assessee had not received the notices. Further it was submitted that the assessee is dealing with furniture and furnishing jointly with Mrs. Geetha and receive the commission on the same. The assessee gives advance to the supplier against the requirements of the various customers. After the confirmation, material will be delivered to the customers and then he will get the commission. The assessee claimed that the cash as well as cheque deposits in the bank are the advance amount collected from the customer and therefore the same cannot be treated as income

of the assessee. The CIT (Appeals) directed the Assessing Officer for a remand report, however, the Assessing Officer objected to giving another opportunity to the assessee in the remand report as reproduced by the CIT (Appeals) in para 5 of the impugned order as under :-

" 5. A remand report was called for from the Assessing Officer. The Assessing Officer has upheld the addition made vide his report dt.17.10.2014. The gist is summarized as under :-

- (i) The notices were properly served and the acknowledgements were also taken.*
- (ii) Giving another opportunity of hearing to the assessee does not carry any merit as he has neither produced any confirmation of sources of cash deposits nor any letters confirming the supply of furniture or receipts from the customers, before the Appellate Commissioner.*
- (iii) Also there is violation of Section 40A(3) as the assessee has issued bearer cheque and not A/c payee cheques to the suppliers."*

Thus it is clear that the Assessing Officer has not examined any record during the remand proceedings and objected to another opportunity of hearing to the assessee. The CIT (Appeals) has confirmed the disallowance made by the Assessing Officer on the ground that the assessee has failed to produce the confirmations from the suppliers.

3. In this case the assessment was passed under Section 144 of the Act and further as it is clear from the impugned order of the CIT (Appeals) that the assessee was not afforded an opportunity of hearing during the remand proceedings and therefore the case was not properly examined by the Assessing Officer despite the opportunity given by the

CIT (Appeals) by issuing remand order. Accordingly, in the facts and circumstances of the case, we set aside the impugned order and remand the matter to the record of the Assessing Officer for providing one more opportunity of hearing to the assessee as well as examine the issue after consideration and verification of the submissions and relevant record to be filed by the assessee.

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

Order pronounced in the open court on this 18th day of Nov., 2015.

Sd/-
(ABRAHAM P GEORGE)
Accountant Member

Sd/-
(VIJAYPAL RAO)
Judicial Member

*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard File.

(True copy)

By Order

Asst. Registrar, ITAT, Bangalore