

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES: "A", BANGALORE**

**BEFORE SHRI N.V.VASUDEVAN, VICE PRESIDENT  
AND  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.1168 (Bang)/2018  
(Assessment Year: 2001-02)**

Shri Venkatesh, K.I.  
No.323, 14th Cross, 2<sup>nd</sup> Block, R.T.Nagar,  
Bangalore-560 032  
PANNo.AACPI3934R

Appellant

**Vs**

The Asst. Commissioner of Income Tax,  
Circle-6(3)(1),  
Bangalore

Respondent

**Appellant by : Shri R. Chandrashekar Advocate  
Revenue by : Shri Manjeet Singh, Addl.CIT**

**Date of hearing : 09-07-2020**

**Date of pronouncement : 10-07-2020**

**ORDER**

**PER G. MANJUNATHA, AM**

This appeal filed by the assessee is directed against the order of the ld. CIT (A)-6, Bangalore dated 30-11-2017 and it pertains to AY 2001-02. The assessee has raised the following grounds of appeal:

1. The learned Commissioner of Income tax (Appeals) erred in confirming the order of assessment in part, though the order of assessment is opposed to the decision of Hon'ble Supreme Court rendered in the case of Kalyan Kumar Ray V/s. Commissioner of Income tax, reported in 191 ITR 634.

2. The learned Commissioner of Income tax (Appeals) erred in confirming the addition of Rs.500,000/-, the demand draft purchased by the M/s. Sangameshwara Enterprises, Gulbarga in the name of Excise Commissioner, on the ground that, no PAN number is quoted in the confirmation letter, though copy of the assessment order of the said firm is filed.

3. The learned Commissioner of Income tax (Appeals) erred in confirming the addition of Rs.5,00,000/-, the demand draft purchased by Mr. Nagaraj solely on ground that, PAN details are not available.

4. The learned Commissioner of Income tax (Appeals) erred in confirming the addition of Rs.5,00,000/-, the demand draft obtained by N.R.Veerappa in the name of Excise Commissioner, solely on ground that, PAN details are not available, though the PAN is available in the copy of confirmation filed.

5. The learned Commissioner of Income tax (Appeals) erred in confirming the addition in respect of DD's purchased by U.G.Rajput. Hubli Solely on the ground that, PAN Details are not available.

6. The learned Commissioner of Income tax (Appeals) erred in confirming the addition in respect of B.Manik Rao, though the said transaction is a double entry, one in the name of Sangameshwara Enterprises and the other B.Manik Rao, who is the partner in the same firm and there was only one demand draft bearing No.7074724 ii.../e<sup>7</sup> dated 03.05.2000 issued by Vyasya Bank, Bidar for Rs.5,00,000/-.

7. The learned Commissioner of Income tax (Appeals) failed to consider that, there were no credits in the books of accounts or in bank accounts, in the name of the Appellant, in order to attract the provisions of section 68 of the Income tax Act, nor the appellant made any investment to attract the provision of section 69 or 69 A of the Income tax Act.

8. The Appellant has discharged the burden by providing confirmation letters and in absence of denial of the purchase of demand drafts from the banks by above persons, no addition is called for in appellant's case.

9. The order of the learned Commissioner of Income tax (Appeals) is opposed to law and no adverse finding is held in respect to confirmation letters, the additions are not sustainable.

10. Sustenance of additions in part by the learned CIT (A) is opposed to decisions of the Hon'ble High Court and Supreme Court.

11. The levy of interest u/s 234A, 234B and 234C are not warranted.

Appellant craves leave of the Hon'ble Tribunal to add/modify/delete any other ground or grounds at the time of hearing”.

2. The brief facts of the case are that the assessee is an Excise Contractor, filed his return of income for the AY 2001-02 declaring total income of Rs.65,800/-. The case was re-opened on the basis of information received from the ITO, Survey, Mangalore and the assessment has been completed u/s 143(3) r.w.s.147 of the IT Act, 1961 (Act) on 28-03-2005 determining the total income at Rs1,43,28,500/-, after making addition of Rs.1,42,62,676/- towards the demand drafts obtained and given to Excise Commissioner for bidding arrack auction. The assessee carried the matter in appeal before the first appellate authority and the ld.CIT (A) has deleted the additions to the extent of Rs.98,12,700/- and confirmed the additions to the extent of Rs.44,50,000/-. The assessee as well as the revenue had filed further appeal before the Tribunal against the order of the ld. CIT (A). The Tribunal vide its order dated 06-02-2015 in ITA No.1080 (B)/2012 has granted partial relief to the assessee and has upheld the findings of the ld. CIT (A) on the additions to the extent of Rs.28,99,996/- and remitted the issue back to the file of the AO for examining the case afresh in respect of balance addition of Rs.68.00 lakhs. During the second round of litigation, the AO has confirmed the addition of Rs.68.00 lakhs in respect of DD taken from certain parties on the ground that the assessee had failed to submit the confirmations and has also failed to prove the source of income in the hands of the persons who gave DD in favour of the Excise Commissioner on behalf of the assessee. Against this order, the assessee has filed an appeal before the ld. CIT (A). The ld. CIT (A) for the detailed reasons recorded in the appellate order dated 30-11-

2017 has allowed relief to the extent of Rs.46.00 lakhs out of total addition of Rs.68.00 lakhs and the balance addition of Rs.22.00 lakhs in respect of 5 persons has been confirmed on the ground that although, assessee has filed confirmation letters but has failed to mention Pan numbers in respect of those parties, thereby failed to prove the source.

3. Being aggrieved by the ld.CIT (A)'s order, the assessee is in appeal before us.

4. The ld. AR for the assessee submitted that the ld.CIT (A) erred in confirming the addition to the extent of Rs.22.00 lakhs in respect of 5 parties on the ground that no pan numbers were given in their confirmation letters, ignoring the specific direction of the ITAT that, if the assessee is able to show the confirmation and the related DD numbers and source of raising the amount, then the additions would not stand. The ld. AR submitted that although, the AO has stated that the assessee has not submitted any confirmation letters, but fact remains that the assessee has filed confirmation letters from all the parties and explained the source of income. He further argued that most of the DDs given for bidding purpose has been returned back to the persons after the auction without recording the same in the books of accounts of the assessee and hence, the provisions of sec.68 or 69A of the Act has no application to the impugned amounts.

5. The ld. DR on the other hand, strongly supported the order of the ld. CIT (A) and submitted that even during second round of litigation the assessee has failed to file necessary confirmation along with the pan numbers of the persons who gave DD in favour of the

assessee which is evident from the fact that the AO and the Id., CIT (A) has recorded categorical finding that no details has been furnished to prove the source.

6. We have heard both parties, perused the material on record and have gone through the orders of the authorities below. In the first round of litigation, the ITAT had restored the issue to the file of AO with a specific direction that if the assessee is able to show confirmation towards the sum of Rs.68.00 lakhs, the details of DD and source for raising the amounts and if the DD numbers tally with the list given by the AO at page-8 of his order and provide details of account from which the money for DD were drawn, then in our opinion, additions would not stand. If we go through the observations of the Tribunal, it is very clear that the Tribunal has concluded the issue of applicability of provisions of sec.68 or 69A of the Act, without allowing further scope to challenge the issue. Therefore, we are of the considered view that, there is no merit in the arguments of the Id. AR of the assessee that the provisions of sec.68 or 69A of the Act has no application to the impugned amounts. As regards the additions made towards the DDs taken from certain parties, on perusal of confirmation letters filed by the assessee before the AO, the copies of which are made available to us in paper book, we find M/s Sangameshwara Enterprises from whom a sum of Rs.5.00 lakh has been taken by the assessee was confirmed that they have issued DD in favour of the assessee and said DD has been taken from M/s Vysya Bank, Bidar Branch. We further noted that M/s Sangameshwara Enterprises is also assessed to income tax at Gulbarga. Therefore, we are of the considered view that, no additions could be made in respect of DD taken from M/s Sangameshwara Enterprises. As regards amount received from Sheri. Negara,

although the assessee has filed confirmation letter along with affidavit from the person who gave the DD, but fact remains that the details of pan numbers and income tax assessment of Shri Nagaraj has not been furnished so as to ascertain whether Shri Nagaraj is having sufficient source of income to explain the DD issued on behalf of assessee. From the above, it is clear that addition made towards DD taken from Shri. Nagaraj to the extent of Rs.5.00 lakhs remains unexplained. Therefore, we are of the considered view that there is no error in the findings recorded by the AO as well as the Id.CIT (A) to confirm the addition and hence, a finding of the Id. CIT (A) is upheld. Similarly, in respect of DD received from Shri N.R.Veerappa amounting to Rs.5.00 lakhs, on a perusal of confirmation letter issued by assessee, we find that the party has confirmed DD amount along with his pan number and said DD was returned back to the person immediately after the bidding. Therefore, we are of the considered opinion, that the assessee has satisfied the conditions as per the direction of ITAT to establish the source of income and hence, addition made towards DD taken from Shri N.R.Veerappa amounting to Rs.5.00 lakhs is unwarranted and accordingly, we direct the AO to delete the addition made towards DD received from Shri N.R.Veerappa. As regards the DD taken from Shri U.G.Rohit (U.G.Rajput), the assessee has filed confirmation letter from the party but failed to mention his pan number to prove that he is having sufficient source of income to establish his capacity to issue DD amounting to Rs.2.00 lakhs in favour of the Excise Commissioner. Further, the Id. AR for the assessee admitted that Shri U.G.Rohit is not assessed to income tax. From the above, it is clear that the assessee has failed to prove the DD taken in the name of Shri U.G.Rohit, and hence, addition made to that extent is hereby confirmed. In so far as DD taken in the name of Shri V.B.Manik Rao,

on perusal of confirmation along with affidavit filed by him, we find that the party has explained the source of income for purchase of DD out of loan taken from Shri Nagaraj Rao Chidri, through bank and Shri Nagaraj is assessed to income tax at ITO, Ward-1, Gulbaraga. From the above, it is clear that addition made for DD received from Shri V.B.Manik Rao, of Rs.5.00 lakhs stands explained in the light of the findings of the Tribunal Therefore, we are of the considered opinion that once the assessee has given the details of income tax assessment of person who gave the DD, merely for the reason that pan number is not furnished, no addition could be made. Hence, we direct the AO to delete the addition made towards DD taken in the name of Shri V.B.Manik Rao. To sum up, out of additions sustained by the ld. CIT (A) of Rs.22.00 lakhs, the assessee gets a relief to the extent of Rs.15.00 lakhs towards Demand Drafts received from M/s Sangameshwaran Enterprises, Shri N.R.Veerappa and Shri V.B,Manik Rao. The balance amount of Rs.7.00 lakhs being amount received from Shri Nagaraj and Shri U.G.Rohit is still unexplained and hence, we confirm the additions made by the AO towards Demand Drafts claimed to have received from above two parties.

7. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 10-07-2020.

**(N.V.VASUDEVAN)**  
**VICE PRESIDENT**

Place: Bangalore  
Dated: 10-07-2020

**\*am**

**(G.MANJUNATHA)**  
**ACCOUNTANT MEMBER**

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A)
- 5.DR
- 6.Guard File

By Order  
Asst. Registrar