

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER
AND SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

ITA No.33/Bang/2014
Assessment year : 2009-10

Shri B.P. Ravi, Safeway Woods Apartments, 1 st Floor, Horamavu Road, Banaswadi Post, Bangalore – 560 043. PAN: AJSPR 7200E	Vs.	The Income Tax Officer, Ward 15(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri N. Suryanarayana, ACIT(Retd.)
Respondent by	:	Shri P. Dhivahar, Jt. CIT(DR)

Date of hearing	:	06.04.2015
Date of Pronouncement	:	10.04.2015

ORDER

Per N.V. Vasudevan, Judicial Member

This appeal by the assessee is against the order dated 4.10.2013 of the CIT(Appeals)-IV, Bangalore relating to assessment year 2009-10.

2. The assessee is an individual. For the A.Y. 2009-10, he filed a revised return of income declaring total income of Rs.4,44,990. An order of assessment u/s. 144 of the Act making a best judgment assessment was passed as the assessee did not participate in the proceedings before the AO. As per the Annual Information Report (AIR), the AO noticed that the

assessee had deposited cash amounting to Rs.34,89,699 in his SB account with ICICI Bank. Since the source of funds for the aforesaid cash deposit in the bank account remained unexplained, the AO added the same to the total income of the assessee. Besides the above, a deduction of Rs.67,524 claimed under Chapter-VIA of the Act was also denied for want of evidence to substantiate the eligibility for claim of deduction. The AO ultimately determined the total income of the assessee as follows:-

Income returned	:	4,44,990
Add: Deduction claimed under Chapter VIA:		67,524
Add: Unexplained cash credits	:	34,89,699
Total Income	:	40,02,210

3. Aggrieved by the order of the AO, the assessee preferred appeal before the CIT(Appeals). The assessee pointed out that he was working in Emerson Network Power India Ltd., Koramangala, Bangalore as a Deputy Manager-Service Operation-Air since 2003. It was pointed out that the AIR information relating to cash deposit in the ICICI Bank was only Rs.16,15,000. The AO has erroneously considered the said amount twice and arrived at a cash deposit of Rs.32,30,000 in the bank account. The assessee therefore submitted that the cash deposits that the assessee has to explain was only a sum of Rs.16,15,000. This explanation was accepted by the CIT(A). The assessee explained the source of cash of Rs.16,15,000/- as follows:-

Opening cash (01.04.2008)	4,03,527
Drawings from credit cards	1,50,000
Loan on credit cards	2,00,000
Re-imburement of foreign tour expenses	2,53,000
Sale of jewellery	2,75,000
Gift from mother (RD matured from post office)	1,00,000
Hand loan from SSC Power System	1,60,000
Salary savings for the year	1,00,000

Total	16,31,527

4. Out of the above sources, the CIT(Appeals) accepted the explanation of the assessee with regard to availability of cash of Rs.2,75,000 on account of sale of jewellery and a sum of Rs.1 lakh towards savings from salary. The remaining availability of source of cash was disbelieved by the CIT(A). Aggrieved by the order of CIT(A), the assessee has preferred the present appeal before the Tribunal.

5. Grounds No. 1 & 2 regarding challenge to order u/s. 144 of the Act were not pressed and are therefore dismissed as not pressed.

6. The remaining grounds are only with regard to the various items of source of cash which were disbelieved by the CIT(A). We will deal with each of the items of source of cash as explained by the assessee before the CIT(A) in the light of the order of the CIT(A).

(i) Opening cash as on 1.4.2008 of Rs.4,03,527

7. According to CIT(A), the assessee had received gross salary of Rs.5 lakhs during the previous year and therefore source of opening credit

balance of Rs.4,03,527 was not acceptable. The CIT(A) was also of the view that the assessee had three bank accounts and was withdrawing cash from ATM and therefore it was not unreasonable to believe that the assessee would keep cash of about Rs.4 lakhs in hand as a salaried employee.

8. The Id. counsel for the assessee submitted before us that the assessee had filed balance sheet as on 31.3.2007, 31.3.2006, 31.3.2005 & 31.3.2004 before the CIT(A). Cash and bank balance have been disclosed in those balance sheets. The opening balance of cash as on 1.4.2008 was arrived at by the assessee only on the basis of cash balance as on 31.3.2007 and after taking into consideration the cash transactions during the previous year from 1.4.2007 to 31.3.2008. According to him, therefore, the source of opening balance of cash stands duly explained.

9. We have considered his submissions and are unable to accept the same. Except for the balance sheet as on 31.3.2007, there is no other evidence to show the source of cash and bank balance as disclosed in the balance sheet as on 31.3.2007. How the opening balance as on 1.4.2007 was arrived at is not explained by the Assessee. Apart from the above, cash book for the period from 1.4.2007 to 31.3.2008 has also not been filed. In such circumstances, we are of the view that the assessee has miserably failed to prove the opening cash balance as claimed by him. We therefore agree with the conclusions of the Id. CIT(Appeals) on this issue.

- (ii) Drawings from credit cards – Rs.1,50,000
- (iii) Loan on credit cards – Rs.2,00,000

10. As far as the source of Rs.3.5 lakhs in respect of the above sources are concerned, the assessee has filed only cash book from 1.4.2008 to 31.3.2009. In the cash book, there is a section showing credit card expenses. According to the assessee, the credit card expenses shows withdrawal of cash on the basis of credit card and also payments made by cheques from the assessee's ICICI Bank account in discharge of the withdrawal of cash using credit card. The sum total of the payments so made by the assessee by way of cheque as stated in the cash book, is a sum of Rs.2,33,065. A copy of the cash book filed in the paperbook at pages 21 to 23 shows the payments made by cheque in respect of credit card expenses. According to the assessee, the withdrawals of cash by using ATM card are therefore to be considered as cash available for depositing in the bank account.

11. On the above explanation offered by the assessee, the CIT(A) was of the view that the payment by cheque shown by the assessee in cash book as payments made towards repayment of cash withdrawn using credit card was not supported by credit card statement. The CIT(A) was of the view that though substantial amounts have been paid towards credit cards during the previous year, it has not been established that those payments were for cash withdrawals or loans through credit cards. The CIT(A) therefore rejected the explanation of the assessee.

12. The Id. counsel for the assessee reiterated the stand of the assessee as was put forth before the CIT(Appeals). When a query was put as to why the credit card statement was not filed to support the claim of the assessee, the Id. counsel for the assessee could not give any satisfactory explanation. He, however, prayed that an opportunity may be given by remanding the issue to the AO.

13. We have considered the submissions of the assessee and are of the view that the order of CIT(Appeals) has to be upheld. As we have already noticed, the assessee has filed cash book from 1.4.2008 to 31.3.2009 and the same is placed at pages 7 to 13 of the assessee's paperbook. Copy of the capital account ledger is placed at pages 14 to 39 of the Assessee's paper book. Pages 21 to 23 contain classification in the cash book under the head 'credit card expenses'. The entries made at pages 21 to 23 are not supported by the credit card statement and therefore the claim of the assessee that the cash withdrawals using credit card were repaid by cheque issued from the assessee's bank account and therefore cash withdrawn using credit card should be considered as being available to the assessee to explain the cash deposit of Rs.16.15 lakhs in his bank account cannot be accepted. The request of the Id. counsel for the assessee for a remand to the AO can also not be accepted because the CIT(A) had rejected the claim of assessee for absence of credit card statement and even before the Tribunal, the assessee did not make any attempts to file

the same as additional evidence. In these circumstances, we uphold the order of the CIT(Appeals) on this issue.

(iv) Reimbursement of foreign tour expense – Rs.2,53,000

14. It was the claim of assessee that he had undertaken foreign travel on behalf of the employer and had used credit cards for booking air-tickets and incurring expenses while on journey abroad. The expenses so incurred were reimbursed by the assessee's employer in cash. The CIT(A) rejected the claim of the assessee for the reason that no details of expenses incurred and funded from the source of the assessee was given and therefore the question of employer reimbursing the expenses does not arise for consideration.

15. On the above issue, the Id. counsel for the assessee filed before us a certificate from his employer regarding the assessee having undertaken the foreign travel on behalf of the company and that the company has reimbursed those expenses.

16. The expenses so reimbursed insofar as it relates to the period from 28.4.2008 to 2.1.2009 is claimed by the assessee to be a sum of Rs.2,43,000. The details are given in Annexure-I to this order. The assessee has also filed before us the details of foreign trips undertaken by him which are as follows:-

	Date of visit (from & to)	Country visited	Date of purchase of airticket through credit card
1	28.4.2008 to 01.05.2008	Sri Lanka	Up and down air ticket purchased on 26.4.2008
2	2.12.2008 to 5.12.2008	China/ Hongkong	Up and down air ticket purchased on 20.11.2008
3	2.1.2009 to 09.1.2009	Bangladesh	Up and down air ticket purchased on 23.12.2008

17. The credit card statement issued by Citi Bank has also been filed before us. We have perused the same and we find that the credit card statement evidences purchase of air tickets from Indian Airlines on 20.11.2008, 23.12.2008 and 26.4.2008. As to how these purchases of air ticket is linked with the visits of the assessee to Sri Lanka, China, Hongkong and Bangladesh is not clear. There is no evidence filed by the assessee to show that these expenses were reimbursed by the employer. In these circumstances, we are of the view that the claim made by the assessee was rightly rejected by the CIT(A).

(v) Gift from mother of Rs.1 lakh

18. The assessee explained that the assessee's mother was in possession of funds received out of maturity of RD in post office. The CIT(A) noticed from the documents filed by the assessee that there were two deposits of Rs.50,000 made on 21.8.2003 by one Sri Sanjeevarayudu at Cuddapah Post Office, which were withdrawn on 30.3.2005 prematurely. The CIT(A) was of the view that there was no evidence to show how the

assessee's mother came into possession of the RD maturity proceeds which stood in the name of Shri Sanjeevarayudu. The CIT(A) held that even if the maturity proceeds are accepted as belonging to the assessee's mother, it was improbable to believe that the RD maturity proceeds which were received on 30.3.2005 would have been retained by the assessee's mother and given as gift to the assessee in the F.Y. 2008-09. The CIT(A) was of the view that it was highly improbable that the assessee's mother would have retained cash with her for 3 years and given it as gift to the assessee.

19. Before us, the Id. counsel for the assessee reiterated the submissions as were made before the CIT(Appeals).

20. We are of the view that the conclusions drawn by the Id. CIT(Appeals), in the facts and circumstances of the case, are proper and call for no interference. We therefore confirm the order of the CIT(Appeals).

21. In the result, the appeal by the assessee is dismissed.

Pronounced in the open court on this 10th day of April, 2015.

Sd/-

(JASON P. BOAZ)
Accountant Member

Sd/-

(N.V. VASUDEVAN)
Judicial Member

Encl: Annexure-I.
Bangalore,
Dated, the 10th April, 2015.
/D S/

Copy to:

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

By order

Assistant Registrar/
Senior Private Secretary
ITAT, Bangalore.