



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF JULY, 2018

PRESENT

THE HON'BLE Dr.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MRS.JUSTICE S SUJATHA

ITA No.94/2016

BETWEEN:

G. SHUBHA DEVI
W/O G SAMBASIVA RAO
AGED ABOUT 59 YEARS
NO 17/2 VANI VILAS ROAD
BASAVANAGUDI
BENGALURU – 560004

... APPELLANT

(BY SRI: S A PADMANABHA, ADV)

AND:

THE INCOME TAX OFFICER
WARD -3 (1), 4TH FLOOR
UNITY BUILDING ANNEXE
BENGALURU – 560027

... RESPONDENT

(BY SRI: K V ARAVIND, ADV)

THIS ITA IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 09/10/2015 PASSED BY THE ITAT IN ITA NO.1139/BANG/2014, FOR THE ASSESSMENT YEAR 2010-11 AND SET ASIDE THE ORDER DATED 01/05/2014 PASSED BY THE COMMISSIONER OF INCOME TAX (APPEALS)-II, BENGALURU IN ITA NO.101/W-3(1)/CIT(A)-II/2012-13, PRAYING THIS HON'BLE COURT TO: 1) TO SET ASIDE THE ORDER DATED 09/10/2015 PASSED BY THE ITAT, BENCH 'C', BENGALURU IN ITA NO. 1139/BANG/2014 IN SO FAR AS ALLOWING THE ASSESSMENT ORDER PASSED BY THE RESPONDENT WITH REGARD TO INCLUSION OF ADDITIONAL INCOME OF RS. 5,07,900/- PRODUCED AS ANNEXURE-C; 2) TO SET ASIDE THE ORDER DATED 01/05/2014 PASSED BY THE COMMISSIONER OF INCOME TAX (APPEALS)-II, BENGALURU IN ITA NO.101/W-3(1)/CIT(A)-II/2012-13 IN SO FAR AS DISALLOWING THE INTEREST ORDERED TO BE CHANGED UNDER SECTION 234A & B OF THE INCOME TAX ACT, 1961 PRODUCED AS ANNEXURE B AND 3) TO ALLOW THIS APPEAL WITH COSTS TO MEET THE ENDS OF JUSTICE.

THIS ITA COMING ON FOR ADMISSION THIS DAY, **VINEET KOTHARI, J.**, DELIVERED THE FOLLOWING:

JUDGMENT

Mr.S A Padmanabha, Adv for Appellant
Mr.K V Aravind, Adv for Respondent.

1. The assessee – G Shubha Devi, wife of Sri.G Sambasiva Rao, has filed this appeal under **Section 260-A**

of the Income Tax Act, 1961, raising the substantial question of law against the order passed by learned ITAT dated **09.10.2015** for the assessment year **2010-11**, partly allowing the appeal of Revenue.

2. The case of assessee before the authorities below was that she made advances to the Agriculturists for purchase of their lands and since the Agreements failed to fructify, the advances made by the assessee to these agriculturists were refunded back to her in cash and since the transactions of the said sale or purchase of agricultural lands in question with agriculturists generally takes place only in cash, therefore, the cash refunded back by these agriculturists were deposited in her bank account which deposit (cash credits) to the extent of Rs.15,07,900/- were not believed by the Assessing Authority as explained and the additions to the declared income were made in her hand under Section 68 of the Act to an extent of Rs.15,07,900/-.

3. The assessee produced the confirmation letters from the said four Agriculturists namely, Channa Shetty, Dhana Shetty, M R Ranga Setty and B V Chandru, for the refund of cash to the extent of Rs.4,50,000/- by each one of them and by M R Ranga Setty for Rs.4,05,000/-, which entire amount received by the assessee in the relevant assessment year 2010-11 was deposited by the assessee in her bank account. Disbelieving the confirmations given in writing by these Agriculturists, the Assessing Authority added back the said deposit in the Bank Account of assessee to an extent of Rs.15,07,900/- in the declared income of the assessee.

4. The observations made in pars 3.2 to 3.4 of the Assessment Order dated **18.02.2013** are quoted below for ready reference:

*“3.2 As per confirmation letters, three persons hail from Hassan and one person from Coorg District. However, it is noticed from the confirmation letters that **all the four letters are similar in content, all the four letters of confirmation have been written in the same***

handwriting and appears to be written by the same persons. In all these confirmation letters, date of transaction is not mentioned as also the date of receipt of advance is not mentioned. **Only repayment of advance in 2009-10, that too in cash is mentioned, in all the confirmation letters.**

3.3. As could be seen from the confirmation letters, the addresses of the first three persons happens to be the same address and **holdings of agricultural lands is also in the same survey No.129.** It is clear from this fact that the assessee has brought in confirmers only after the proceedings started from the Department.

3.4. In order to verify the authenticity of the confirmation letters, a letter, calling for information under section **133(6) was issued to Tahsildar, Belur Taluk, Hassan District,** requesting the Tahsildar to furnish details regarding Agricultural holdings of the following persons:

1. Channa Shetty, S/o Ranga Setty, Madhugatta Village, Bikkodu Hobli, Belur, Hassan

2. Dhana Shetty, ----- do -----

3. M R Ranga Setty S/o M R Jayanna --
----- do -----

In response to the above said letter, the **Tahsildar, vide his letter dated 15/02/2013** has stated that Sri.Channa Shetty and Sri.M R Ranga Setty does not own any agricultural lands in Survey No.129, Maadhughatta Village. As per Tahsildar's letter only Sri Dhana Shetty holds agricultural land in Survey No.129, that too to the extent of 0.22 Guntas, as against 2.2 guntas mentioned in his confirmation letter. Therefore, the confirmation given by the assessee is not correct and the assessee's statement for having received back the advances, for non fulfillment of contract is also not correct.

It is clear from the above facts, that the confirmation letters obtained by the assessee is **only an accommodation entries not supported by any documentary evidences.** The confirmation letters furnished by the assessee is only an after thought."

5. The first appeal filed by the assessee, however, came to be allowed by the learned CIT (Appeals)-II,

Bengaluru, holding that the amount in question were duly withdrawn by the assessee from her own bank account by three different cheques, the details of which were furnished before the Assessing Authority as well as the same have been furnished by filing a memo dated 30.06.2016 in this Court also stating the details of cheques, which are quoted below for ready reference:

Date	Particulars	Cheque No	Amount withdrawn (Dr.)
09.06.07	To self	995104	3,30,000-00
27.10.07	To self	995106	5,00,000-00
14.03.09	To self	995110	10,00,000-00
Total			18,30,000-00

The said advance amount given to the agriculturists were reflected in the returns filed by the assessee for the previous assessment years as well as the refund of which was deposited by her in the bank account in the present assessment year. The CIT (Appeals)-II, Bengaluru, therefore, allowed the appeal of the assessee vide order

dated **01.05.2014** and set aside the impugned assessment order with the following observations:

*“3.3 I have carefully considered the appellant’s submissions and also the reasons given by the AO in the assessment order for the addition made to the appellant’s declared income. During the assessment proceedings, the AO asked the appellant to **furnish details regarding the cash deposits amounting to Rs.15,07,900/- in her bank account.** The appellant, in reply, explained that she had given advances for purchase of agricultural lands and following the cancellation of the deal the advance paid earlier was received back and deposited in the bank account in support of which she filed copies of the returns of income filed by her for the assessment years 2008-09 and 2009-10; that the advances paid for purchase of property were reflected in the statement of affairs filed before the AO during the assessment proceedings; and that the appellant had filed bank statements showing withdrawals made on 14/3/2009 to the extent of Rs.10 lakhs being advance paid for the purchase of agricultural lands; that the remaining amount of **Rs.7,50,000/- had been***

paid much earlier on 31/3/2009 out of withdrawals from bank made on 9/6/2007 and 27/10/2007; and that, following the cancellation of the deal for the purchase of the property, the advance paid prior to 31/3/2009 had been returned, which were deposited in the bank account. The

appellant also explained that the deal entered into for the purchase of property was only oral and no formal agreement in writing had been entered into as the title and ownership of the property had not been put to legal scrutiny. Copies of the returns of income filed by the appellant show that she had enough resources at her disposal for entering into a transaction. As the deal did not go through, the appellant received back the advance, which was deposited in her bank account. It is well settled law that the appellant cannot be expected to prove the financial capacity of the creditors. The appellant's contention that a contract between parties can be oral in as much as it is enforceable in law, is well-founded as it legally sound. As it is found from the materials placed before me that the weight of evidence is in favour of the appellant, I hold that she has been

able to explain the source of money for the cash credit, the addition of Rs.15,07,900/- made by the AO is deleted.”

6. The Revenue took up the matter before the learned Tribunal. The learned Tribunal, however, partly allowed the appeal of the Revenue and deleted the addition made under Section 68 of the Act only to an extent of Rs.10,00,000/-, while upholding the additions under Section 68 of the Act to an extent of Rs.5,07,900/-. The relevant portion of the Tribunal order dated **09.10.2015** is quoted below for ready reference:

*“10. As it is clear from the finding of the CIT(A) that the **assessee was able to prove the withdrawals of Rs.10 lakhs made from the bank on 14/3/2009** and, therefore, to the extent of the said amount the **assessee has proved at least the source of the deposit in the bank even** if the explanation of the assessee was not acceptable because of the enquiry conducted by the AO. **As far as remaining amount of Rs.5,07,900/-, the CIT(A) has also not given any details of the bank withdrawals** and, therefore, in the*

absence of any record furnished by the parties before us, we find that the assessee failed to explain the source of remaining Rs.5,07,900/- deposit in the bank account. Thus, in view of the above facts and circumstances, we confirm the addition to the extent of Rs.5,07,900/- made by the AO. Revenue has succeeded in part.”

7. Learned Counsel for the appellant-assessee Mr.S A Padmanabha submitted before this Court that the findings given by the learned Tribunal are perverse and without any reason, the learned Tribunal has wrongly held that the explanation furnished by the assessee was only for a sum of Rs.10,00,000/- and not for the entire sum of Rs.15,07,900/-. He has further submitted that the Assessing Authority never examined the four agriculturists in question named above, nor the Tahsildar in question whose letter was believed by the Assessing Authority was produced and allowed to be cross examined by the assessee in the present case and the confirmations given in writing by these Agriculturists were disbelieved on an unfounded apprehension by the Assessing Authority that

since they were in the same handwriting, they were not credible and could not be believed. He submitted that the withdrawal from the bank by the assessee for making the said advances between 2007 to 2009 to the agriculturists were duly proved with the help of passbook entries and confirmations given by the Agriculturists and those evidences having not been rebutted or controverted by the Assessing Authority, who made these additions, which were rightly set aside by the CIT (Appeals)-II, Bengaluru, but the learned Tribunal has wrongly allowed the appeal of the Revenue even though partly. Hence, the present appeal by the assessee before this Court under Section 260-A of the Act.

8. In our opinion, the following substantial question of law arises for our consideration and the parties were heard on the same.

“Whether the learned Tribunal were justified in reversing the finding of CIT (Appeals)-II, Bengaluru, for the assessment year 2010-11 with regard to the additions of cash credit under

Section 68 of the Act to an extent of Rs.5,07,900/-?”

9. Learned Counsel for the Revenue Mr.K V Aravind, however, supported the impugned order of the learned Tribunal, who submits before us that this findings of fact given by the learned Tribunal deserves to be accepted by this Court.

10. Having heard the learned Counsels, we are of the opinion that the Tribunal being a fact finding body while taking a different view from the one taken by the first appellate authority was required to assign proper reason for taking a different view in the matter. We find that the learned Tribunal has wrongly noted in the aforesaid para 10 of the order that the assessee was able to prove withdrawal only to the extent of Rs.10,00,000/-, whereas the assessee has produced details of withdrawals to an extent of Rs.18,30,000/- by three different cheques and the written confirmations of all the four agriculturists in question were produced before the Assessing Authority for the entire deposit of Rs.15,07,900/- made by the assessee

during the current year in her bank account which were the refunds of advances given by the Assessee to the Agriculturists with whom the Agreement of purchase of agricultural lands failed and consequently, the advances made to them were returned back to the assessee during the current year.

11. We do not find any justification for upholding the additions under Section 68 of the Act to an extent of Rs.5,07,900/- by the Tribunal. In our opinion, learned CIT (Appeals)-II, Bengaluru, had rightly looked into the entire relevant evidence and set aside the additions made under Section 68 of the Act.

12. As far as the nature of enquiry conducted by the Assessing Authority is concerned, we find that it has left much to the guess work. The confirmations in writing produced by the Agriculturists could not have been rejected by the Assessing Authority without their evidence being recorded by the Assessing Authority. The Assessing Authority has the power of a Civil Court by virtue of

Section 131 of the Act. Therefore, he could very well summon these Agriculturists and after their examination, he could have believed or discarded the evidence given by them. Misplaced apprehension of the Assessing Authority that since confirmations were in the same handwriting, therefore, they were not believable is a typical pro-revenue approach, without any foundation. The agriculturists most of whom might have been illiterates, could not have been expected to write their own confirmations to be produced before the Assessing Authority, but as the witnesses they could have been certainly summoned by the Assessing Authority for verifying the written confirmations given by them and it is only thereafter that the Assessing Authority could have confirmed the fact as to whether the written confirmations given by them were genuine or fake.

13. As far as the evidence collected through the Tahsildar under Section 133(6) of the Act is concerned also, we do not find that the said exparte evidence collected by the Assessing Authority has been confronted to the

assessee or the Agriculturists in question. Thus, the whole process of enquiry conducted by the Assessing Authority in the present case does not have any foundational legs to stand upon.

14. The Revenue authority even though bestowed with the job to collect revenue in accordance with law cannot act arbitrarily and on a mere guess work make the additions in the declared income of the assessee. The reasonable factual enquiry in the matter, only can give support to their findings of facts, which are the subject matter of further scrutiny by the appellate forums and also by the constitutional Courts.

15. However, the very foundation of assessment enquiry conducted by the Assessing Authority does not inspire any confidence in the present case and the entire assessment has to fall to the ground.

16. In these circumstances, we are of the opinion that the first appellate authority after having looked into

the evidence on record was justified in granting the relief to the assessee, but the learned Tribunal without assigning any cogent reasons has taken a different view of the matter and has rendered a finding of fact, which is bad and perverse to that extent. The said finding, therefore, cannot be sustained and the order of the Tribunal, therefore, requires to be quashed and set aside. The substantial question is thus answered in the favour of assessee.

17. Accordingly, we allow the appeal filed by the Assessee. The order dated **09.10.2015** passed by the learned Tribunal is quashed and set aside and the order dated **01.05.2014** passed by the CIT (Appeals)-II, Bengaluru, is restored. No order as to costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

*bgn/-
(List No.1 Sl.No.1)