

IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC - B” BENCH : BANGALORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER

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| ITA Nos. 24 & 25/Bang/2017           |
| Assessment years : 2007-08 & 2008-09 |

|   |     |  |
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| Dr. K. Balaraman,<br>No. 559, RMV II Stage,<br>New BEL Road,<br>Bangalore – 560 094.<br><br><b>PAN: ACQPB 4519F</b> | Vs. | The Income Tax Officer,<br>Ward – 6[3][2],<br>Bangalore. |
| APPELLANT   |     | RESPONDENT   |

|               |   |                                   |
|---------------|---|-----------------------------------|
| Appellant by  | : | Shri V. Narendra Sharma, Advocate |
| Respondent by | : | Shri AR.V. Sreenivasan, JCIT (DR) |

|                       |   |            |
|-----------------------|---|------------|
| Date of hearing       | : | 21.03.2017 |
| Date of Pronouncement | : | 24.03.2017 |

**ORDER**

*Per Vijay Pal Rao, Judicial Member*

These two appeals by the assessee are directed against two separate orders of CIT(A) both dated 08.09.2016 for the assessment years 2007-08 and 2008-09. The assessee has raised the common grounds in these appeals except the difference of quantum of addition / disallowance. The grounds raised for the assessment year 2007-08 are reproduced as under.

**GROUNDS OF APPEAL**

1. The impugned order passed by learned Commissioner of Income tax [Appeals] under Section 250 of the Act dated 08/09/2016 in so far as it is against the appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.
2. The learned Commissioner of Income-tax [Appeals] is not justified in law and on facts in not adjudicating the additional grounds raised by the appellant as regard to the re-opening of assessment, which is against the principles of natural justice under the facts and circumstances of the case.
3. The learned Commissioner of Income-tax [Appeals] failed to appreciate the fact that the mandatory conditions for invoking the reassessment proceedings were not duly complied with and consequently the impugned order of assessment passed under section 143[3] r.w.s. 147 of the Act requires to be cancelled, under the facts and circumstances of the case.
4. The appellant denies himself liable to be assessed over and above the income returned by the appellant of Rs. 12,40,108/- under the facts and circumstances of the case.
5. The learned Commissioner of Income-tax [Appeals] is not justified in law in confirming the additions made by Assessing officer of Rs 24,320/- of Horticulture income on an estimate basis, under the facts and circumstance of the case.

6. The learned Commissioner of Income-tax [Appeals] is not justified in law in confirming the additions made by Assessing officer of Rs 94,164/- as income of Kalyana Mahal, on an estimate basis under the facts and circumstance of the case.
7. The learned Commissioner of Income-tax [Appeals] is not justified in law to confirming the disallowance of expenditure to an extent of Rs 3,00,000/- made by the learned assessing officer on an adhoc basis, under the facts and circumstance of the case.
8. The learned Commissioner of Income-tax [Appeals] failed to appreciate that the additions and disallowances made by the learned assessing officer is purely arbitrary and based on suspicions and surmises and without assailing any reasons and ought to have deleted the additions and disallowances made by the learned assessing officer under the facts and circumstances of the case.
9. Without prejudice the estimation made by the learned authorities below are highly excessive and the same requires to be reduced substantially under the facts and circumstances of the case.
10. The appellant craves leave of this Hon'ble Tribunal, to add, alter, modify, delete or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.
11. For these and other grounds that may be urged at the time of hearing of appeal, the Appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.

#### ADDITIONAL GROUNDS OF APPEAL

1. The order of re-assessment passed under section 143[3] r.w.s. 147 of the Act is bad in law and void-ab-initio as the mandatory conditions to invoke the provision of section 147 did not exist and thereby the very notice issued under section 148 is also bad in law under the facts and circumstances of the case.

- 1.1. The reason recorded if any by the learned assessing officer utmost may be considered as reason to suspect and under no stretch of imagination the same cannot constitute reason to believe which is a basic ingredient for a valid assumption of re-assessment under the facts and circumstances of the case.
- 1.2. The notice issued under section 148 of the Act is not in accordance with law since there was no original assessment before the issuance of a notice under section 148 of the Act, question to reassess the income which has not already assessed does not arise and consequently the subsequent proceedings which has been concluded on an invalid notice becomes bad in law, under the facts and circumstances of the case.
- 1.3. Without prejudice the notice issued under section 143[2] of the Act is not a valid notice since the said notice has been issued before the filing of the return of income and without properly complying to the procedure as laid out in the statute under the facts and circumstances of the case.
2. The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.
3. In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed and appropriate relief may be granted in the interest of justice and equity.

2. Ground nos. 1 to 3 as well as additional grounds are regarding validity of reassessment. At the time of hearing the Id. AR of the assessee has stated at bar that the assessee does not press ground nos. 1 to 3 and additional grounds and the same may be dismissed as not pressed. The Id. DR has raised no objection in ground nos. 1 to 3 are dismissed as not pressed. Accordingly, ground nos. 1 to 3 as well as additional grounds of the assessee's appeal are dismissed being not pressed.

3. Ground no. 4 is general in nature and does not require any specific adjudication.
4. Ground no. 5 is regarding the addition made by the AO of Rs. 24,320/- on account of horticulture income. The Assessing Officer while completing the assessment has made an addition of Rs. 24,320/- on estimated basis as income from M/s. Indian Horticulture Consultancy. The assessee challenged the action of the AO before the CIT(A) but could not succeed.
5. I have heard the ld. AR as well as the ld. DR and considered the relevant material on record. The AO has not discussed in the assessment order either any facts or material as to how this income of Rs. 4 Lakhs was estimated by the AO as against the income declared by the assessee at Rs. 3,75,680/-. It is pertinent to note that except the one sentence in the computation of income the AO has not given any reason or discussed any surrounding circumstances which had led to him to estimate and enhance the income by Rs. 24,320/-. In the absence of any adverse or incriminating evidence or facts detected by the AO to support this addition, the action of the AO is arbitrary and unjustified. Accordingly this addition of Rs. 24,320/- is deleted.

6. Ground no. 6 is regarding the addition in respect of the income from Kalyana Mahal. The AO has estimated the income from Kalyana Mahal at Rs. 44,164/- and further enhanced the income at estimated basis to Rs. 50,000/- and thereafter the AO has made an addition by clubbing the two amounts i.e. Rs. 44,164/- + Rs. 50,000/-. The assessee challenged the action of the AO before the CIT(A) but could not succeed.
  
7. Before the Tribunal, the ld. AR has submitted that the AO has passed a cryptic arbitrary order without discussing anything and thereby made an addition of Rs. 94,164/- to the income of the assessee on estimate basis. Thus he has contented that in the absence of any material to support such estimation of income the addition made by the AO is not justified. On the other hand, the ld. DR has relied upon the order of the authorities below and submitted that the case was discussed with the AR of the assessee and thereafter the AO estimated the income of the assessee.
  
8. Having considered the rival submissions as well as relevant material on record it is noted that the assessment order is a non-speaking order wherein the AO has just given the amounts of addition in the final computation of income without discussing any material or fact. It is manifest from the assessment order that the assessment was framed by

the AO in a cryptic manner and the addition in question was mere an estimation of the AO without any basis. It is also not discussed by the AO as what is the basis of such estimation of income of the assessee. Thus in view of the facts and circumstances of the case, where the AO has not brought on record any fact or material to justify his action of estimation of income, the addition made by the AO is not sustainable and the same is deleted.

9. Ground nos. 7 & 8 regarding disallowance of expenditure to the extent of Rs. 3 Lakhs. The AO has made disallowance of Rs. 3 Lakhs on account of expenditure claim in the Profit & Loss Account in the absence of vouchers. The assessee challenged the action of the AO before the CIT(A) but could not succeed.

10. Before the Tribunal, the ld. AR of the assessee has submitted that the disallowance of this amount has been made by the AO on adhoc basis without discussing the reasons and only one word has been mentioned as reason of disallowance. The AO has not pointed out any particular item of expenditure for which the assessee has not produced the vouchers. He has referred to the notice issued by the AO asking the details for the assessment year 2008-09 and submitted that the assessee has duly replied

the said notice by giving all the details as required by the AO. Thus, the ld. AR has submitted that the AO has made a disallowance in arbitrary manner without even affording an opportunity to the assessee. Hence, the ld. AR has submitted that the disallowance made by the AO is not sustainable and the same may be deleted.

11. On the other hand, the ld. DR has submitted that the assessee did not produce the vouchers in respect of the expenditure booked in the Profit & Loss account. Therefore there is failure on the part of the assessee to discharge its onus of proving the claim of expenditure. He has relied upon the orders of the authorities below.

12. Having considered the rival submissions as well as relevant material on record it is noted that the AO has passed the assessment order dated 28.03.2012 u/s. 143(3) r.w.s. 147 which is a non-speaking order. It is appropriate to reproduce the assessment order as under.

**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME-TAX DEPARTMENT**

|    |  |  |
|----|--|--|
| 1  | Name of the assessee   | Dr. K. Balaram   |
| 2  | Address  | No.559, New BEL Road,<br>RMV II Stage,<br>Bangalore-94 |
| 3  | PAN/GIR No.  | ACQPB4519F   |
| 4  | Ward   | Ward-6(1), Bangalore                                   |
| 5  | Status   | Indl   |
| 6  | Asst Year  | 2007-08  |
| 7  | Whether Resident/Resident but<br>not ordinary resident/non –<br>resident | Resident   |
| 8  | Method of accounting   | Mercantile   |
| 9  | Previous Year  | 2006-07  |
| 10 | Nature of Business   |  |
| 11 | Dates of Hearing   | 24/02/2012, 27/03/12,                                  |
| 12 | Date of Order  | 28/03/2012   |
| 13 | Section & Sub section under<br>which the assessment is made              | 143(3) r.w. 147 of the IT Act                          |

**ASSESSMENT ORDER**

In this case the assessee filed his return of income on 05/02/2009 by e-filing, declaring an income of Rs.12,40,103/- along with Agriculture income of Rs.6,00,000/-

This case was reopened by this office on 05.09.2011 by issue of notice under Section 148 of the IT Act. By his letter dated 09.11.2011 the assessee stated that the return of Income filed originally be treated as returned filed in response to notice issued u/s 148 of the I.T. Act.


Subsequently, notices under Section 143(2) and 142(1) have been issued. In response to the notices issued, Sri. P.N. Rajashekar CA appeared along with the assessee and produced books of accounts and the case has been discussed.

This is a case which falls under compulsory audit u/s 44AB of IT Act and the return of income was filed belatedly. In response to reopening of assessment the assessee in his letter stated that the assessee has not realized income due to uncertainty in the joint venture undertaken by him, This is not acceptable. After discussions the assessment is completed as under:

|  |              |
|--|--------------|
| Income returned other than Agriculture income  | Rs.12,40,108 |
| <b>Add:</b> Income Estimated from m/s Indian Horticulture consultants of Rs.375680/- is enhanced to Rs.4,00,000 after discussion (4,00,000-3,75,680) | Rs 24,320    |
| Income from Kalyana Mahal estimated at (Rs.44,164/-) The Income estimated is enhanced to Rs.50,000/- as income after discussions (44164+50000)       | Rs. 94,164   |
| Disallowance of Travelling and conveyance claimed at 25% of Rs.665457 x ¼  | Rs.1,66,364  |
| Disallowance of expenditure claimed in P & L Account in the absence of vouchers  | Rs.3,00,000  |
| <b>Total Income</b>  | Rs.18,24,956 |
| <b>Rounded Off</b>   | Rs.18,24,960 |

Agriculture income for rate purpose : Rs.6,00,000/-

Penal Proceedings under Section 271B and 271(1)(c) of the IT Act are initiated. Issue Demand Notice accordingly.

  
( T. SANTHANAM )  
Income-tax Officer  
Ward-6(1),Bangalore.

13.As it is clear from the assessment order that the AO has not conducted any enquiry or investigation but has completed the assessment in a

summary manner which is a highly arbitrary and cryptic in nature. Except the one sentence written by the AO regarding the disallowance of expenditure as “in the absence of voucher” the AO has even not discussed the nature of expenditure and the enquiry conducted by the AO before making such disallowance. It is also pertinent to note that in response to the notice u/s. 148 the assessee submitted that the original return filed by the assessee on 05.02.2009 may be treated as return filed in response to notice u/s. 148. Therefore, there is no relevancy of the delay in filing the original return when it was filed prior to the notice issued u/s. 148 and the assessee has duly stated that the said return may be treated as return filed in response to the notice u/s. 148. Therefore, the observation of the AO that the return was filed belatedly is not at all relevant in framing the assessment u/s. 143(3) r.w.s. 147. The AO has even not mentioned that the assessee was asked to submit the vouchers and further which off the expenditure booked in the Profit & Loss account was doubted by the AO. Thus it is apparent from the assessment order that the AO has acted in highly arbitrary manner and without conducting the necessary enquiry and investigation. Therefore, the disallowance made by the AO is not sustainable in law and accordingly deleted.

14. For the assessment year 2008-09, identical additions were made by the AO. Therefore in view the finding of these issues for the assessment year 2007-08, the additions / disallowances made by the AO are deleted. As regards the issue of validity of reassessment, the assessee has not pressed these grounds for the assessment year 2008-09 also. Accordingly, the same are dismissed being not pressed.

15. In the result the appeals of the assessee are partly allowed.

Pronounced in the open court on this 24<sup>th</sup> day of March, 2017

Sd/-  
(VIJAY PAL RAO)  
Judicial Member

Bangalore,  
Dated, the 24<sup>th</sup> March, 2017.

/MS/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,  
ITAT, Bangalore.