IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND SHRI A. K. GARODIA, ACCOUNTANT MEMBER

ITA Nos.1223 to 1226/Bang/2014
Assessment years : 2005-06 to 2008-09

Smt. Shamshunnissa Begum, C/o. Mir Hassan Ali, Near Nehru Stadium, Bidar. **PAN : APHPB 9973 P**	Vs.	Income Tax Officer, Ward - 1, Bidar.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Balram R. Rao, Advocate
Revenue by	:	Shri. Manjeet Singh, Addl. CIT (DR)(ITAT), Bengaluru

Date of hearing	:	05.02.2020
Date of Pronouncement	:	20.02.2020

O R D E R

Per A.K. Garodia, Accountant Member

These four appeals are filed by the assessee and the same are directed against a combined order of learned CIT(A) Hubli, dated 02.01.2014 for the Assessment Years 2005-06 to 2008-09. These appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. These appeals were filed by the assessee after a delay of 126 days. The assessee has moved an application for condonation of delay along with an affidavit in which it is stated that because of the assessee's old age and health problems, the appeals could not be filed within time. It was submitted that in the interest of justice, the delay should be condoned and in the facts of present case, we condone this delay and admit these appeals.

3. The assessee has raised the following grounds:

ITA No.1223/Bang/2014

1. *The Commissioner of Income Tax (Appeals), Hubli has erred in confirming the order of Assessing officer in reopening the assessment of the Appellant without any basis and reason.*

2. *The Commissioner of Income Tax (Appeals), Hubli is has erred in passing the order without providing proper opportunity to the Appellant and therefore, the Appellate order therefore is void ab initio.*

3. *The Commissioner of Income Tax (Appeals), Hubli, has erred in confirming the additions to the admitted income of the Appellant by the Assessing Officer by not deleting such additions to the total income.*

4. *Without prejudice The Commissioner of Income Tax (Appeals), Hubli ought not to have sustained the additions made to the admitted income of the appellant.*

5. *The Commissioner of Income Tax (Appeals), Hubli is incorrect in sustaining the order of the Assessing Officer in so for as ascertaining the investment towards the cost of construction based on the valuation officer report in excess by Rs. 68,114/- as undisclosed investment which suffers from the facts and figures.*

6. *The Commissioner of Income Tax (Appeals), Hubli has erred in sustaining the order of The Assessing officer in so for as assessing the Agricultural income of Rs. 3,36,175/- of the appellant as income from other sources.*

7. *The Commissioner of Income Tax (Appeals), Hubli is incorrect in sustaining the additions of Rs. 44,380/- towards the additional personnel drawings by the assessing authority.*

8. *Without prejudice the commissioner of income tax (Appeals) Hubli, ought to have appreciated the evidences and documents supporting the Grounds of Appeal.*

9. *On the facts the additions to the admitted income as sustained by The Commissioner of Income Tax (Appeals), Hubli, are excessive, arbitrary and un reasonable which ought to be reduced in total.*

ITA No.1224/Bang/2014

1. *The Commissioner of Income Tax (Appeals), Hubli has erred in confirming the order of Assessing officer in reopening the assessment of the Appellant without any basis and reason.*

2. *The Commissioner of Income Tax (Appeals), Hubli is has erred in passing the order without providing proper opportunity to the Appellant and therefore, the Appellate order therefore is void ab initio.*

3. *The Commissioner of Income Tax (Appeals), Hubli, has erred in confirming the additions to the admitted income of the Appellant by the Assessing Officer by not deleting such additions to the total income.*

4. *Without prejudice The Commissioner of Income Tax (Appeals), Hubli ought not to have sustained the additions made to the admitted income of the appellant.*

5. *The Commissioner of Income Tax (Appeals), Hubli is incorrect in sustaining the order of the Assessing Officer in so for as ascertaining the investment towards the cost of construction based on the valuation officer report in excess by Rs. 12,36,990/- as undisclosed investment which suffers from the facts and figures.*

6. *The Commissioner of Income Tax (Appeals), Hubli has erred in sustaining the order of The Assessing officer in so for as assessing the Agricultural income of Rs. 3,24,611/- of the appellant as income from other sources.*

7. *The Commissioner of Income Tax (Appeals), Hubli is incorrect in sustaining the additions of Rs. 32,426/- towards the additional personnel drawings by the assessing authority.*

8. *Without prejudice the commissioner of income tax (Appeals) Hubli, ought to have appreciated the evidences and documents supporting the Grounds of Appeal.*

9. *On the facts the additions to the admitted income as sustained by The Commissioner of Income Tax (Appeals), Hubli, are excessive, arbitrary and un reasonable which ought to be reduced in total*

ITA No.1225/Bang/2014

1. *The Commissioner of Income Tax (Appeals), Hubli has erred in confirming the order of Assessing officer in reopening the assessment of the Appellant without any basis and reason.*

2. *The Commissioner of Income Tax (Appeals), Hubli is has erred in passing the order without providing proper opportunity to the Appellant and therefore, the Appellate order therefore is void ab initio.*

3. *The Commissioner of Income Tax (Appeals), Hubli, has erred in confirming the additions to the admitted income of the Appellant by the Assessing Officer by not deleting such additions to the total income.*

4. *Without prejudice The Commissioner of Income Tax (Appeals), Hubli ought not to have sustained the additions made to the admitted income of the appellant.*

5. *The Commissioner of Income Tax (Appeals), Hubli is incorrect in sustaining the order of the Assessing Officer in so for as ascertaining the investment towards the cost of construction based on the valuation officer report in excess by Rs. 12,36,990/- as undisclosed investment which suffers from the facts and figures.*

6. *The Commissioner of Income Tax (Appeals), Hubli has erred in sustaining the order of The Assessing officer in so for as assessing the Agricultural income of Rs. 2,95,759/- of the appellant as income from other sources.*

7. *The Commissioner of Income Tax (Appeals), Hubli is incorrect in sustaining the additions of Rs.15,690/- towards the additional personnel drawings by the assessing authority.*

8. *Without prejudice the commissioner of income tax (Appeals) Hubli, ought to have appreciated the evidences and documents supporting the Grounds of Appeal.*

9. *On the facts the additions to the admitted income as sustained by The Commissioner of Income Tax (Appeals), Hubli, are excessive, arbitrary and un reasonable which ought to be reduced in total*

ITA No.1226/Bang/2014

1. *The Commissioner of Income Tax (Appeals), Hubli has erred in confirming the order of Assessing officer in reopening the assessment of the Appellant without any basis and reason.*

2. *The Commissioner of Income Tax (Appeals), Hubli is has erred in passing the order without providing proper opportunity to the Appellant and therefore, the Appellate order therefore is void ab initio.*

3. *The Commissioner of Income Tax (Appeals), Hubli, has erred in confirming the additions to the admitted income of the Appellant by the Assessing Officer by not deleting such additions to the total income.*

4. *Without prejudice The Commissioner of Income Tax (Appeals), Hubli ought not to have sustained the additions made to the admitted income of the appellant.*

5. *The Commissioner of Income Tax (Appeals), Hubli is incorrect in sustaining the order of the Assessing Officer in so for as ascertaining the investment towards the cost of construction based on the valuation officer report in excess by Rs. 4,94,796/- as undisclosed investment which suffers from the facts and figures.*

6. *The Commissioner of Income Tax (Appeals), Hubli has erred in sustaining the order of The Assessing officer in so for as assessing the Agricultural income of Rs. 4,94,796/- of the appellant as income from other sources.*

7. *The Commissioner of Income Tax (Appeals), Hubli is incorrect in sustaining the additions of Rs. 14,544/- towards the additional personnel drawings by the assessing authority.*

8. *Without prejudice the commissioner of income tax (Appeals) Hubli, ought to have appreciated the evidences and documents supporting the Grounds of Appeal.*

9. *On the facts the additions to the admitted income as sustained by The Commissioner of Income Tax (Appeals), Hubli, are excessive, arbitrary and un reasonable which ought to be reduced in total*

4. In the course of hearing, it was submitted by learned AR of the assessee that ground No.2 regarding validity of reopening is not pressed in all these four years and accordingly ground No.2 is rejected as not pressed in all the four years. He also submitted that ground Nos.1, 3 and 4 are general for which no separate adjudication is called for.

5. Regarding ground No.5 in all these 4 years, it was submitted that the order of CIT(A) is very cryptic. He pointed out that on pages 7 to 10 of his order, the learned CIT(A) has noted the facts and decided the issue in a cryptic manner as per last para on page 10 of his order. He submitted that in the interest of justice, the matter should be restored back to the file of CIT(A) for a fresh decision by way of speaking and reasoned order. Learned DR of the Revenue supported the order of CIT(A).

6. We have considered the rival submissions. First of all, we reproduce last para from the page 10 of the order of CIT(A). This reads as under:

> *"I have gone through the facts of the case, contents of the assessment order and written submissions of the assessee. The AO has referred to the valuation cell to know the exact value of the construction of the building and the valuation cell has valued the property at Rs. 41,23,300/- but the assessee has submitted his own valuation report that*

> *report has given by PWD Department Govt. Of Karnataka. But the valuation report which was given by the PWD Department, is not authenticated. Hence the contention for adoption of the value given by the departmental valuation cell is appropriate and the addition made by the AO in this regard is upheld and the assesses this ground of appeal is dismissed."*

7. We find force in the submissions of the learned AR of the assessee because we find although various contentions were raised before CIT(A) as noted by him on pages 7 to 10 of his order, he has decided the issue in a very cryptic manner as per last para on page 10 of his order as reproduced above. Hence, we feel it proper to set aside the order of CIT(A) and restore the matter back to his file for a fresh decision by way of a speaking and reasoned order after providing reasonable opportunity of being heard to both sides. We order accordingly. In view of this decision, no adjudication on merit is called for at the present stage and we make no comment on merit. Ground No.5 is allowed for statistical purposes in all the four years.

8. Regarding ground No. 6 i.e., regarding disallowance of the assessee's claim in respect of agricultural income, it was submitted by learned AR of the assessee that on this issue also, the order of CIT(A) is very cryptic. The relevant para of learned CIT(A)'s order on this issue is 2nd para on page 14 of his order, which is reproduced herein below for ready reference:

> *"I have gone through the facts of the case, contents of the assessment order and written submissions of the assessee. AO in the assessment order (for AY 2005-06) it is mentioned that " the assessee has declared the income from Agriculture during the financial year 2001-02 at Rs. 3,36,175/-. After giving ample opportunities, the assessee's AR furnished only the details of the possession of the land holdings. As the assessee has not filed any evidence regarding the agriculture income other than mentioning the possession of the agriculture land. Mere possession of agriculture land is not enough there must be evidence for agricultural*

> *income with supporting evidence of the crops grown, agricultural expenditure, use of manures and fertilizers, agricultural labour expenditure details and agricultural income receipts. Absence of all these details the claim of agriculutral income Rs. 3,36,175/- is considered as income from other source. Hence the addition made by the AO is upheld and assesses this ground of appeal is dismissed."*

9. From the above para reproduced from the order of CIT(A), it is seen that the order is very cryptic particularly in view of this fact that on page No.13 of his order, it is noted by learned CIT(A) that the assessee has filed written submissions where it is mentioned that the AO has accepted the income of the assessee for the financial years 2001-02 to 2003-04 but erred in rejecting the agricultural income for Assessment Years 2005-06 to 2008-09. Hence, we feel it proper to restore back this matter also to the file of CIT(A) for a fresh decision by way of speaking and reasoned order. We order accordingly. On this issue also, we set aside the order of CIT(A) in all these four years for a fresh decision on all aspects after providing reasonable opportunity of being heard to both sides. Accordingly, ground No.6 is also allowed for statistical purposes in all the four years.

10. Regarding ground No.7 in respect of addition made by the AO by alleging that drawings shown by the assessee for household expenses is inadequate, it was submitted by learned AR of the assessee that the AO has considered the annual drawing of the assessee at Rs.60,000/- per year. He submitted that in page 11 of his order, it is noted by CIT (A) that the assessee has filed written submissions where it is submitted that the AO erred in estimating the house hold expenses of the assessee at Rs.60,000/-. It is also noted by learned CIT(A) that this is also the contention raised by the assessee in the written submissions that the AO has not considered the income of the

other family members of the assessee including the income of the assessee's husband who is pensioner from Govt. of Karnataka who is a former MLA and advocate by profession. When the drawing is considered for the family as a whole because the assessee and her husband are living jointly, the income of the assessee as well as her husband's income should be considered to decide as to whether drawing shown by the assessee is inadequate or not. It is observed by learned CIT(A) on page 16 of his order that no income details of the assessee's husband were furnished before CIT(A) or before the AO. We feel that when the matter is going back to CIT(A) for a fresh decision on two other aspects, on this aspect also, the matter may be restored back to the file of CIT(A) for a fresh decision. Accordingly, we set aside the order of CIT(A) on this issue also and restore the matter back to his file for a fresh decision with a direction that the assessee should furnish evidences and details regarding income of the assessee's husband in these four years and if drawing is made by the husband for household expenses, Learned CIT(A) should decide this aspect also by way of a speaking and reasoned order. Ground No.7 is also allowed for statistical purposes in all the four years.

11. In the result, all the four appeals of the assessee are partly allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-	Sd/-
(N. V. VASUDEVAN)	**(A.K. GARODIA)**
Vice President	**Accountant Member**

Bangalore,
Dated: 20th February, 2020.
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Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.