

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'C', BANGALORE**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND
SHRI A.K.GARODIA, ACCOUNTANT MEMBER**

**ITA No.438(Bang)/2014
(Assessment year : 2004-05)**

Shri Anand Kumar,
No.27, Elephant Rock Road,
3rd Block, Jayanagar,
Bangalore-560 011

PAN No.AEMPK0797C

Appellant

Vs

The Asst. Commissioner of Income-tax,
Circle-4(1),
Bangalore
Respondent

And

**ITA No.409(Bang)/2014
(Assessment year : 2004-05)
(By Revenue)**

**Assessee by : Shri V. Srinivasan, Advocate
Revenue by : Dr. Sibichen K Mathew, CIT-III**

Date of hearing : 30-05-2016

Date of pronouncement : 17-06-2016

ORDER

PER SHRI A. K. GARODIA, AM:

These are cross appeals filed by the assessee and the revenue which are directed against the orders of the learned CIT(A)-II, Bangalore dated 23-12-2013 for the assessment years : 2004-05.

2. The grounds raised by the assessee in its appeal are as under;

“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[A]** is not justified in sustaining an addition of Rs. 8,75,000/- out of the original addition of Rs.77,50,000/- made as the alleged unexplained money received by the appellant u/s 69A of the Act under the facts and in the circumstances of the appellant's case.*

*3. Without prejudice to the right to seek waiver with the Hon'ble **CCIT/DG**, the appellant denies himself liable to be charged to interest U/s 234-A, 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.*

4. For the above and 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”.

3. The grounds raised by the revenue in its appeal are as under;

“ 1. The order of the ld. CIT(A) is clearly opposed to law as far as the findings are perverse,

contrary to the facts and circumstances of the case and hence not sustainable.

2. The CIT(A) erred in not considering the cash payments of Rs.34,37,500/- and Rs.77,50,000/-a and Rs.4.00 Lakhs received by the assessee as per the agreement dated 17/02/2003, the notings on seized paper bearing page no.89 and the notings in seized paper bearing page no.90 which aggregate to Rs.1,15,87,500/-while granting the relief of Rs.68,75,000/-.

3. The CIT(A) ought to have noted that the cash payments received by the assessee on 04/12/2003 of Rs.77,50,000/- and Rs.4.00 lakhs towards sale of land are after the initial receipt of Rs.34,37,500/- on 17/02/2003 on signing the agreement but the amount offered to tax in his individual assessment is only Rs.68,75,000/-. In these circumstances, the CI(A) ought to have sustained addition of Rs.38,37,500/-“.

4. The brief facts, till the stage of passing of the present assessment order, are noted by the Id. CIT(A) in paras 3, 3.1 & 3.2 of his order and these paras are re-produced hereunder for the sake of ready reference;

**“ 3. Unexplained money brought to tax u/s 69A :
Rs.77,50,000/-.**

3.1 Consequent to the setting aside of the assessment order dated 31/12/20008 passed by the AO u/s 153A

read with section 143(3) of the Act by the CIT –II vide his order u/s 263 of the Act dated 29/03/2011, the AO sought details from the appellant regarding the amount of Rs.77,50,000/- found to have been received by him from M/s People’s Education Society on an examination of the seized material marked A/PES/13 mentioned above. The appellant in his reply dated 20/07/2011 stated that, as a result of the search operation, a total amount of Rs.124 Lakhs had been brought to tax in his hands and in the hands of M/s Bangalore Sites and Estates inasmuch as he had offered a sum of Rs.68,75,000/- at Rs.34,37,500/- each for the assessment years 2003-04 and 2004-05 and M/s Bangalore Sites and Estates had offered a sum of Rs.56,00,000/-for tax. As, in the opinion, the amount of Rs.7,50,000/- figuring in the seized material was not addressed by the appellant, the AO sought further clarification from the appellant. The appellant vide his reply dated 4/8/2011 that the AO had made notings at pages 89 and 92 of the said seized material that the gross amount involved in the transaction was Rs.1.24 Lakhs out of which an amount of Rs.90.00 Lakhs was mentioned as ‘Paid from PES Office” at page 92 against the appellant’s name consisting of cash payment of Rs.77,50,000/- and a payment of Rs.12.50 Lakhs by postal order and that, if the amount of Rs.12.50 Lakhs received through the postal order is deducted from Rs.90.00Lakhs the amount of Rs.77.50 Lakhs stood answered as having been received by him in cash. Therefore, according to the appellant, the sum of Rs.1.24 Crores offered to tax in all included the sum of Rs.77.50 Lakhs sought to be brought to tax in the

reassessment order following the CIT's order u/s 263 of the Act.

3.2 However, according to the AO, the appellant's explanation did not address the question as to whether the sum of Rs.77.50 Lakhs had suffered tax either in the assessments of the firm (M/s Bangalore Sits and Estates) for the assessment years 2003-04 and 2004-05 or in the assessment of the appellant for the assessment year 2004-05. Holding thus, the AO brought to tax the sum of Rs.77.50 Lakhs as the appellant's money u/s 69A of the Act".

5. Being aggrieved, the assessee carried the matter in appeal before the ld.CIT(A) and the ld.CIT(A) sustained part of addition of Rs.8.75 Lakhs out of total addition made by the AO of Rs.77.50 Lakhs and deleted the balance addition of Rs.68.75 Lakhs.

6. Now the assessee is in appeal before us for the part addition sustained by the ld. CIT(A) and the revenue is in appeal for the relief granted by the ld. CIT(A).

6.1 It was submitted by the ld. AR of the assessee that on pages 24 & 25 of the paper book are the seized papers on the basis of which the present addition was made and partly confirmed by the ld. CIT(A). At the outset, he has drawn our attention to page no.24 of the paper book, wherein against the name of the assessee, the total amount mentioned is Rs.124.00 Lakhs comprising of Rs.30.00 Lakhs being paid to the Bangalore Sites and Estates Rs.90.00 Lakhs being paid to PES Office

and Rs.4.00 Lakhs paid by Secretary Office. Thereafter, he has drawn our attention to page no.25 of the paper book and pointed out that on this page two amounts are mentioned against the name of the assessee being Rs.77.50 Lakhs in cash and Rs.12.50 Lakhs by pay order. The total of these two amounts comes to Rs.90.00 Lakhs and it was the submission of the Ld. AR of the assessee that total of these two amounts is already included in the total amount of Rs.124 Lakhs noted in page no.24 of the paper book. Further, he has drawn our attention to page no.38 to 41 of the paper book where a remand report submitted by the AO before the ld. CIT(A) is available. It was pointed out that on page no.2 of the remand report, the AO has noted that as per seized material the total amount received by the assessee is Rs.124.00 lakhs and if Rs.77.50 Lakhs is considered separately, the income offered of Rs.68.75 Lakhs together with Rs.77.50 Lakhs would exceed Rs.124.00 Lakhs and on this basis, it was stated by the DCIT, Central Circle-4(1), Bangalore, who has done the original assessment u/s 143(3) of the IT Act, that the assessee's contention is correct. It was the submission of the ld. AR of the assessee that in the light of these facts of the present case, the amount of Rs.77.50 Lakhs noted on page-25 of the paper book which is already included in the amount of Rs.124.00 Lakhs noted at page-25 of the paper book and this amount is already offered to tax by the assessee although, in two assessment years i.e partly in the present assessment year and partly in the assessment year 2007-08. At this juncture, it was pointed out by the Bench, that it is settled law that income should be

taxed in correct year and therefore, when the registry was affected in the present year, how it can be accepted that part amount was received by the assessee in the later year and it may be that it should be omitted from the taxable income of that year and tax paid in that year against that income may be adjusted against the income which is being added in the present year. In reply, learned AR of the assessee agreed to this proposition.

7. Regarding the part addition of Rs.8.75 lakhs confirmed by the ld. CIT(A) he submitted that it is noted by the AO at page 2 of the remand report that as per page no.92 of the seized material available at page no.24 of the paper book, total payment Rs.124.00 Lakhs was received by the assessee against sale of land and the payment made through cheque of Rs.2,25 Lakhs was to the firm and the same was offered to tax by that firm. It was submitted that the assessee being partner holding 25% in the firms share i.e 1/4th of the total amount of Rs.2,25 Lakhs is Rs.56.00 Lakhs approximate which was offered in the hands of the firm and the balance of Rs.68.75 Lakhs was offered by the assessee in the assessment year 2006-07 on receipt basis and therefore, no further addition is justified in the present year.

8. As against this, the ld. DR of the revenue supported the assessment order. He also submitted that the matter may be restored to the file of the AO for a fresh decision.

9. We have considered the rival submissions. We find that as per page no.24 of the paper book, out of the total sale consideration of **Rs.4,57,50,000/-**, the amount stated to have been received by the assessee is Rs.124.00 Lakhs and this amount of Rs.124.00 Lakhs includes the amount of Rs.90.00 Lakhs break-up of which is available on page 25 of the paper book which comprises of Rs.77.50 Lakhs in cash and Rs.12.50 Lakhs by way of pay order. Under these facts, in our considered opinion, total amount that can be taxed in the hands of the assessee should not exceed the amount of cash received Rs.77.50 Lakhs. Out of this amount of Rs.77.50 Lakhs, the Id. CIT(A) has confirmed an addition of Rs.8.75 Lakhs and in the facts of the present case, we do not find any infirmity in the order passed by the Id.CIT(A) on this aspect. The balance amount of Rs.68.75 Lakhs has been offered to tax by the assessee to the extent of 50% in the present year and the balance 50% for the assessment year 2006-07. In our considered opinion, when the sale deed was executed in the present year, it is not acceptable that the balance amount was received by the assessee in the assessment year 2006-07, particularly when no cogent evidence in respect of his claim was produced before us or before any of the authorities below. Therefore, we hold that the amount of Rs.34,37,500/- should also be taxed in the present year in addition to the addition upheld by the Id.CIT(A) of Rs.8.75 Lakhs. In this manner, we uphold an addition of

Rs.43,12,500/- out of the addition made by the AO of Rs.77.50 Lakhs. The remaining amount of Rs.34,37,500/- is already offered to tax by the assessee in the present year. Therefore, to this extent, no further addition can be made and hence, this much addition is being deleted out of the total addition made by the AO of Rs.77.50 Lakhs and partly deleted by the Id. CIT(A). We would also like to observe that if the assessee has disclosed income in the assessment year 2006-07 of Rs.34,37,500/- which is being taxed in the present year and if the assessee can establish that both are same, then such income should not be taxed in the assessment year 2006-07 and if the tax has been paid by the assessee in that year, credit for the same be allowed in the present year against the addition being upheld by us of Rs.34,37,500/- from the date of payment of tax for the assessment year 2006-07.

10. In the result, the appeal of the assessee is dismissed, whereas the appeal of the revenue is partly allowed in the terms indicated above.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(SUNIL KUMAR YADAV)
JUDICIAL MEMBER
Bangalore:
D a t e d : 17-06-2016
am*

Sd/-
(A.K. GARODIA)
ACCOUNTANT MEMBER

Copy to :

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

By order

AR, ITAT, Bangalore

1.	Date of Dictation
2.	Date on which the typed draft is placed before the dictating Member
3.	Date on which the approved draft comes to the Sr. P. S.
4	Date on which the order is placed before the dictating Member for pronouncement
5.	Date on which the order comes back to the Sr. P.S.
6.	Date of uploading the order on website
7.	If not uploaded, furnish the reason for doing so.....
8.	Date on which the file goes to the Bench Clerk
9.	Date on which order does for Xerox & endorsement
10.	Date on which the file goes to the Head Clerk.....
11	The date on which the file goes to the Assistant Registrar for signature on the order.....
12	The date on which the file goes to the dispatch section for dispatch of the Tribunal order.....
13	Date of dispatch of order.....

