

**IN THE HIGH COURT OF KARNATAKA AT
BENGALURU**

DATED THIS THE 6TH DAY OF APRIL 2015

PRESENT

THE HON'BLE MR.JUSTICE VINEET SARAN

AND

THE HON'BLE MRS.JUSTICE S SUJATHA

ITA NO.498/2009

BETWEEN:

M/S QUALITY LIQUOR AGENCIES
SOUZA CASHEW COMPOUND
KULSHEKAR, MANGALORE-575005
REP BY ITS PARTNER MR SUNIL
KUMAR , 49 YEARS, SON OF SRI K S ACHAR
... APPELLANT

(BY SRI S PARTHASARATHI, ADV)

AND

THE ASSISTANT COMMISSIONER
INCOME TAX CENTRAL CIRCLE R
NO 202, CENTRAL REVENUE
BUILDING, ATTAVARA,
MANAGALORE-575001 ... RESPONDENT

(BY SRI K V ARAVIND, ADV)

This ITA is filed u/S.260-A of I.T.Act, 1961 arising out of Order dated 26-06-2009 passed in IT(SS)A No.59/BNG/2008, for the Block Assessment Period 1.4.96 to 12.9.02, praying that this Hon'ble Court may be pleased to: (i) formulate the substantial questions of law stated therein, (ii) allow the appeal

and set aside the order passed by the ITAT Bangalore in IT(SS)A No.59/BNG/2008, dated 26-06-2009 in the interest of justice and equity.

THIS APPEAL COMING ON FOR FINAL HEARING THIS DAY, **SUJATHA J.**, DELIVERED THE FOLLOWING:

JUDGMENT

The order dated 26.06.2009 passed by the ITAT "A" Bench, Bangalore is challenged in this appeal. The appeal pertains to the block period 1.4.1996 to 12.9.2002. The following questions of law are involved in this appeal:

Question No.1:

Whether the tribunal was justified in upholding the inclusion of Rs.164158/- being income from 'SECONDS' for period 1.4.2002 to 12.9.2002 in block assessment when the said income did not fall within the definition of undisclosed income under S 158BA of the Income tax Act 1961?

Question No.2:

Whether the transaction of 'SECONDS' having been recorded in normal course in the ledger maintained, the income there from for period 1/4/2002 to 12/9/2002 was excludable from the Block Assessment in light of the provision of s 158BA?

Question No.3:

Whether the investment of Rs.2.5 lacs in a firm 'Kaveri Bar & Restaurant' constituted by some of the partners of Appellant could be attributed to the

Appellant without sufficient material to justify addition of unexplained investment of the Appellant in Block Assessment under S 158B(b)?

2. Facts in brief: The appellant is engaged in the wholesale liquor business. A search was conducted under Section 132 of the Income Tax Act, 1961 (herein after referred to as 'the Act' for short) at the business premises of the assessee – firm/appellant on 12.09.2002 and at the residential premises of Sri.Sunil Kumar, partner of the firm. Certain material containing agreements with Mr. Elias Gerald D' Silva for the purchase of Kaveri Bar was found and seized. Similarly, certain materials relating to the unaccounted sale of the firm were also found and seized. Shri. Sunil Kumar, partner of the firm, admitted the undisclosed income of Rs.3,14,979/- and offered the same for tax in the hands of the firm. However, in the return of undisclosed income filed, the firm has declared only Rs.1,50,821/- as its undisclosed income for the block period. Assessments were framed under Section 158 BC read with Section

143 (3) of the Act on these undisclosed income of Rs.3,14,979/- and unexplained investment-payment made to Mr. Elias Gerald D' Silva of Rs.2,50,000/-. Appeals filed by the appellant/firm against the said assessment order were dismissed by the CIT (Appeals), Mangalore. Being aggrieved, the appellant filed appeal before the ITAT, Bangalore which was rejected and the said order is assailed in this appeal.

3. The learned counsel Sri S Parthasarthy appearing for the appellant argued that Rs.164158/- was declared in the regular return filed by the assessee for the assessment year 2003-04 as it represented the income earned between 1.4.2002 to 12.9.2002. The learned counsel placing reliance on Section 158(BA)(3) of the Act submitted that if any part of the income relates to an assessment year for which the previous year has not ended or the date of filing the return of income under Section 139(1) for any previous year has not been expired, and if such income are recorded in the books of accounts or

other documents, the said income shall not be included in the block period. The learned counsel elaborated his arguments contending that two sets of accounts were maintained by the assessee and in one set, this income was recorded and the assessee has also filed the returns disclosing this income of Rs.164158/- in the returns filed for the assessment year 2003-04 and as such, the Tribunal without appreciating these material facts, has brought this amount of Rs.1,64158/- as undisclosed income falling under the block period.

4. The next contention urged by the learned counsel is as regards the payment of Rs.2,50,000/- paid to Sri Elias D' Silva for purchasing the Kaveri Bar treated to be the unexplained investment of the assessee-firm. It is submitted that no documents were seized by the department to establish that the flow of money towards the cash payment made to Sri Elias D'silva was from the appellant-firm.

5. Per contra, learned counsel Sri K V Aravind appearing for the department contended that subsequent to the search conducted on 12.9.2002, the amount of Rs.164158/- was disclosed in the returns filed for the assessment year 2003-04, the assessee-firm had not maintained the regular books of accounts, the said undisclosed income would have gone unnoticed and has come to light only on the search conducted by the department. Further, it was argued that the source of cash payment of Rs.250000/- made to Sri Elias D'silva on 1.8.2002 was not properly explained and these are all the issues relating to the facts which have been considered by the tribunal and rightly held to be unexplained investment of the assessee-firm.

6. After hearing the parties and perusing the material on record, we have noticed that as per the submissions made by the learned counsel for the appellant, the learned counsel admits that the appellant is maintaining two sets of accounts which

is not permissible in law merely because subsequent to the search held on 12.9.2002, the assessee has filed the returns for the assessment year 2003-04 disclosing the amount of Rs.1,64,158/- held to be undisclosed income, would not carry any conviction. The reliance placed on by the learned counsel on Section 158(BA) and Annexure "C" said to be a document maintained by the assessee-firm disclosing the details of said undisclosed income is not acceptable since the said document is very vague, without having the details of dates and the proof of the transaction said to have been effected with the parties except the parties names and the amount. Much emphasis is placed by the learned counsel appearing for the appellant, on Annexure C, to bring this document under Section 158(BA)(3) of the Act which provides that undisclosed income, if recorded on or before the date of search or requisition in the books of account or other documents maintained in the normal course relating to such previous years shall not be included in the block period. We are

unable to appreciate this argument advanced by the learned counsel. No law permits maintenance of two sets of accounts i.e., one unaccounted and the other accounted. Such scheme of maintaining two different sets of accounts is totally forbidden in law and no credential value can be given to such illegal accounts maintained by the assessee. At no stretch of imagination, this document at Ann: C would be considered as 'other documents' maintained in the normal course to exclude from the block period.

7. As regards the next issue relating to transactions with Kaveri Bar, it is admitted fact that Sri Elias D'silva has given the statement before the departmental authorities on 16.9.2004 wherein it is stated that he had received Rs.2,50,000/- in cash on 18.02.2002. Now the case of the assessee-firm is that two partners of M/s Kaveri Bar had made the payment to Sri Elias D' Silva and the assessee-firm is no way concerned with the said transaction and the departmental authorities have wrongly held it to be

the unexplained investment of the assessee which has been affirmed by the tribunal without appreciating the material on record in a proper perspective. The tribunal has considered this issue at length and has come to the conclusion that the partnership deed of Kaveri Bar dated 27.8.2002 was drawn on a stamp paper dated 31.3.1999 purchased by the assessee-firm and the circumstances create a doubt regarding the genuineness of the said partnership deed relied on by the assessee. After a detailed examination of the documents, the tribunal has arrived at a conclusion that the assessee-firm has failed to explain the source of the amount of Rs.250000/- paid to Sri Elias D' Silva. These are pure questions of facts and the findings given on these factual aspects cannot be interfered by us in this appeal.

8. Accordingly, the Questions of law raised in this appeal are answered against the assessee and in favour of the revenue.

9. For the foregoing reasons, the appeal is devoid of merits and stands dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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