

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' A '**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

I.T. A. No.794/Bang/2014
(Assessment Year : 2008-09)

Shri K. Parameshwarappa,
M/s. Basaveshwara Engg. Works,
No.2, Devasandra Main Road, K.R. Puram,
Bangalore-560 036.
PAN **AFZPP 4828D**

.... Appellant.

Vs.

Income Tax Officer,
Ward 8(1), Bangalore.

..... Respondent.

Appellant By : Shri Chat Raj, C.A.
Respondent By : Dr.P.K. Srihari, Addl. CIT (D.R.)

Date of Hearing : 25.02.2016
Date of Pronouncement : 24 .03.2016.

O R D E R

Per Shri Vijay Pal Rao, J.M. :

This appeal by the assessee is directed against the order dt.5.11.2013 of Commissioner of Income Tax (Appeals)-V, Bangalore for the Assessment Year 2008-09.

2. The assessee has filed the following revised grounds :

"1. The order of the learned CIT (Appeals)-V, Bangalore, 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 learned CIT (Appeals)-V, Bangalore is not justified in passing the impugned order declining to accept the evidences adduced by the appellant during the course of appeal by invoking the provisions of Rule 46A of the Income Tax Rules.

3. The learned CIT (Appeals)-V erred in not invoking his quasi judicial power as envisaged in sub-section 4 of Section 250 of the Income Tax Act, 1961.

4. The learned CIT (Appeals) – V erred in facts as well as in law in not admitting the additional evidence as the submission giving details of evidence as to source of Rs.1,46,25,000 and Rs.40,00,000 being the amount of investment in property and capital introduced in the firm was forwarded to the Assessing Officer for a remand report and the Id. Assessing Officer weighed and considered those evidences and furnished the report. Hence the learned CIT (Appeals) – V, ought to have considered the weight of the evidence instead of accepting on one and rejecting the other.

5. The learned CIT (Appeals)-V erred both in facts and in law is not appreciating the fact that appellant was prevented by sufficient reason to provide his evidence before the learned Assessing Officer as to source of Rs.1,46,25,000 and Rs. 40,00,000 being the amount of investment in property and capital introduced in the firm.

6. The learned CIT (Appeals) – V erred both in facts as well as in law is not appreciating that the evidence as to agricultural

income put up before him, were subject to Remand Reports by the learned Assessing Officer and hence the evidence, instead of being summarily denied consideration, needed to be given proper weight and credence.

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

3. The only that issue arises in this appeal of the assessee is, whether in the facts and circumstances of the case, the CIT (Appeals) has erred in confirming the disallowance made by the Assessing Officer of Rs.40 lakhs and Rs.1,46,25,000 under Sections 68 & 69 respectively of the Income Tax Act, 1961 (in short 'the Act').

4. The assessee is a partner in the firm, M/s Sri Shanthaveera Transformers Manufacturing Company. The Assessing Officer noted that the assessee has introduced capital to the extent of Rs.40 lakhs in the partnership firm. The Assessing Officer asked the assessee to explain the source of the said amount of Rs.40 lakhs. Apart from this the assessee also purchased immovable property for Rs.1,46,25,000. The Assessing Officer noted that the assessee did not furnish the details of the purchase and explained the source of the purchase consideration in spite

of repeated requests. Since there was no response from the assessee despite giving opportunity for producing evidence/details/sources, the Assessing Officer completed the assessment by making the addition of these two amounts of Rs.40 lakhs under Section 68 and Rs.1,46,25,000 under Section 69 of the Act. The assessee challenged the action of the Assessing Officer before the CIT (Appeals) and furnished additional evidence under Rule 46A of the Income Tax Rules, 1962 in support of the explanation of source of Rs.40 lakhs. As regards the purchase of immovable property for Rs.1,46,25,000, the CIT (Appeals) after considering the remand report of the Assessing Officer has deleted the said addition on the ground that the said property was purchased on behalf of the firm but in the name of the partner as the immovable property cannot be purchased in the name of the partnership firm. Thus the dispute before us is only with regard to the addition of Rs.40 lakhs made under Section 68 of the Act which was confirmed by the CIT (Appeals).

5. Before us, the learned Authorised Representative of the assessee has submitted that during the course of the appellate proceedings, the

assessee sought permission to adduce additional evidence in support of the source of Rs.40 lakhs. The CIT (Appeals) forwarded the additional evidence to the Assessing Officer for examination and comments. However, the CIT (Appeals) declined to admit the additional evidence in respect of source of Rs.40 lakhs. Thus the learned Authorised Representative has submitted that without examining the evidence placed before it, the CIT (Appeals) is not justified in confirming the addition made by the Assessing Officer. He has referred the additional evidence produced before the CIT (Appeals) and submitted that the assessee has filed the details of the agricultural income of the HUF. Thus the learned Authorised Representative has submitted that when the assessee has explained the source of the amount of Rs.40 lakhs, the same should have accepted by the CIT (Appeals).

6. On the other hand, the learned Departmental Representative has submitted that despite repeated show cause notices and opportunities given by the Assessing Officer, the assessee did not respond and also has not furnished any explanation/detail / evidence in support of the claim before the Assessing Officer. Further, the additional evidence sought to

be produced before the CIT (Appeals) is nothing but an after thought. Therefore, in the absence of any documentary evidence and direct nexus between the documentary evidence and the agricultural income of the HUF as well as source of the investment of Rs.40 lakhs by the assessee, same cannot be accepted in support of the claim. He has supported the orders of the authorities below.

7. We have heard the rival submissions as well as considered the relevant material on record. At the outset, we note that the additional evidence sought to be adduced by the assessee before the CIT (Appeals) was forwarded to the Assessing Officer for his comments. Thus, once the CIT (Appeals) has forwarded the additional evidence for examination by the Assessing Officer for his comments, then the Assessing Officer ought to have examined the veracity as well as the merits of the additional evidence filed by the assessee apart from raising objection against the admissibility of the additional evidence filed at the appellate stage. We find that once the additional evidence was forwarded to A.O., then without examination of the additional evidence, the CIT (Appeals) is not justified in declining to admit the additional evidence. Accordingly, in the

facts and circumstances of the case, we are of the considered opinion that the additional evidence filed by the assessee is required to be verified / examined at the level of the Assessing Officer to come to the conclusion whether the said additional evidence does explain the source of the investment made by the Assessee of Rs.40 lakhs in the shape of capital introduced in the partnership firm as well as source of any amount out of Rs.1,46,25,000 being purchase consideration paid by the assessee for purchase of the immovable property on behalf of the partnership firm. Thus, at the time of considering the source of investment, the amount, if any, paid by the assessee towards purchase of immovable property was also to be taken into consideration. Further we make it clear that mere production of the details of the land holdings of the HUF *ipso facto* would not explain the source until and unless a tangible material is brought on record showing the real income in the hands of the HUF which is available for making such investment by the assessee. Therefore, the Assessing Officer has to examine the issue as well as the evidence to be produced by the assessee in support of the

claim and then decide the same as per law. Accordingly, we set aside this issue to the record of the Assessing Officer in the above said terms.

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

Order pronounced in the open court on the 24th day of March 2016.

Sd/-
(INTURI RAMA RAO)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Dated, the 24th March, 2016.

*Reddy gp / DS /

Copy to :

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

By Order

Asst. Registrar, ITAT, Bangalore.