

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

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.1724/Bang/2017
Assessment Year: 2007-08

Shri Ananth Guruprasad No.392, 8 th Main, AECS Layout 'B' Block, Singasandra Marathahalli Post, Begur Hobli Bengaluru 560 068 PAN NO : AFMPP0970K	Vs.	ACIT Circle-5(3)(1) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Smt. Sinitha Chatterjee, A.R.
Respondent by	:	Shri Sankar Ganesh K., D.R.

Date of Hearing	:	28.10.2021
Date of Pronouncement	:	01.11.2021

ORDER

PERB.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 10.4.2017 passed by Ld. CIT(A)-5, Bengaluru and it relates to the assessment year 2007-08. The assessee is aggrieved by the decision of Ld. CIT(A) in sustaining the addition made by th A.O. u/s 69 of the Income-tax Act,1961 ['the Act' for short] to the extent of Rs.14.10 lakhs.

2. The facts relating to the case are stated in brief. The assessee is an employee of Motorola India Pvt. Ltd. During the year under

consideration, the assessee filed return of income declaring total income of Rs.17,29,811/-, which included income of Rs.20.93 lakhs declared under the head "Income from salary". During the course of assessment proceedings, the A.O. noticed that the assessee has constructed a residential property. From the valuation report submitted by the assessee, he noticed that the value of property was determined at Rs.68.10 lakhs including the value of land. The assessee had availed loan of Rs.30 lakhs. According to the A.O., the assessee did not furnish any detail for the balance amount of Rs.38.10 lakhs and hence, the A.O. assessed the same as unexplained investment u/s 69 of the Act.

3. Before Ld. CIT(A), the assessee submitted that the valuation of the property was determined at Rs.68.10 lakhs on the following basis:-

Value of land	-	Rs.24,00,000/-
Cost of construction	-	Rs.44,10,000/-
Total	-	Rs.68,10,000/-

4. It was submitted that the land was purchased on 9.12.2002 for a consideration of Rs.4,80,000/- and the market value in 2006 was adopted in the valuation. Accordingly, it was submitted that the cost of construction of Rs.44.10 lakhs alone is required to be explained. It was submitted that the assessee had obtained loan of Rs.30 lakhs and the construction was carried out in 2 years namely in the years relevant to assessment years 2006-07 & 2007-08. It was submitted that the balance amount of Rs.14.10 lakhs was spent out of his savings.

5. In view of the above explanation given by the assessee, the Ld. CIT(A) deleted the disallowance relating to land amounting to Rs.24 lakhs. Accordingly, he confirmed the balance amount of

Rs.14.10 lakhs on the reasoning that the assessee did not prove sources for the salary savings of Rs.14.10 lakhs. The assessee has filed this appeal challenging the above decision rendered by the Ld. CIT(A).

6. The Ld. A.R. submitted that the assessee has carried out construction of the property during the years relevant to the assessment years 2006-07 & 2007-08. She submitted that the A.O. reopened the assessment of assessment year 2006-07 and made an addition of Rs.5.66 lakhs towards difference in cost of construction disbelieving the claim of the assessee that a sum of Rs.10.25 lakhs was used by the assessee for construction of the property out of his own savings during the year relevant to the assessment year 2006-07. The A.O. also estimated the cost of construction on the basis of market value at Rs.60 lakhs. Since the assessee had disclosed Rs.44.10 lakhs as cost of construction. The A.O. assessed the difference of Rs.15.90 lakhs also as income of the assessee.

7. The Ld. A.R. submitted both the additions made by AO in AY 2006-07 was challenged before Ld CIT(A), who has already passed the order in favour of the assessee. The Ld A.R furnished a copy of order dated 10.4.2017 passed by Ld. CIT(A)-5 Bengaluru and in ITA No.1073/SAL/CIT(A)-5/2011-12. The Ld. A.R. submitted that the Ld. CIT(A) has deleted the addition of Rs.15.90 lakhs made by the A.O. holding that the cost of construction should be taken as Rs.44.10 lakhs only. The Ld. CIT(A) also accepted the claim of the assessee that own funds of Rs.10.25 lakhs was used for construction during the year relevant to the assessment year 2006-07. Accordingly, he deleted the disallowance of Rs.5.66 lakhs made by the A.O.

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8. The Ld. A.R. submitted that the Ld. CIT(A) has accepted availability of own funds to the extent of Rs.10.25 lakhs in assessment year 2006-07. The aggregate amount of own funds used by the assessee for construction was Rs.14.10 lakhs, out of which Rs.10.25 lakhs was used in the year relevant to AY 2006-07 and the balance amount of Rs.3.85 lakhs was used in the year relevant to AY 2010-11. Since the assessee is earning salary income of Rs.20 lakhs per annum, the sources for the balance amount of Rs.3.85 lakhs would stand explained.

9. The Ld A.R submitted that, in assessment year 2007-08, the Ld. CIT(A) has confirmed the addition to the extent of Rs.14.10 lakhs without giving set off of Rs.10.25 lakhs, which has already been deleted by him in assessment year 2006-07. Accordingly, she submitted that the claim of the assessee that the sum of Rs.3.85 lakhs was made out of salary savings during the year under consideration during the year under consideration should be accepted. Accordingly she prayed for deletion of the entire addition of Rs.14.10 lakhs.

10. We heard Ld. D.R. who supported the order passed by the tax authorities.

11. Having heard the rival submissions, we are of the view that there is merit in the submissions made by Ld. A.R. There is no dispute with regard to the fact that the cost of construction of the house is Rs.44.10 lakhs. The assessee has availed loan of Rs.30 lakhs from bank and this fact has also been accepted by the tax authorities. The claim of the assessee is that he has invested balance amount of Rs.14.10 lakhs out of his savings. We notice that the assessee has carried out the construction in two years namely in the years relevant to assessment year 2006-07 & 2007-

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08. The assessee has spent aggregate amount of Rs.14.10 lakhs in two years namely Rs.10.25 lakhs in assessment year 2006-07 & Rs.3.85 lakhs in assessment year 2007-08. We notice that the Ld. CIT(A) has accepted the claim of salary savings to the extent of Rs.10.25 lakhs in assessment year 2006-07. Hence, what is required to be explained during the year under consideration is the balance amount of Rs.3.85 lakhs (Rs.14.10 lakhs (minus) Rs.10.25 lakhs). It is also an undisputed fact that the assessee has declared salary income of around Rs.20 lakhs during the year under consideration. Accordingly, we are of the view that there is no reason to disbelieve the claim of the assessee that the above said sum of Rs.3.85 lakhs was spent out of salary savings. In view of the foregoing discussions, we are of the view that the claim of own funds of Rs.14.10 lakhs deserves to be accepted. Accordingly, we modify the order passed by Ld. CIT(A) and direct the A.O. to delete the addition of Rs.14.10 lakhs.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 1st Nov, 2021

Sd/-
(George George K.)
Judicial Member

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

Bangalore,
Dated 1st Nov, 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.