

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

**BEFORE SHRI VIJAYPAL RAO, JUDICIAL MEMBER AND
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER**

I.T.A. No.574/Bang/2014 (Assessment Year : 2009-10)		
M/s. Ahad Builders Inc., No.406, Ahad Chambers, Opp. Raheja Arcade, 7 th Block, Koramangala, Bangalore-560 017 PAN AALFA 1391F	Vs.	Asst. Commissioner of Income Tax, Circle 7(2), Bangalore.
Appellant		Respondent.

Appellant By : Shri C.R. Nulvi, C.A.

Respondent By : Dr.P.K. Srihari, Addl. CIT (D.R.)

Date of Hearing : 18.06.2015.

Date of Pronouncement : 7.8.2015.

O R D E R

Per Shri Jason P. Boaz, A.M. :

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-III, Bangalore dt.24.2.2014 for Assessment Year 2009-10.

2. The facts of the case, briefly, are as under :-

2.1 The assessee, a firm engaged in business as builders and developers, filed its return of income for Assessment Year 2009-10 on 31.7.2009 declaring income of Rs.21,53,140.

The case was taken up for scrutiny and the assessment was subsequently concluded under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') vide order dt.26.12.2011

wherein the income of the assessee was determined at Rs.56,53,140 as against the returned income of Rs.21,53,140. This was in view of the Assessing Officer treating the alleged loans received from the following four persons as unexplained cash credits on the grounds that the identity and credit worthiness of the creditors and the genuineness of the transactions had not been established :-

(i) Abu Bakar :	Rs.10,00,000.
(ii) Zoheb Ur Rehman :	Rs.10,00,000.
(iii) Sawanth Shetty :	Rs.10,00,000.
(iv) Ateeq :	Rs.5,00,000.

2.2 Aggrieved by the order of assessment for Assessment Year 2009-10 dt.26.12.2011, the assessee preferred an appeal before the CIT (Appeals) - III, Bangalore challenging the additions of Rs.35,00,000 made by the Assessing Officer in respect of the above unexplained cash credits amounting to Rs.35 lakhs. The learned CIT (Appeals) dismissed the assessee's appeal vide order dt.24.2.2014.

3. The assessee, being aggrieved by the order of the CIT (Appeals) - III, Bangalore dt.24.2.2014 for Assessment Year 2009-10, has preferred this appeal raising the following grounds :-

"1. The order of the Assessing Officer and CIT (Appeals) - III, Bangalore is against the facts and circumstances of the case and being bad in law and against the judicial pronouncements.

2. On the facts and circumstances of the case, the Hon'ble CIT (Appeals) erred in denying in admission of additional evidences under Rule 46A submitted by the appellant. Hence denied the justice and though the various Hon'ble High Courts held that the "technicalities shall not be come in the way of rendering the justice."

3. On the facts and circumstances of the case and under the provisions of law the CIT (Appeals) erred in sustaining the addition made by the Assessing Officer

under Section 68 by holding that credit worthiness of the lender of the lender has not been proved, though the appellant is not bound to prove sources of source.

4. On the facts and circumstances of the case, the Hon'ble CIT (Appeals) erred in sustaining the addition without appreciating evidences were produced to prove the identity, genuineness and credit worthiness of the loan creditors.

5. On the facts and circumstances of the case, the Hon'ble CIT (Appeals) erred in not appreciating the evidences and documents were produced in proper prospective manner and its entirety.

6. On the facts and circumstances of the case, the Hon'ble CIT (Appeals) erred in sustaining the addition made by the Assessing Officer under Section 68, though the loans were received through proper banking channel and the appellant submitted the PAN and assessing authority under whom the loan creditors were assessed. Hence, the addition being erroneous on both of the facts and law.

7. For these and other reasons, which may be adduced at the time of hearing, the appellant prays this Hon'ble Bench to delete the addition made by the Assessing Officer or may pass such other order as the Bench may think fit.

8. Appellant craves leaves to add, to alter, to amend and to delete any of the grounds during the course of hearing."

4. The Grounds at S.Nos.1, 7 & 8 are general in nature and not being urged before us, are dismissed as infructuous.

5.1.1 Ground No.2 : In this ground, the assessee assails the impugned order of the learned CIT (Appeals) in denying the admission of additional evidence submitted by the assessee in appellate proceedings under Rule 46A of the Income Tax Rules, 1962 (in short 'the Rules'). At the outset, the learned Authorised Representative urged this ground before the Bench. It is submitted by the learned Authorised Representative that in the course of assessment proceedings, the Assessing Officer required the assessee to establish the genuineness of the loans from the following persons appearing in the balance sheet of the firm as on 31.3.2009 :-

(i) Abu Bakar: Rs.10 lakhs.

(ii) Zoheb ur Rehman : Rs.10lakhs.

- (iii) Sawanth Shetty : Rs.10 lakhs.
(iv) Ateeq : Rs.5 lakhs.

5.1.2 It is submitted, that simultaneously, the Assessing Officer had also issued summons under Section 131 of the Act to the four persons directing them to produce their returns of income for Assessment Years 2008-09 and 2009-10 and bank statements, which were furnished before her. It is contended that the order of assessment indicated that details in this regard were admittedly filed by three of these persons directly before the Assessing Officer, inter alia, by the Mr. Abu Bakar, Mr.Zoheb ur Rehman and Mr.Ateeq confirming that their loans were advanced to the assessee by cheques. In the case of Mr.Sawanth Shetty, the summons issued by the Assessing Officer under Section 131 of the Act was returned unserved. The learned Authorised Representative contends that the Assessing Officer brushed aside whatever evidences were placed before her and proceeded to hold that the loans from the above four persons amounting to Rs.35 lakhs were not established to be genuine and brought the same amount to tax in the assessee's hands. The learned Authorised Representative contended that this was done by the Assessing Officer without giving the assessee an opportunity to rebut the Assessing Officer's view by putting the assessee on notice by way of a show cause notice proposing the addition of the aforesaid amounts to Rs.35 lakhs. The learned Authorised Representative contends that this action on the part of the Assessing Officer, before coming to an adverse finding in the matter, was in grave violation of the principles of natural justice since the assessee was not provided due and adequate opportunity of being

heard in the matter and to adduce evidence to rebut the Assessing Officer's presumption and to buttress its own case.

5.1.3 The learned Authorised Representative submitted that in appellate proceedings before the learned CIT (Appeals), the assessee had made an application dt.21.1.2014 seeking for admission of additional evidence under Rule 46A of the Rules which was rejected by the learned CIT (Appeals) on the grounds that the assessee has failed to establish reasonable cause for failure to produce this evidence in assessment proceedings and the Assessing Officer had afforded the assessee adequate opportunity to produce the evidence required. The learned Authorised Representative contends that this view of the learned CIT (Appeals) was erroneous. The record clearly indicates that while the Assessing Officer required the assessee to produce certain details, the Assessing Officer had also directly called for information under Section 131 of the Act, which were filed in the case of 3 parties, with one summons in the case of Mr. Sawanth Shetty being returned unserved. The Assessing Officer by virtue of the principles of natural justice ought to have put the assessee on notice, by way of a show cause notice, before coming to an adverse finding in the matter. A plain reading of the order of assessment would clearly establish that no such opportunity was afforded to the assessee. The learned Authorised Representative submits that it was in view of the Assessing Officer not affording the assessee an opportunity to rebut her presumptions in the matter before coming to an adverse view that there was reasonable cause for the assessee being unable to adduce the evidence/details before her that was now being sought to be admitted before the

learned CIT (Appeals). It was contended that these additional evidences go to the very root of the issue for establishing the genuineness of the loans amounting to Rs.35,00,000 and prayed that in the interest of equity and justice, the said additional evidence be admitted and the same be restored to the file of the Assessing Officer for fresh consideration.

5.2 Per contra, the learned Departmental Representative supported the orders of the authorities below and prayed for dismissal of this ground as the Assessing Officer had afforded the assessee adequate opportunity of being heard in the matter.

5.3.1 We have heard the rival contentions and perused and carefully considered the material on record on the issue of the denial of the admission of additional evidence by the learned CIT (Appeals) which is sought to be brought on record for confirmation of loans amounting to Rs.35 lakhs taken from the above 4 persons (supra) by the assessee. On a perusal of the orders of authorities below, we find that the Assessing Officer, in the course of assessment proceedings had required the assessee to establish the genuineness of the loans amounting to Rs.35 lakhs advanced by the aforesaid four persons (details at para 5.1.1 supra). It appears while some of the details called for from the assessee were filed, the Assessing Officer, simultaneously also issued summons under Section 131 of the Act to the four persons directing them to produce certain details. In the case of 3 parties **Mr. Abu Bakar, Mr. Zoheb ur Rehman and Mr. Ateeq**, the details called for appear to have been placed before her and also confirming that the loans were advanced by cheque to the assessee. In the case of the fourth person, namely, Sri Sawanth Shetty,

the summons issued was returned unserved. It appears from the order of assessment that, on an appraisal of the material before her at this stage, the Assessing Officer was not inclined to accept the genuineness of the loans of these four persons amounting to Rs.35 lakhs. It appears from a plain reading of the order of assessment that the Assessing Officer at this stage, instead of putting the assessee on notice by affording the assessee an opportunity of being heard and to adduce evidence to rebut the Assessing Officer's view and buttress its own stands that the aforesaid four loans were genuine, proceeded to render an adverse finding in the matter thereby violating the principles of natural justice by not affording the assessee adequate opportunity to present evidence in this regard.

5.3.2 We find that on appeal too, the learned CIT (Appeals) in the impugned order, declined to admit the additional evidence sought to be admitted by the assessee u/R 46A of the Rules on the ground that the assessee was unable to establish reasonable cause since it was afforded adequate opportunity by the Assessing Officer. In our view, on an appreciation of the orders below, we are of the considered opinion that since the Assessing Officer did not put the assessee on notice on her views in respect of the genuineness of the four loans amounting to Rs. 35 lakhs before coming to the adverse view in the matter, the assessee was denied the opportunity to rebut her views and buttress its own view on the genuineness of the aforesaid loans by adducing evidence in that regard thereby violating the principles of natural justice. We are also of the view that the learned CIT (Appeals) on a wrong appreciation of the facts of the matter, i.e. that the

assessee was provided adequate opportunity by the Assessing Officer; declined to admit the additional evidence sought to be admitted U/R 46A of the Rules. In the factual matrix of the case, as discussed above, we are of the view that the assessee was prevented by reasonable and sufficient cause from presenting the details, sought to be filed and admitted as additional evidence, since it had no opportunity to do so before the Assessing Officer and was not allowed to do so before the learned CIT (Appeals). We, therefore, in the interest of justice and equity, admit the additional evidence, filed by the assessee as per pages 1 to 45 of Paper Book filed before the Bench on 17.6.2015, for consideration and adjudication. In view of the fact that admittedly the same has not been considered by the authorities below, we set aside the adverse orders of the authorities below in respect of the loans of the aforesaid four parties amounting to Rs.35 lakhs and restore the matter to the file of the Assessing Officer for de novo consideration and adjudication thereon after considering the material on record; the additional evidence furnished by the assessee, now admitted by us (supra) and affording the assessee adequate opportunity in the matter and to file details and submissions required. It is ordered accordingly. Consequently, Ground No.2 of the assessee's appeal is allowed.

6. In view of allowing Ground No.2 of the assessee's appeal by us, thereby restoring the matter of the verification of the genuineness of loans of four persons amounting to Rs.35 lakhs for fresh consideration and adjudication to the file of the Assessing Officer, we

decline to adjudicate the grounds raised at S.No.3 to 6 of this appeal; on merits of the case.

7. In the result, the assessee's appeal for Assessment Year 2009-10 is allowed for statistical purposes.

Order pronounced in the open court on 7th Aug., 2015.

Sd/-
(VIJAYPAL RAO)
Judicial Member

Sd/-
(JASON P BOAZ)
Accountant 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