

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

SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

I.T.A No.1587/Bang/2014
(Assessment Year : 2008-09)

Shri. M. Nagesh,
No.4, Dhruva Nilaya, Old Police Station Road,
Old Bank Colony, Bengaluru 560 062 .. Appellant
PAN : ACWPN0559M

v.

Income-tax Officer,
Ward – 10(2), Bengaluru .. Respondent

Assessee by : Shri. Raghavendra Chakraborty, CA
Revenue by : Dr. P. K. Srihari, Addl.CIT

Heard on : 01.06.2016
Pronounced on : 10.06.2016

ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

In this appeal filed by assessee, following grounds have been raised:

1. The order of the learned Commissioner of Income Tax (Appeals) – LTU, Bangalore, insofar as it is against the appellant, is opposed to law, weight of evidence, facts and circumstances of the case.
2. The learned Commissioner of Income Tax (Appeals) is not justified in confirming all the additions made by the Id. Assessing Officer under the facts and circumstances of the case.
3. The order of the Id. Commissioner of Income Tax (Appeals) is not justified the same was concluded without providing opportunity to the appellant and thereby defeating the basic principles of natural justice and equity under the facts and circumstances of the case.
4. The Id. Commissioner of Income Tax (Appeals) grossly erred in not appreciating and considering the letter given by the appellant dt. 29.10.2012 addressing the Commissioner of Income Tax (Appeals) – V, Bangalore requesting for providing an opportunity of being heard but proceeded to dismiss the appeal of the appellant against the principles of natural justice and equity and accordingly liable to be quashed under the facts and circumstances of the case.
5. Without prejudice to the above the appellant denies himself liable to be assessed on a total income of Rs.44,61,690/- as against the declared income of Rs.1,75,000/- under the facts and circumstances of the case.
6. The Id. Commissioner of Income Tax (Appeals) – LTU, Bangalore is not justified in confirming the additions made in respect of Purchase of Immovable Property amounting to Rs.31,50,000/- under the facts and circumstances of the case.
7. The Id. Commissioner of Income Tax (Appeals) – LTU, Bangalore is not justified in confirming the additions made in respect of Unsecured Loans amounting to Rs.9,12,098/- under the facts and circumstances of the case.
8. The Id. Commissioner of Income Tax (Appeals) – LTU, Bangalore is not justified in confirming the additions made in respect of Sundry Creditors amounting to Rs.1,16,341/- under the facts and circumstances of the case.
9. The Id. Commissioner of Income Tax (Appeals) – LTU, Bangalore is not justified in confirming the additions made in respect of deduction claimed under Chapter – VI-A amounting to Rs.1,00,000/- under the facts and circumstances of the case.
10. The Id. Commissioner of Income Tax (Appeals) – LTU, Bangalore is not justified in confirming the additions made in respect of VAT Payable amounting to Rs.8,250/- under the facts and circumstances of the case.
11. Without prejudice to the above appellant denies himself liable to be assessed against the additions made by the Id. Assessing Officer and confirmed by the Id. Commissioner of Income Tax (Appeals) – LTU, Bangalore.
12. Without prejudice to the right to seek waiver of interest as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies herself liable to be charged to interest under section 234B & 234C of the Income Tax Act under the facts and circumstances of the case. Further the levy of interest under section 234B & 234C of the Act is also bad in law as the period, rate, quantum and method of calculation adopted on which interest is levied are not discernable and are wrong on the facts of the case.
13. For the above and such other grounds that may be urged or raised during the course of appellate proceedings before the Hon'ble Income Tax Appellate Tribunal, Bangalore the appellant prays that the appeal may be allowed for advancement of substantial cause of equity and justice.

02. One of the grounds raised by assessee is that CIT (A) had not provided him adequate opportunity for representing his case, thereby violating the principles of natural justice.

03. Facts apropos are that assessee, a contractor, had filed his return declaring income of Rs.1,75,000/-, for the impugned assessment year. During the course of assessment proceedings in response to notices u/s.143(2) and 142(1) of the Income-tax Act, 1961 ('the Act' in short), Shri. K. Ramachandra, authorised representative for the assessee appeared. However no explanation was given by the assessee with regard to various information sought by the AO which inter alia included source for purchase of immovable property for Rs.35,50,000/-, confirmation for unsecured loan of Rs.9,12,098/-, confirmation for sundry creditors of Rs.1,16,431/- and proof for VAT liability of Rs.8,250/-. Further as per the AO, assessee did not produce any evidence for claim of Chapter VIA deduction of Rs.1,00,000/-. Assessment was completed u/s.144 of the Act, making additions for all the above.

04. Aggrieved assessee moved in appeal before the CIT (A). CIT (A) noted that assessee did not enter appearance despite notice having been served. As per the CIT (A), more than two notices were sent to the

assessee and one of them was returned with a postal remark that no such person existed. CIT (A) held that assessee was not interested in pursuing the case. He confirmed the additions.

05. Ld. AR submitted that assessee was not given a proper chance to explain its case before the CIT (A). As per the Ld. AR, no notice of any sort was ever received by the assessee. An affidavit of Shri. K. Ramachandra, authorised representative, was also filed by the Ld. AR, which inter alia stated that the address for communication in the appeal filed before the CIT (A) was G. R. Associates, but no notice was served in the said address.

06. Per contra, Ld. DR supported the orders of authorities below.

07. We have perused the materials and heard the rival contentions. Affidavit filed by the representative of the assessee states that the address for service of notice mentioned in Form.35, filed by the assessee was that of the authorised representative. Contention of the Ld. AR was that no such notice was ever received. It is one of the basic tenets of justice that no man should be punished unheard. Rule 'audi alteram partem' has to be adhered to in law as well as in spirit. I am of the opinion that the circumstances call for a revisit by the CIT (A). We, therefore, set aside the

orders of the CIT (A) and remit the matter back to him for fresh consideration. Assessee shall ensure that he is properly represented before the CIT (A).

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

Order pronounced in the open court on 10th day of June, 2016.

Sd/-

(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