

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' C '

BEFORE SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER AND
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

I.T. A. No.1351/Bang/2013
(Assessment Year : 2006-07)

Shri G. Venkatesh,
No.199, 16th Main, 4th T Block,
Jayanagar, Bangalore-560 041
PAN AFEPG 1125R

... Appellant.

Vs.

Income Tax Officer,
Ward 4(1), Bangalore.

..... Respondent.

Appellant By : Shri S. Venkatesan, C.A.
Respondent By : Shri Sunil Kumar Agarwala, JCIT(D.R)

Date of Hearing : 21.9.2015.
Date of Pronouncement : 23.10.2015.

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)-II, Bangalore dt.19.07.2013 for Assessment Year 2006-07.

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

2.1 The assessee, an individual deriving income from pension, consultation fees and commission, filed his return of income for Assessment Year 2006-07 on 14.8.2007 declaring income of Rs.3,06,970. The assessee's case was selected for scrutiny and the assessment was concluded under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') vide order dt.17.12.2008

Wherein the income of the assessee was determined at Rs.1,16,56,920 in view of the following additions to the returned income :-

i) Short Term Capital Gains ('STCG') :	Rs.31,00,000.
ii) Cash Deposits in Bank :	Rs.62,50,000.
iii) Cheque deposit in Bank :	Rs.20,00,000.

2.2 Aggrieved by the order of assessment dt.17.12.2008 for Assessment Year 2006-07, the assessee preferred an appeal before the CIT (Appeals) - II, Bangalore. The learned CIT (Appeals) disposed the appeal vide order dt.19.2.2010, allowing the assessee partial relief, by deleting the additions made in respect of STCG of Rs.31,00,000 and Rs.20,00,000 in respect of deposits made in the bank account of the assessee. The learned CIT (Appeals), however, confirmed Rs.61,50,000 out of addition of Rs.62,50,000 in respect of cash deposits in the bank account of the assessee, accepting the source of deposit only to the extent of Rs.1 lakh.

2.3 Aggrieved by the order of the CIT (Appeals), dt.19.2.2010, for Assessment Year 2006-07, the assessee preferred an appeal before the Tribunal. The Tribunal vide order in ITA No.973/Bang/2010 dt.3.9.2010 set aside the matter back to the file of the Assessing Officer with regard to the cash deposits of Rs.61,50,000 for affording the assessee sufficient opportunity for establishing the genuineness of the same.

3.1 In accordance with the directions in para 2.2 of the order of the Tribunal dt.3.9.2010, the Assessing Officer commenced proceedings and required the assessee to furnish the details and explanations to prove the genuineness of the sources for the cash deposits made. The assessee filed its explanations in this regard before the Assessing Officer, who proceeded to hold that

the same were neither satisfactory nor acceptable. In this view of the matter, the Assessing Officer passed the order of assessment under Section 143(3) rws 254 of the Act vide order dt.26.12.2011 wherein the income of the assessee was determined at Rs.65,56,920 by bringing to tax the sum of Rs.62,50,000 representing unexplained cash credits in the assessee's bank account.

3.2 Aggrieved by the order of assessment dt.26.12.2011 for Assessment Year 2006-07, the assessee preferred an appeal before the CIT (Appeals) - II, Bangalore. Before the learned CIT (Appeals), the assessee pleaded that the Assessing Officer had failed to afford adequate opportunity to produce some of the creditors from whom the assessee had received certain advances for establishing the sources and genuineness of the cash credits amounting to Rs.62,50,000. The learned CIT (Appeals) thereupon called for remand report in the matter from the Assessing Officer, whose findings were accepted by the learned CIT (Appeals). In disposing off and dismissing the assessee's appeal vide order dt.19.7.2013, the learned CIT (Appeals) has held as under at paras 3.9 to 3.11 of her order :-

"3.9 I have carefully considered the appellant's submissions and perused the reassessment order and other materials available on record. A perusal of the order of the Hon'ble ITAT shows that there is nothing therein to suggest that the examination of the credits by the A.O. should be confined only to the three credits amounting to Rs.45,00,000 as contended by the appellant. In the remand report dt.20.3.2012 reproduced above, the Assessing Officer has pointed out that fixed deposits bearing FD receipts No.262 to 280 were held on 3.6.2004 in the names of his children; that the FDs were closed on 24.11.2004 and the amount was transferred to the account of the appellant's wife, Smt. Malathi; that DDs for Rs.60 lakhs were taken from the SB Account No.20529 of his wife with Canara Bank; that the said amount of Rs.60 lakhs was utilized for the purchase of the immovable property bearing site No.1141, 35th Cross, 4th T Block, Jayanagar, Bangalore by sale deed dt.1.12.2004; that in respect of the alleged loans said to have been taken by the appellant from his family members the appellant has not furnished any details. The appellant's authorized representative has stated as follows in the written submissions filed on 15.7.2013 :

"4. The Hon'ble ITAT after considering the matter did not clearly and expressly state that the explanation given by the appellant with reference to the deposit of Rs.16,50,000 made by earlier withdrawal of the deposit Rs.10,00,000 and out of the sale proceeds under the sale deed dt.21.10.2005 is to be accepted or not. Since, the same has not been expressly rejected, the appeal on this point (is) to be treated as allowed by necessary implication."

3.10 It is, therefore, the submission of the appellant's authorized representative that such a conclusion has to be drawn by reading between the lines. As the Hon'ble ITAT has not given a definite finding in this regard, the submission made cannot be accepted. The A.O's remand report in respect of the alleged advances paid to Shri Narayanappa, Shri Gangappa and Shri Manjappa Naik and their receiving back the advances from the appellant, the appellant did not produce any documentary evidence. Even before me during the appeal hearings, the appellant did not produce any evidence in support of such a claim made by the appellant. At para 6 of the submissions of the authorized representative filed on 15.7.2013, he has himself clearly stated that the said three persons did not appear before the Assessing Officer during de novo proceedings despite filing copies of notarized agreements to sell and confirmation letters. At paragraph 12 of the latest submissions, it is stated by the appellant's authorized representative that the appellant produced the said three persons before the Assessing Officer who was satisfied with the existence of the persons but was not satisfied with their capacity to advance the monies stated to have been given by them to the appellant and that this is not a relevant factor for considering the genuineness of the advances. This is a naïve argument in that if the persons did not have the means to give the advances to the appellant, how can the claim about advances given can be considered genuine? In this regard, it is worth noting the comments of the Addl. CIT, Range-4, Bangalore in his letter 5.3.2013 forwarding the A.O's report dt. 24.1.2013. His brief but comprehensive comments are reproduced below :

"2. From the statements recorded, it is sufficiently clear that these persons have been produced only to lend credence to their earlier submissions that advances had been received by the assessee from these persons in the past. On the other hand, none of these persons provide their capacity to advance such huge amount in cash for purchase of properties stated to be owned by the assessee. They have not produced any proof of their sources of income, as to how they could accumulate such huge cash and paid to the assessee without proceedings further to register these properties. They have not furnished details of bank accounts, if any, maintained by them. In respect of properties purportedly agreed to be sold to Mr. Gangappa & Mr. Narayanappa, it is not known whether these properties are worth that amount mentioned in the agreements. The assessee has not produced any proof in respect of the then market value of these properties. The property which the assessee purportedly agreed to sell to Mr. Manjappa Naik is a site at Jayanagar which had been sold one month after this agreement to some other person for a consideration of Rs.41 lakhs. In that sale deed, there was no mention about the sale agreement with Mr. Manjappa Naik although the agreement was not cancelled as on that date and the money was not returned to Mr. Manjappa Naik.

3. It is also important to highlight that none of these agreements were registered although the Registration Act envisages Registration of agreements of sale also. The agreements of sale produced by the assessee are notarized agreements and surprisingly all these agreements are made on 10th / 11th September 2005. The assessee has not produced any cancellation agreements in respect of these properties. Even during the appellate proceedings on the original assessment, the assessee never produced the original sale agreements before the CIT (Appeals) and this fact has been mentioned by the CIT (Appeals) in his order. And even during the current proceedings, the originals have not been produced before the ITO. From these facts and circumstances, it can be inferred that these agreements are not genuine and the persons are not those having such credit worthiness to advance lakhs of rupees in cash and not finalizing the sale. They have not even been paid interest while repaying the amount after few years. All these three persons stated that they had been paid back the money by the assessee, but no details of period or the dates of repayment have been mentioned. If these amounts are actually returned, the onus lies on the assessee to furnish the dates on which they were returned and the sources of cash in his hands as on that date. Without producing any of these details, merely producing the persons and making them state that advances were paid could not serve the assessee in establishing the sources of cash deposited in the bank...."

3.11. The findings of the Assessing Officer in the remand proceedings have been aptly summarized by the Addl. CIT in his report reproduced above with which I have no hesitation in agreeing. In the circumstances, the appellant's submissions about the payment of advances to the landowners or their return to the appellant are not reliable and, therefore, rejected. The addition of Rs.62,50,000 made by the Assessing Officer is confirmed."

4. Aggrieved by the order of the CIT (Appeals) -II, Bangalore dt.19.7.2013 for Assessment Year 2006-07, the assessee is in appeal before the Tribunal. Since the grounds originally raised were very elaborate and argumentative, the assessee filed the following concise grounds of appeal :-

"1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT (Appeals) is not justified in sustaining the addition of Rs.62,50,000 considered as unexplained cash credits in the bank account of the appellant under the facts and in the circumstances of the appellant's case.

3. The learned CIT (Appeals) ought to have appreciated that the appellant has discharged the onus of proving source of the cash deposit in the bank account and consequently impugned addition made ought to have been deleted.

4. Without prejudice to the right to seek waiver with the Hon'ble CCIT / DG, the appellant denies himself liable to be charged to interest under Section 234A, 234B and under Section 234C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled especially having regard to the decision of the Hon'ble Supreme Court in the case of CIT V. Ranchi Club reported in 247 ITR 209.

5. For the above and other grounds, which were urged in the original grounds of appeal filed along with the memorandum of appeal, which are directed to be concised and such 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."

5. The Grounds at S.Nos.1 and 5 are general in nature and not being urged before us, are rendered infructuous and are accordingly dismissed.

6. The Ground No.4 is in respect of chargeability of interest under Sections 234A, 234B and 234C of the Act. The charging of interest is consequential and mandatory and the Assessing Officer has no discretion in the matter. This proposition has been upheld by the Hon'ble Apex Court in the case of Anjum H Ghaswala & Others (252 ITR 1) and we, therefore, uphold the action of the Assessing Officer in charging the said interest. The Assessing Officer is, however, directed to recompute the interest chargeable u/s. 234A, 234B and 234C of the Act, if any, while giving effect to this order.

7.1 Grounds No.2 and 3 relate to the only effective issue for consideration i.e. the cash deposits in the assessee's bank account amounting to Rs.62,50,000. It was contended by the learned Authorised Representative for the assessee that the co-ordinate bench of the Tribunal vide order in ITA No.973/Bang/2010 dt.3.9.2010 in the assessee's own case for the year under consideration i.e. Assessment Year 2006-07 had directed the Assessing Officer to consider afresh the issue of the cash deposits amounting to Rs.62,50,000 in the assessee's bank account.

It is submitted that the assessee had produced before the Assessing Officer Xerox copies of agreements to sell dt.10.9.2005 with Sri Manjappa Naik and Narayanappa and copies of agreement to sell dt.11.9.2005 with Sri Gangappa and in this regard confirmation letters of Sri Gangappa and Sri Narayanappa dt.23.11.2011 and confirmation letter dt.25.11.2011 from Sri Manjappa Naik were also filed. It is submitted that before the learned CIT (Appeals), the assessee had claimed that he received amounts totaling Rs.45,00,000 under the aforesaid agreements which were deposited in his bank accounts on 16.9.2005. In respect of the other cash deposits of Rs.50,000 on 28.5.2005; Rs.15,00,000 on 19.9.2005 and Rs.1,00,000 on 26.11.2005, the assessee contended that there were cash withdrawals from the said bank account which was available to explain the source of the entire deposits. It was submitted that the learned CIT (Appeals) called for remand reports from the Assessing Officer on the aforesaid submissions made by the assessee. In dismissing the assessee's appeal on this issue, the learned Authorised Representative submitted that the learned CIT (Appeals) placed reliance on the factual report of the Addl. CIT in his letter forwarding the remand report of the Assessing Officer. It is submitted that the assessee had filed a detailed rejoinder, to the remand report dt.15.7.2013 which replied/put forward explanations to the observations of the Assessing Officer and the Addl. CIT, but however the same have not been considered by the learned CIT (Appeals) while sustaining the additions in respect of cash deposits amounting to Rs.62,50,000 in the assessee's bank account in the period under consideration. It is submitted that the matter be remitted to the authorities below for consideration of the submissions put forth by the assessee on this issue.

7.2 The learned Departmental Representative supported the impugned order of the learned CIT (Appeals) and submitted that the assessee has not discharged the basic onus cast under Section 68 of the Act in proving the identity of the creditor; the capacity of the creditor to advance the said amounts and the genuineness of the transactions.

7.3.1 We have heard the rival contentions and perused and carefully considered the material on record. At the outset, we observe that the addition sustained in the first round of proceedings in respect of cash deposits in the assessee's bank accounts, was Rs.61,50,000 and not Rs.64,50,000. This issue appears to have been dealt with by the learned CIT (Appeals) in his order dt.13.2.2010, at paras 5 to 5.14. At para 5.9 thereof the learned CIT (Appeals) has rendered the following finding -

"After verification of the evidence, there is force in the appellate claim and the deposit of Rs.1,00,000 is considered to have been explained."

It appears from the record before us, that no appeal was filed by Revenue against this order of the learned CIT (Appeals). Therefore, it would appear from the facts on record that the Tribunal vide its order in ITA No.973/Bang/2010 dt.3.9.2010 would have restored the addition to the file of the Assessing Officer for re-examination / consideration of the submissions to be by the assessee to the extent of Rs.61,50,000 only. We find that in the orders of the authorities below, the discussion has mainly revolved around the assessee's claims of advances to the extent of Rs45,00,000 allegedly received from 3 parties i.e. Sri Manjappa Naik, Sri Gangappa and Sri Narayanappa by agreements to sell dt.10.9.2005 and 11.9.2005. It appears

that while the assessee was able to produce these three creditors before the Assessing Officer and their statements have been recorded in this regard; the capacity of the creditors to advance such amounts and the genuineness of those transactions are not proved. The learned Authorised Representative of the assessee has also claimed that in respect of balance deposits i.e. Rs.61,50,000 less Rs.45,00,000, the contentions of the assessee on this issue have not been considered.

7.3.2 After going through the rival contentions and the material on record, we are of the considered view that the aforesaid issue of cash deposits of Rs.61,50,000 in the assessee's bank account requires afresh consideration by the Assessing Officer; who shall, apart from taking into account the existing material on record, decide the issues; after 'inter alia' considering the capacity of the lenders to advance such amounts and the explanation of the assessee with regard to the availability of the sources for making the cash deposits for establishing the genuineness or otherwise of the cash transactions. In this factual and legal matrix of the issue, we set aside the impugned order of the learned CIT (Appeals) to the file of the Assessing Officer to the extent of the examination of the capacity of the lenders to advance the loans and the genuineness of the cash credits amounting to Rs.61,50,000 in the assessee's bank account in the period under consideration for fresh adjudication in accordance with law. Needless to add that, before deciding the issue involved, the assessee will be afforded adequate opportunity of being heard in the matter and for consideration of the submissions put forth on the various aspects of this issue, including those which have allegedly been hitherto made but not considered. It is ordered accordingly.

8. In the result, the assessee's appeal for Assessment Year 2006-07 is treated as allowed for statistical purposes.

Order pronounced in the open court on 23rd October, 2015.

Sd/-
(ASHA VIJAYARAGHAVAN)
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