

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B”BENCH: BANGALORE**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.2660/Bang/2019
Assessment Year: 2014-15

Sri Venkataramanappa Ravikumar # 600, 8 th Main, 4 th B Cross RPC Layout, Vijayanagar Bengaluru 560 040. PAN NO : ABDPR5035J	Vs.	ACIT Circle-3(2)(1) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Srinivasan, A.R.
Respondent by	:	Shri Muzaffar Hussain, D.R.

Date of Hearing	:	06.04.2021
Date of Pronouncement	:	14.07.2021

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The appeal filed by the assessee is directed against the order dated 13.11.2019 passed by Ld. CIT(A)-3, Bengaluru and it relates to the assessment year 2014-15. The assessee is aggrieved by the decision of Ld. CIT(A) in upholding the addition of Rs.6.07 Crores made by the A.O. as unexplained credits in the bank accounts of the assessee.

2. The facts relating to the issue are stated in brief. The assessee is carrying on the business of trading in Ceramic Tiles and other Hardware items under the name of M/s. Moonlight Ceramics.

The assessee is also carrying on the business in Real Estate and earns commission income from doing liaison works. The assessee filed its return of income for the year under consideration declaring a total income of Rs.39.91 lakhs. The revenue carried out a survey operation u/s 133A of the Income-tax Act, 1961 ['the Act' for short] on 8.9.2016 in the hands of the assessee. During the course of Survey operations, it was noticed that the assessee was maintaining two savings bank accounts in M/s. Janata Seva Co-operative Bank Ltd., Vijayanagar Branch, Bengaluru and they were not disclosed in the books of accounts. In the statement taken during the course of survey, the assessee submitted that these bank accounts were used in the business of doing liaison works in his real estate business such as change of land use, conversion of land from agriculture to residential purposes, taking pan approval from local authorities. He also admitted that the receipts and expenses from this business were not reflected in his books of accounts.

3. The A.O. noticed from both the bank accounts that following aggregate amounts have been deposited during the year under consideration:

Cash deposit	-	Rs.4,10,63,026/-
Cheque deposit	-	<u>Rs.2,72,95,445/-</u>
Total	-	<u>Rs.6,83,58,471/-</u>

The AO also noticed that the assessee has withdrawn aggregate amounts of Rs.6,33,12,130/- from the above said bank accounts and accordingly the closing balance as on 31.3.2014 stood at Rs.50,46,341/-. Though the assessee has stated that these bank accounts were used for the purpose of doing liaison works, yet, the A.O. observed that the assessee has not furnished any proof in support of the activities mentioned above. Before A.O., the assessee requested for assessing peak credit balance of the bank accounts

but the same was rejected by the A.O. Accordingly, the A.O. took the view that the deposits made in the bank accounts are unexplained. Accordingly, the A.O. assessed entire cheque deposit of Rs.2,72,95,445/- as unexplained income of the assessee. With regard to the cash deposits, the assessee had produced before the AO certain sale agreements and on the basis of those agreements, the A.O. gave credit of Rs.76.00 lakhs and assessed the balance amount of Rs.3,34,63,026/- as unexplained income of the assessee.

4. The assessee carried the matter before Ld. CIT(A). In the first round, the Ld. CIT(A) dismissed the appeal of the assessee since none appeared before him. The assessee challenged the ex-parte order passed by Ld. CIT(A) by filing appeal before the Tribunal and the ITAT, vide its order dated 4.6.2018 passed in ITA No.2901/Bang/2017, restored the matter back to the file of Ld. CIT(A). Accordingly, the impugned order came to be passed by Ld. CIT(A).

5. Before Ld. CIT(A), the assessee reiterated its contentions that the transactions in these bank accounts represented business transactions in his real estate business. In the alternative, the assessee claimed that peak credit balance should have been assessed by the A.O. The peak credit balance worked out by the assessee was Rs.94,13,506/-. The Ld. CIT(A) did not accept the contentions of the assessee, since the assessee has failed to furnish evidences relating to his business transactions. He also did not accept the peak credit theory canvassed by the assessee. The Ld. CIT(A) also took the view that there might be violation of provisions of section 40(A)(3) of the Act and Explanation 1 to Section 37(1) of the Act. Accordingly, the Ld. CIT(A) confirmed the addition made by the A.O. Aggrieved, the assessee has filed this appeal before us.

6. The Ld A.R submitted that the assessee has all along has stated that the two bank accounts referred above, have been used for the purpose of his real estate business including the business of doing liaison works. He submitted that the AO did not accept the explanation of the assessee in this regard. He submitted that the transactions in the bank accounts would show that there were deposits and withdrawals alternatively. In fact, the AO has given credit to the tune of Rs.75.00 lakhs accepting the explanation of the assessee that it represented the transaction in real estate business. He submitted that the assessee has carried out the liaison works on behalf of others and in that process, he has received money from them and spent it on behalf of them. Hence the entire deposits cannot be taken as the income of the assessee. He submitted that the assessing officer has accepted the fact that the assessee is carrying on real estate business also. Hence, the tax authorities are not justified in presuming that the entire deposits belong to the assessee. He submitted that the income element involved in those deposits alone may belong to the assessee. Since there were continuous transactions of deposits and withdrawals, as an alternative, the assessee has requested the tax authorities to assess "peak credit". He submitted that the peak credit worked out to Rs.94.13 lakhs. Accordingly he prayed that the AO may be directed to assess the peak credit amount.

7. The Ld D.R, on the contrary, submitted that the claim of peak credit has been rejected by the Ld CIT(A). He submitted that the peak credit may be accepted only if the assessee had disclosed truly and fully the source of deposits and also proved that the money withdrawn was deposited back. In this regard, the Ld D.R placed his reliance on the decisions rendered by Hon'ble High Court of Allahabad in the case of Bhaiyalal Shyam Behari (2005)(276 ITR

38), Vijay Agricultural Industries (2007) (294 ITR 610)(All). The Ld D.R also placed his reliance on the decision rendered by Hon'ble Delhi High Court in the case of CIT vs. D.K.Garg (2018)(404 ITR 757). The Ld D.R submitted that the assessee has failed to prove the sources of deposits and also the purpose of withdrawals. Further, he has failed to show that the money so withdrawn was re-deposited. Accordingly the Ld D.R submitted that the claim of peak credit should be rejected. He further submitted that the assessee has failed to explain the bank deposits and hence the order passed by Ld CIT(A) should be upheld.

8. We heard rival contentions and perused the record. We notice from the assessment order that the AO has observed as under with regard to the business activities carried on by the assessee:-

"3. Note on business activities

The assessee is carrying on the business of trading in ceramics, tiles and other hardware items. The business is carried on in the name of M/s. Moonlight Ceramics which is a proprietary concern. The assessee has also carried on the business of real estate and earns commission from liasoning works. The assessee submitted that he is engaged in developing real estate projects at 1) Mahalakshmi enclave, Sy.No.74, Yeshwantpura, Hobli, Manganahalli Village, Bangalore North, 2) Nakshatra Residency Sy.No.5, Sulikere, Kengeri Hobli, Bangalore South and 3) Amoghavarsha Premium Residency Layout Kenchanapura Village, Kengeri Hobli, Bangalore South."

Hence, the AO has acknowledged that the assessee has earned commission income from undertaking liaison works. We also refer to some of the question and answers from the statement taken from the assessee at the time of survey operations, which have been extracted by the AO in the assessment order:-

“Q21. I am showing the Saving Bank account Nos.25532 & A/c 24777 of Jantha Seva Co-operative Bank Ltd., Vijayanagar Branch in your name (i.e. Ravi Kumar V) Please comment?”

Ans. The Saving account numbers 25532 and A/c 24777 of Janatha Seva Co-operative Bank Ltd., Vijayanagar Branch belong to me. They were opened by me in F/Y 2012-13 for my business purpose of liasoning, such as change of land use, conversion of land from Agriculture to residential purposes, taking plan approval from local authorities. The receipts and expenses from this business were not shown in my Books of accounts.

Q22. Please explain for whom you have carried out liasoning works?

Ans. I carried out work for Builders like Brigade Builders Pvt. Ltd., Shobha Developers, Purvankara Developers, Land bankers. I will furnish the complete details in two days.

Q23. Are these accounts reflected in your book of accounts?

Ans. No. These accounts are not reflected in my books of accounts. I don't keep any record/Books of accounts of my business transaction for the liasoning work done through Janata Seva Co-operative bank accounts (vide Accounts No.25532 & A/c 244777).”

In reply to other questions also, the assessee has stated that the transactions in both the bank accounts reflect his real estate business transactions. It is further stated that the transactions relating to liaison works were not recorded in books of account and hence these two bank accounts have not been reflected in his books.

9. Thus, we notice that the assessee has maintained his stand that the transactions in these bank accounts relate to liaison works undertaken by him in his real estate business, such as change of land use, conversion of land from agriculture to residential purposes, taking pan approval from local authorities. Since the assessee was doing liaison works on behalf of others, it was

contended that the entire deposits cannot be taken as his income. We also notice that the AO has accepted explanations to the tune of Rs.75.00 lakhs out of the cash deposits found in these bank accounts on the basis of a cancelled sale agreement. This fact also fortifies the stand of the assessee that the transactions found in these two bank accounts relate to his real estate business.

10. We notice that the AO has assessed the entire amount of deposits as unexplained income of the assessee for want of evidences. However, considering the facts discussed above, it is quite natural that the assessee may not be keeping records, since the transactions were carried out on behalf of others. Hence, we are of the view that the explanation of the assessee that the transactions in these two bank accounts relate to his real estate business cannot be rejected altogether. On the contrary, the observations made by the AO, the replies given by the assessee would suggest that the explanations given by the assessee may be accepted. In that case, entire deposits could not be assessed as income of the assessee. Only the income element involved in the deposits requires to be assessed as income of the assessee. In these business transactions, the assessee should be earning commission and brokerage income. However, we notice that the assessee has not stated anything about his rate of commission/brokerage. Considering the fact that the income element in the case of liaison works is usually high, we are of the view that the income of the assessee may be estimated @ 20% of the addition made by the AO relating to unexplained deposits. In our considered view, the same would be reasonable in the facts and circumstances of the case and further the same would also meet the ends of justice.

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11. Since we have held that the transactions found in the bank accounts may relate to the real estate business carried on by the assessee, the alternative contention of addition of peak credit need not be considered.

12. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to compute income of the assessee @ 20% of the addition made and assess the same in the place of the addition made by him.

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

Order pronounced in the open court on 14th Jul, 2021

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 14th Jul, 2021.
VG/SPS

Copy to:

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

By order

Asst. Registrar,
ITAT, Bangalore