

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

BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER

ITA Nos.700 & 701/Bang/2014
Assessment years : 2005-06 & 2007-08

Shri R. Srinivasa, No.29, St. Marthas Hospital Road, Uttarahalli, Subramanya Pura Post Bangalore – 560 061. PAN: ATJPS 1930P	Vs.	The Income Tax Officer, Ward 10(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Ms. Prathibha, Advocate
Respondent by	:	Shri Tshering Ongola, Jt. CIT(DR)

Date of hearing	:	11.08.2016
Date of Pronouncement	:	30.09.2016

ORDER

Both these appeals of the assessee are directed against the combined order of Id. CIT (Appeals), LTU, Bangalore dated 19.3.2014 for the assessment years 2005-06 & 2007-08. Both these appeals were heard together and are being disposed of by this common order for the sake of convenience.

2. The grounds raised by the assessee in A.Y. 2005-06 are as under:-

“1. The learned CIT (Appeals) erred in passing the order in the manner he did.

2. On the facts and in the circumstances of the case, the learned CIT (Appeals) ought to have accepted the explanation of the Appellant in full with regard to the opening capital and ought

to have refrained from confirming the impugned addition of Rs.15,55,477/-.

3. The learned CIT (Appeals) erred in confirming the addition of Rs.4,35,801/- towards the investment in Vaddarapalya Village, Uttarahalli Hobli, Bangalore South Taluk jointly along with 6 other persons.

4. The learned CIT (Appeals) ought to have appreciated that the Appellant had adequate resources for investment and accordingly he ought to have deleted the addition as made by the assessing officer.

5. The learned CIT (Appeals) ought to have appreciated that the transactions did not pertain to the Appellant individually, but were required to be considered in the hands of the AOP in which the Appellant was a member with 1/7th share.

6. The learned CIT (Appeals) having perused the agreement of the AOP, ought to have appreciated that there was a valid AOP in existence which carried on the transactions as business transactions/adventure in the nature of trade and accordingly the AOP alone was liable to tax and no part of the income if any of the AOP was liable to be taxed in the hands of the Appellant.

7. The learned CIT (Appeals) ought to have appreciated that the transactions did not yield income which had ended up in loss and even if the Appellant was liable to be assessed on his share which was loss, which was required to be considered for set-off against his other income.

8. Without prejudice, the impugned additions as confirmed by the learned CIT (Appeals) are opposed to law in that no adequate opportunity was given to the Appellant to prove the genuineness of the transactions and the financial results there from besides the source for investment.

9. Without prejudice, the additions as confirmed by the learned CIT (Appeals) are arbitrary, excessive, unreasonable and ought to be deleted in toto.

10. The learned CIT (Appeals) erred in confirming the levy of interest charged under Sections 234A, 234B & 234C of the Act.

11. For these and such other grounds that may be urged at the time of hearing, the Appellant prays that the appeal may be allowed.”

3. Similarly, grounds raised in A.Y. 2007-08 are as under:-

“1. The learned CIT (Appeals) erred in passing the order in the manner he did.

2. The learned CIT (Appeals) erred in confirming the addition towards short term capital gain of Rs.22,71,901/- in the hands of the Appellant.

3. The learned CIT (Appeals) ought to have appreciated that the transactions did not pertain to the Appellant individually, but were required to be considered in the hands of the AOP in which the Appellant was a member with 1/7th share.

4. The learned CIT (Appeals) having perused the agreement of the AOP, ought to have appreciated that there was a valid AOP in existence which carried on the transactions as business transactions/adventure in the nature of trade and accordingly the AOP alone was liable to tax and no part of the income if any of the AOP was liable to be taxed in the hands of the Appellant.

5. The learned CIT (Appeals) ought to have appreciated that the transactions did not yield income which had ended up in loss and even if the Appellant was liable to be assessed on his share which was loss, which was required to be considered for set-off against his other income.

6. The learned CIT (Appeals) ought to have given adequate opportunity to the Appellant for providing the details with regard to source for purchase of land and income there from on sale and accordingly he ought to have deleted the addition as made by the assessing officer.

7. Without prejudice, the impugned additions as confirmed by the learned CIT (Appeals) are opposed to law in that no adequate opportunity was given to the Appellant to prove the genuineness of the transactions and the financial results there from besides the source for investment.

8. Without prejudice, the additions as confirmed by the learned CIT (Appeals) are arbitrary, excessive, unreasonable and ought to be deleted in toto.

9. The learned CIT (Appeals) erred in confirming the levy of interest charged under Sections 234A, 234B & 234C of the Act.

10. For these and such other grounds that may be urged at the time of hearing, the Appellant prays that the appeal may be allowed.”

4. It was submitted by the Id. AR of the assessee that in AY 2005-06, ground No.2 is the main grievance of the assessee because out of opening capital as on 1.4.2004 claimed by the assessee of Rs.38,29,203.52, the AO has accepted only Rs.22,73,726 and made addition of the balance amount of Rs.15,55,477 and this addition has been upheld by the CIT(Appeals). It was submitted that the entire amount of opening capital should have been accepted. At this juncture, the Bench wanted to know as to what is the evidence with assessee that this much of opening capital was available as on 1.4.2004. The Bench wanted to know as to when various lands of the value of Rs.69,370, Rs.1,71,714, Rs.1,76,132.50, Rs.3,42,145 and vehicle of Rs.5,52,500 totalling to Rs.13,11,887.50 were acquired by the assessee and if the assessee can show that these lands and vehicles were acquired prior to 1.4.2004, then the claim of assessee can be accepted about opening capital of Rs.38,29,203.52.

5. In reply, it was submitted by the Id. AR of assessee that the matter may be restored back to the file of the Assessing Officer for fresh decision to provide one more opportunity to the assessee and if this is done, the

assessee can place evidence regarding acquisition of these properties which were acquired prior to 1.4.2004 because the AO had also not brought anything on record to show that these properties were acquired by the assessee after 1.4.2004.

6. Regarding ground No.3 of assessee's appeal in A.Y. 2005-06 and regarding assessee's appeal for A.Y. 2007-08, the Id. AR of assessee could not place any evidence on record to point out any mistake in the orders of authorities below.

7. The Id. DR supported the orders of authorities below.

8. I have considered the rival submissions. Regarding Ground No.2 in A.Y. 2005-06 in respect of addition of Rs.15,55,477, I am of the considered opinion that the assessee deserves one more opportunity to establish that various properties in question which are not accepted by the AO as having been acquired by the assessee prior to 1.4.2004 is acquired on which date. If the assessee can establish that these properties were acquired by the assessee prior to 1.4.2004, then it has to be accepted that opening capital was more by that amount over and above the opening capital accepted by the AO. I feel so because the AO has also not established that these properties in question were in fact acquired by the assessee after 1.4.2004. Hence on this issue, I set aside the order of the CIT (Appeals) and restore the matter back to the file of Assessing Officer for fresh decision. The assessee has to establish that these properties in question of Rs.69,370,

Rs.1,71,740, Rs.1,76,132.50, Rs.3,34,145 and Rs.5,52,500 were acquired by the assessee before 1.4.2004. If all of the properties or some of them were acquired by the assessee before 1.4.2004 and assessee is able to establish this, then the value of such property should also be considered as part of opening capital over and above the amount of opening capital accepted by the AO of Rs.22,73,726. The AO should pass necessary order as per law as per above observations after providing adequate opportunity of being heard to the assessee. Accordingly, ground No.2 of the assessee's appeal for A.Y. 2005-06 is allowed for statistical purposes.

9. The other issue involved in the appeal of assessee for AY 2005-06 is regarding addition of Rs.4,38,801 towards the investment in Vaddarapalya Village along with 6 other persons. It was the claim of assessee that investment in purchase of land was made out of advance received but the assessee could not bring any evidence in support of this claim of advances received and therefore, I find no reason to interfere in the order of CIT(Appeals) on this issue. Accordingly, ground No.3 of assessee's appeal for AY 2005-06 is rejected.

10. The remaining grounds in AY 2005-06 and grounds of appeal in AY 2007-08 are regarding claim of assessee that profit in respect transactions in purchase and sale of land is not taxable in the hands of assessee but the same is taxable in the hands of AOP but no argument was advanced by the Id. AR of assessee on this issue. It is also seen in the orders of authorities

below that this issue is decided after considering all the facts and contentions of the assessee and I find no infirmity therein and therefore, I decline to interfere in the order of CIT(Appeals) on this issue in both of these years.

11. In the result, the appeal of the assessee for AY 2005-06 is partly allowed for statistical purposes, whereas the appeal of assessee for AY 2007-08 is dismissed.

Pronounced in the open court on this 30th day of September, 2016.

Sd/-
(A.K. GARODIA)
Accountant Member

Bangalore,
Dated, the 30th September, 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.