

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

BEFORE SHRI. N. V. VASUDEVAN, JUDICIAL MEMBER

AND

SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

I.T.A No.1857/Bang/2013
(Assessment Year : 2009-10)

Smt. S. Aruna,
1559/0, B Block, Sahakarnagar,
Bengaluru 560 085
PAN : ARTPS6869D

..Appellant

v.

Income-tax Officer,
Ward – 6(4), Bengaluru

..Respondent

I.T.A No.39/Bang/2014
(Assessment Year : 2009-10)
(By the Revenue)

Assessee by : Shri. R. E. Balasubramaniyan, CA
Revenue by : Shri. T. N. Prakash, JCIT

Heard on : 29.10.2015
Pronounced on : .10.2015

ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

These are appeals filed by assessee and the Revenue respectively directed against an order dt.30.12.2011 of C IT (A)-II, Bengaluru.

02. Facts apropos are that assessee engaged in garden contract business had filed her return for the impugned assessment year declaring income of Rs.17,14,510/-. AO had AIR information regarding purchase of an immovable

property for Rs.70,75,000/- by the assessee. On verification of the records, AO found that the above investment was jointly made by assessee along with her husband Shri. L. Srinivas. AO was of the opinion that assessee's share in the investment came to Rs.41,41,712/-. Source of this investment was explained by assessee as her own business income and gift of Rs.39,01,712/- given by her mother-in-law through her husband. As per the assessee, her mother-in-law had sold agricultural land belonging to her which money was routed through her husband to her. AO verified the sale deed and found that her husband, Shri. L. Srinivas was also having a share in the land which was sold and he had received total sum of Rs.70,75,000/-. AO verified the assessment record of L. Srinivas and reached an opinion that the sum of Rs.70,75,000/- received by him on sale of agricultural land was used by him for acquiring fixed assets. As per the AO, there was nothing left with L. Srinivas to give anything to the assessee. He therefore chose to disbelieve assessee's contention that she had received any gift from her husband. One more reason adduced by the AO for disbelieving assessee's version was absence of a gift deed. He held the sum of Rs.41,41,712/- as unexplained investment of the assessee and made an addition under the head 'income from other sources'.

03. During the course of examination of the above investment, AO also found that assessee was having an SB account No.1212500100514701 with Karnataka Bank, Sahakar Nagar Branch and another account No.19090210000663 with UCO bank, Sahakar Nagar Branch. AO obtained the account copies from the

respective banks and found that these two accounts were not reflected in the balance sheet filed by the assessee. There was a deposit of Rs.15 lakhs in the Karnataka Bank account on 22.05.2008. In the account with UCO Bank, there was a closing balance of Rs.30,99,000/-. It seems assessee failed to give any explanation for the source of these. He thus made an addition of Rs.15 lakhs for deposit in Karnataka Bank account and Rs.30,99,000/- for the closing balance in the UCO Bank account.

04. Aggrieved by the above additions assessee moved in appeal before the CIT (A). In so far as the first addition for the investment in immovable property, submission of the assessee was that out of the total investment of Rs.82,72,593/- in the said property, what was borne by the assessee was only Rs.16,12,593/- and the balance sum of Rs.66,60,000/- was paid by her husband, L. Srinivas. Assessee also gave the details of the cheque numbers issued by L. Srinivas to the seller of the property. As per the assessee, the sum of Rs.16,12,593/- contributed by her comprised of three payments of Rs.9 lakhs, Rs.3,78,645/- and Rs.3,33,948/-. Deposits in Karnataka Bank account from where the cheques were issued, as per the assessee, came out of sale proceeds of another property. Though assessee admitted that gain / loss from the sale of property was not returned or computed by the AO, as per the assessee, it constituted a good source for explaining the deposits in the bank account and purchase of the property. Reliance was placed on the judgment of Hon'ble

Madras High Court in the case of S. Hastimal v. CIT [(1963) 49 ITR 273] for its submission that an assessee was not required to prove the source of the source.

05. In so far as the unexplained deposit of Rs.15 lakhs in Karnataka Bank, submission of the assessee before the CIT (A) was that the deposit had come out of the sale of a property. As per the assessee, one property acquired by her in the year 2007 for a cost of Rs.25,78,710/-, was sold during the relevant previous year for a sum of Rs.25 lakhs and the sum of Rs.15 lakhs which was deposited in Karnataka Bank came out of the sale proceeds. Assessee also furnished before the CIT (A), sale deed in support of these contentions.

06. In so far as the addition for the closing balance in UCO Bank was concerned, submission of the assessee before the CIT (A) was that it represented proceeds from sundry debtors. As per the assessee, the account with UCO Bank was started in the last month of the relevant previous year and a few of the cheques received from BBMP in the normal course of its business was deposited in this bank account. As per the assessee, in the balance sheet, sundry debtors were over stated by such amount. Actual sundry debtors were much less. Assessee also produced the work bills issued by it for the work done by it for BBMP. As per the assessee, therefore, treating the closing balance as income was neither justified nor correct.

07. CIT (A) after going through the submissions and arguments of the assessee held that in so far as the investment in immovable property was concerned, assessee could show through evidence that her husband had

sufficient balance in his bank account for the sum of Rs.66,60,000/- paid by him. Further according to the CIT (A) assessee could also show that source for the funds in her bank account with M/s. Karnataka Bank from where the cheques issued by her stood explained. He therefore deleted the addition of Rs.41,41,712/-.

08. In so far as the explanation of assessee for unexplained deposit of Rs.15 lakhs in Karnataka Bank was concerned, CIT (A) was of the opinion that the source was explained by the assessee as arising from sale of an immovable property acquired by her in 2007. However, as per the CIT (A), the said property never appeared in the balance sheet of the assessee and hence could not be accepted as a source for explaining the deposit. He confirmed the addition of Rs.15 lakhs.

09. In so far as addition of Rs.30,99,000/- of the closing balance in UCO Bank was concerned, CIT (A) was of the opinion that assessee could show the sums to have been received from BBMP against work bills raised by it. He therefore held the balance as explained. Addition of Rs.30,99,000/- was deleted.

10. Now before us, assessee is aggrieved on the confirmation of the addition of Rs.15 lakhs for the deposit in Karnataka Bank. As against this, Revenue in its appeal is aggrieved that CIT (A) deleted the addition for investment of Rs.41,41,712/- in the property and Rs.30,99,000/- for the closing balance with UCO Bank.

11. Ld. DR submitted that assessee had not brought in sufficient evidence before the CIT (A) for explaining the source of investment in the immovable property nor for the closing balance in UCO Bank. According to him, assessee had never produced before the lower authorities, details of the source of the cheques issued by L. Srinivas nor the details for the source of cheques issued by her. According to Ld. DR, sale deeds for sale of property to M/s. Vanitha Family Trust and sale of property to Shri. M. Jayagopal Gowda, which were produced by the assessee before the CIT (A) for explaining the source of deposits and cheques issued therefrom were never produced before the AO. CIT (A) had accepted the evidence furnished by the assessee and gave relief to her violating Rule 46A of IT Rules. In so far as deletion of addition for unexplained closing balance in UCO Bank was concerned, Ld. DR submitted that CIT (A) had given relief to the assessee without verifying whether the balances shown as due from BBMP in the books of account were correctly reconciled.

12. Opposing the above submissions of the Ld. DR, Ld. AR submitted that the source for deposits in the banks were proved by the assessee. Assessee had an account with Karnataka Bank and there were credits in the said bank account arising out of the sale of a property purchased by her in 2007. It might be true that the property was not reflected in the balance sheet. However when its sale was evidenced by a conveyance deed, source for the deposits in the bank accounts could not be denied. Taxability of surplus or deficit arising from the

sale of the property, as per the Ld. AR was a different matter altogether. Further as per the Ld. AR, balance sheet of the assessee had over stated the debtors' balance. The receipts of the assessee from BBMP were only based on the work-bills raised by the assessee on BBMP. BBMP had confirmed the payments by cheques which were deposited in the UCO Bank account. Thus the closing balance in the UCO Bank also stood proved. As per the Ld. AR, the CIT (A) while accepting the source of the investment of the assessee in immovable property, and for balance in the UCO Bank account had erroneously rejected the assessee's contention regarding the deposits in the Karnataka bank account.

13. We have perused the orders and heard the rival contentions. In so far as the first issue of investment in immovable property is concerned, at para 3.5 of his order, CIT (A) mentions that assessee had produced copies of the bank account of her husband, copies of the sale deeds of the property to M/s. Vanitha Family Trust and M. Jayagopal Gowda, as evidence for source of L. Srinivas. No doubt it is true that AO had verified the assessment records relating to L. Srinivas. However, the AO has also given a specific finding that source of funds available with L. Srinivas was used for addition to fixed assets. We are of the opinion that the issue requires a fresh look by the AO. Documents produced by the assessee before the CIT (A) appears have been not readily available with the AO. In so far as unexplained deposit in Karnataka Bank is concerned, assessee's argument is that it came out of the sale of a property acquired by her

in 2007. In the submission made by the assessee before the CIT (A), assessee itself had requested the CIT (A) to call for a remand report from the AO with regard to the documents submitted by her. However, it appears that CIT (A) without calling for the remand report confirmed the addition. We are of the opinion that in the circumstances of the case, CIT (A) ought have examined the claim of the assessee that the deposit in Karnataka Bank had come out of sale proceeds of a property acquired by her in 2007 through the Assessing Officer. Taxability of the said transaction is entirely a different issue which the AO can consider. We are of the opinion that this issue also requires a fresh look by the AO.

14. Coming to the addition of Rs.30,99,000/- being the closing balance with UCO Bank, argument of the assessee is that this money was received by her from BBMP for contract work. As per the assessee that debtors' account were over stated. A close verification of this claim is required to see whether the actual billing for the work done by her for BBMP during the previous year included the bills on which payments were received and credited in UCO Bank account. We are of the opinion that this issue also needs to be looked afresh by the AO.

15. To summarise, each of the issue raised by both the Revenue as well as the assessee requires fresh look by the AO. We therefore set aside the orders of lower authorities and remit all the three issues, viz., addition made for unexplained investment in immovable property, deposit of Rs.15 lakhs in

Karnataka Bank and addition of Rs.30,99,000/- for closing balance in UCO Bank, back to the file of the AO for consideration afresh.

16. In the result, both the appeals are treated as allowed for statistical purpose.

Order pronounced in the open court on 1st day of October, 2015.

Sd/-

Sd/-

(N. V. VASUDEVAN)
JUDICIAL MEMBER

(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

MCN

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order
Assistant Registrar