

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

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER

I.T.A. No.1633/Bang/2016 (Assessment Year : 2009-10)		
Sri G P Srinivas Murthy, No.124/1, Coconut Avenue Road, 10 th Cross, Malleshwaram, Bangalore-560 003 PAN AEOPM 8738B	Vs.	Income Tax Officer, Ward 9(4), Bangalore.
Appellant		Respondent.

Appellant By : Shri Ravi Shankar, Advocate . Respondent By : Shri AR.V.Sreenivasan, JCIT (D.R)

Date of Hearing : 12.04.2017.

Date of Pronouncement : 31.05.2017.

O R D E R

Per Shri Vijay Pal Rao, J.M. :

This appeal by the assessee is directed against the order dt.6.7.2016 of Commissioner of Income Tax (Appeals) for the Assessment Year 2009-10.

2. The assessee has raised the following grounds :

1. The order of the CIT (A) in so far as it is against the appellant is opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.
2. The appellant denies himself liable to be assessed to a total income of Rs. 5,37,100/- as against the total income returned by the appellant of Rs. 2,27,100/- for the impugned assessment year 2009-10 on the facts and circumstances of the case.
3. The learned CIT(A) was not justified in law in confirming the addition of Rs.3,10,000/- made under section 68 of the Act, by the learned Assessing Officer on the facts and circumstances of the case.
4. The learned CIT(A) was not justified in confirming the additions as made in the order of assessment by ignoring the submissions of the appellant, that the cash deposits were met out of the personal loans received from close relatives on the facts and circumstances of the case.
5. The learned CIT(A) was not justified in stating that the appellant was making a claim for the first time during appeal proceedings, when the appellant has during assessment proceedings brought to the attention of the AO, that the amounts of cash deposited were met out of loans from close relatives on the facts and circumstances of the case.
6. The appellant craves leave to add, alter, modify, delete or substitute any or all of the grounds and to file a paper book at the time of hearing the appeal.
7. In view of the above and other grounds that may be taken at the time of the hearing the appeal, the appellant prays that the appeal be allowed in the interest of justice and equity.

3. The only issue arises in this appeal is regarding confirming the addition of Rs.3,10,000 made by the Assessing Officer under Section 68 of the Income Tax Act, 1961 (in short 'the Act') on account of cash deposit in Bank. The assessee is an individual and engaged in the business of running a provision store. During the scrutiny assessment, the Assessing Officer found that there is a cash deposit in the assessee's S.B. Account of Rs.15,70,000. The Assessing Officer called upon the assessee to file the details. After verification of the details filed by the assessee, the Assessing Officer has made an addition to the extent of cash deposit of Rs.3,10,000 under Section 68 of the Act. The assessee challenged the action of the Assessing Officer before the CIT (Appeals) and submitted that the cash deposit in the bank have been received from friends and relatives. The assessee also filed Affidavit of the creditors, since these Affidavits and claims were made first time and further the creditors were having small income of their own therefore, the CIT (Appeals) did not accept the explanation furnished by the assessee and confirmed the addition made by the Assessing Officer.

4. Before the Tribunal, the learned Authorised Representative of the assessee has referred to the letter dt.4.11.2011 filed by the assessee in

response to the Notice issued by the Assessing Officer for furnishing the details/documents in support of the deposits made in the bank account. The learned Authorised Representative has further pointed out that the assessee has given the details of the deposits by explaining the amounts received from the relatives and friends. The assessee also furnished the bank statement in support of the claim to show that sufficient balance was available with the creditors who have given loan to the assessee. However the CIT (Appeals) did not even examine the relevant evidence and Affidavit filed by the assessee. Thus the learned Authorised Representative of the assessee has submitted that the evidence filed by the assessee has not been examined either by the Assessing Officer or by the CIT (Appeals) and therefore the matter may be remitted to the record of the Assessing Officer for verification and examination.

5. On the other hand, the learned Departmental Representative has submitted that the explanation and details furnished by the assessee are not reflected in the balance and the assessee did not file the balance sheet to show the loan amount given to the assessee. Further the confirmation filed before the Assessing Officer is different from the Affidavit filed before the CIT (Appeals) therefore the same cannot be accepted.

6. In a rejoinder the learned Authorised Representative has submitted that since these loans were taken as personal loans and therefore it was not taken to the balance sheet of the assessee.

7. Having considered the rival submissions as well as the relevant material on record, it is noted that the Assessing Officer has accepted the explanation and source of deposit of Rs.12,60,000 but made the addition of the balance amount of Rs.3,10,000 on the ground that the assessee has failed to explain the source of the cash deposit in the Bank. Before the CIT (Appeals) the assessee produced additional evidence in the form of Affidavit as well as the bank details to explain the source of cash deposit as loan taken from the friends and relatives. It is pertinent to note that the CIT (Appeals) has not examined the evidence filed by the assessee but turned down the same on the ground that because of a considerable lapse of time, the same is not verifiable. Thus it is clear that the evidence filed by the assessee before the CIT (Appeals) remain unexamined. Accordingly, in the facts and circumstances of the case when evidence filed by the assessee has not been examined by the authorities below, the issue is set aside to the record of the Assessing Officer for readjudication after examination and verification of the evidence filed by the

assessee. Needless to say the assessee be afforded opportunity of hearing before deciding the issue.

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

Order pronounced in the open court on 31st May, 2017.

Sd/-

(VIJAY PAL RAO)
JUDICIAL MEMBER

Bangalore,
Dt. 31.05.2017.

*Reddy gp

Copy to :

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

Assistant Registrar
Income Tax Appellate Tribunal
Bangalore.