

IN THE INCOME TAX APPELLATE TRIBUNAL
SMC "C" BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER

ITA No.772/Bang/2014
Assessment year : 2009-10

Shri Ashok Kumar Rai, Prop: Ve Yes Enterprises, 2-13-1151/2, Bejai New Road, Mangalore. PAN: ADGPR 7834J	Vs.	The Income Tax Officer, Ward 1(2), Mangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Suresh Muthukrishnan, CA
Respondent by	:	Smt. Swapna Das, Jt. CIT(DR)

Date of hearing	:	29.06.2016
Date of Pronouncement	:	26.08.2016

ORDER

This appeal is preferred by the assessee against the order dated 24.10.2013 of the CIT(Appeals), Mysore *inter alia* on the following grounds:-

“1. The order of the learned CIT[A] in so far as it sustained the additions made and impugned in this appeal and in only allowing the appeal partly instead of totally is opposed to law, equity, weight of evidence, facts and circumstances of the appellant's case.

2. The learned CIT[A] is not justified in enhancing the addition made u/s.69 of the Act, by a further sum of Rs.2,00,000/- which was rightly accepted by the learned A.O. while making the impugned addition and the direction is contrary

to law, as no notice was issued about the enhancement prior to disposal of the appeal and consequently, the enhancement of income apart from being contrary to logical accounting principle and on merit is bad in law and requires to be deleted.

3.1 The learned CIT[A] is not justified in sustaining the addition of Rs.34,90,000/- made by the learned A.O. u/s.69 of the Act, instead of deleting the same under the facts and in the circumstances of the appellant's case.

3.2 The learned CIT[A] failed to appreciate that the bank account belonged to the business jointly carried on by the appellant and one Sri Sadananda Rai [as co-venturer], who is an Income-tax assessee also, for which bank account was opened in the name of the appellant and the funds deposited in the bank account represented the funds obtained for such business which resulted in the loss ultimately, which was substantiated by the examination of Sri Sadananda Rai by the A.O. and the rejection of the evidence as self-surviving and with a view to support the appellant even though he gave a finding and directed to make addition in his hands and thus, the finding of the learned CIT[A] is on surmise and suspicion and consequently, the addition sustained requires to be deleted.

3.3 The learned CIT[A] is not justified in rejecting the claim for telescoping of the earlier withdrawals with subsequent deposits in the bank account and for claim for the credit of agricultural income of the appellant deposited in the account while sustaining the addition.

4. The learned CIT[A] is not justified in sustaining the addition of a sum of Rs.10,369/- being the bank interest made by the learned A.O. under the facts and in the circumstances of the appellant's case.

5. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.

5. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant

may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

2. Though various grounds are raised, but the main issue involved through these grounds is with regard to addition of Rs.34,90,000 and enhancement of income of Rs.2 lakhs. Since both the issues are inter-linked, we adjudicate them simultaneously. The facts in brief in this regard borne out from the orders of lower authorities are that the assessee is an individual and is engaged in the business of civil construction work and real estate and dealer in petroleum products. Besides, he is also deriving rental income and remuneration from partnership firms, M/s. Rai Indane Gas Agencies, M/s. Vee Yes Marketing Co. and Vee Yes Enterprises.

3. During the course of assessment proceedings, the Assessing Officer has noted from a SB A/c with City Union Bank, A/c No.472270, which was not disclosed in the statement of account furnished by the assessee, that substantial amount was deposited. When this fact was confronted to the assessee, it was explained vide letter dated 27.12.2011 that the said bank account has not been disclosed in the statement of account as it belongs to AOP comprising of assessee and Mr. Sadananda Rai, who has decided to carry on business of trading as AOP. The money was borrowed by both of them from relatives and friends and was deposited in this account. Since the said business was independent and had no nexus with the assessee's business transaction, same was not shown in his statement of accounts.

The money was borrowed and does not belong to the assessee. This explanation of the assessee was not accepted by the AO and after allowing a credit of Rs.2 lakhs, the AO has treated the deposit of Rs.34,90,000 as unexplained investment and made addition u/s. 69 of the Act.

4. The assessee preferred an appeal before the CIT(Appeals) and reiterated his contentions. It was further argued before the CIT(A) that the AO did not call for any evidence or details to substantiate the averments. It was further contended that without prejudice to his rights, at the most, the AO should have taxed only the peak credits, not the entire deposits. It was further argued that in the name of AOP, account could not be opened as the AOP did not obtain the PAN No. Since there was no taxable income arrived at by the AOP, no return was filed. It was further contended that the source of deposit in the bank account was out of agricultural income and also withdrawal of Rs.10 lakhs made by Mr. Sadananda Rai from his accounts. All these aspects were examined by the CIT(Appeals) and after calling for a remand report from the AO, he confirmed the additions. He not only confirmed the addition, but also enhanced the income by Rs.2 lakhs.

5. Aggrieved, the assessee has preferred the appeal before the Tribunal with the submission that before the lower authorities, the assessee has filed the relevant evidence in order to establish that the account belongs to AOP in which the deposits were made by members of AOP. Therefore, no addition can be made in the hands of individual members. If

the AOP is not able to explain the source of deposits, addition can only be made in the hands of AOP, not the individuals. It was further contended that the CIT(Appeals) has also called for a remand report on the contentions made by the assessee, but the AO could not establish that the account belongs to individuals and not the AOP. It was further contended that the other member of AOP, Mr. Sadananda Rai has appeared before the AO and confirmed the contribution of Rs.10 lakhs towards AOP's account. It was also stated that the remaining amount was borrowed by AOP from different persons and the AO never called the assessee to produce the confirmations or the persons from whom he took the loan.

6. The Id. DR, on the other hand, has placed reliance upon the order of CIT(Appeals).

7. Having carefully examined the orders of lower authorities in the light of rival submissions, I find that the assessee took a stand since the beginning that this impugned account belongs to AOP, not the individuals. The other member has also appeared before the AO and has also confirmed that this account belongs to AOP in which he made a contribution of Rs.10 lakhs at one go. Except presumptions, no concrete evidence was brought on record by the AO to establish that the account in fact belonged to assessee, not the AOP. Since the assessee has placed relevant evidence to justify that the account belonged to AOP and not the assessee, no addition is called for in the hands of individual. If the AO is

not satisfied with the source of deposits in the account, addition can only be made in the hands of AOP, not the individual. For the similar reasons, if any enhancement is required to be done on account of non-explanation of source, it can only be done in the hands of AOP. In the light of these facts, I am of the view that no addition on account of unexplained investment is called for in the hands of individual. I therefore set aside the order of CIT(Appeals) and delete the addition made by the AO on account of unexplained investment and enhancement of income.

8. In the result, the appeal of the assessee is allowed.

Pronounced in the open court on this 26th day of August, 2016.

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 26th August, 2016.
/D S/

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.