IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE "SMC-C" BENCH, BANGALORE

Before Shri George George K, Judicial Member

ITA No.455/Bang/2020 : Asst.Year 2006-2007

Sri.Murali L No.407, Venkateshwara Nivas 23rd Cross, 9th Main H.S.R.Layout, 7th Sector Bengaluru – 560 095. **PAN : AAHHM5298R.**	v.	The Income Tax Officer Ward 14(7) Bengaluru.
(Appellant)		(Respondent)

Appellant by : Sri.S.V.Ravishankar, Advocate
Respondent by : Sri.Ganesh R.Ghale, Standing Counsel

Date of Hearing : 24.09.2021		**Date of Pronouncement : 27.09.2021**

O R D E R

This appeal at the instance of the assessee is directed against the CIT(A)'s order dated 09.11.2019. The relevant assessment year is 2006-2007.

2. There is a delay of 57 days in filing this appeal. The assessee has filed a petition for condonation of delay. In the petition filed for condonation of delay, it is stated that assessee is residing outside India and was represented by his father, the Power of Attorney (POA) holder of the assessee, who is a senior citizen. It is stated that the assessee's father was a severe diabetic patient and was advised not to undertake any activity like travelling on his own. It was further stated that the POA holder was subjected to amputation of the thumb on his left leg since gangrene had

set in and the Chartered Accountant of the assessee was instructed not to visit the assessee's father's house due to the fear of him contracting Covid. Copy of the medical certificate stating that the assessee's father was severally diabetic is also placed on record. It was submitted that if the appeal is not heard on merits, it will lead to irreparable hardship to the assessee and reliance was placed on the following case laws:-

(i) Collector, Land Acquisition v. MST.Katiji and Others (1987) 167 ITR 471 (SC)
(ii) Concord of India Insurance Co. Ltd. v. Smt.Nirmal Devi and Others 118 ITR 507.
(iii) Radha Krishna Rai v. Allahabad Bank & Others [2000] 9 Supreme Court Cases 733.

2.1 I have heard the learned AR and the learned Standing Counsel. I find that there is sufficient reason for belatedly filing of this appeal and no latches can be attributed to the assessee. Hence, I condone the delay in filing this appeal and proceed to dispose of the appeal on merits.

3. Two issues are raised in this appeal – (i) addition in respect of unexplained investment of Rs.5,62,854; and (ii) addition in respect of unexplained credit of Rs.4,46,086.

We shall adjudicate the above issues as under:

Addition of Rs.5,62,854 (Unexplained investment)

4. The assessee had purchased a vacant site in a public auction conducted by the Bangalore Development Authority (BDA) on 28.10.2005 for a total amount of Rs.41,89,654. (land cost of Rs.38,07,140 + stamp duty of Rs.3,44,200 +

registration charges of Rs.38,340 totaling to Rs.41,89,654). The assessee was directed to give the source of investment amounting to Rs.41,89,654. The assessee explained that he had availed bank loan from ABN Amro Bank amounting to Rs.26,75,000, amount received from HUF Rs.10,25,505 and balance Rs.4,89,149 was out of savings from his salary income. It was further stated by the assessee that no construction was undertaken in the site purchased from BDA and the same is still lying vacant. The Assessing Officer gave credit to the extent the bank loan of Rs.26,75,000. With regard to the balance, the A.O. held that the assessee has not justified with any evidence to verify the statement that the amount of Rs.10,25,505 has been received from the HUF source and balance of Rs.4,89,149 was out of drawings from assessee's salary account. However, the A.O. gave credit of Rs.9,51,800. A sum of Rs.9,51,800 was paid by the assessee by two demand drafts dated 28.10.2004 for part of investment in the purchase of site by permitting him to take part in public auction. According to the A.O., a sum of Rs.9,51,800 is out of sale proceeds of HUF property, which was sold on 22.06.2004. Thus, according to A.O. a sum of RS.5,62,854 remains unexplained and he added the same to the total income as unexplained investment (15,14,644 – 9,81,500 = 5,62,854).

4.1 Aggrieved, the assessee preferred an appeal to the first appellate authority. The CIT(A) called for a remand report from the A.O. On receipt of the remand report, the CIT(A) confirmed the addition of Rs.5,62,854. The relevant finding of the CIT(A) in rejecting the plea of the assessee reads as follow:-

> *"14. The appellant has tried to explain the cash availability by this cash flow statement, I find that the opening cash balance is taken at Rs.3.75 lacs, which is without any basis or evidence. Therefore, I hold that this explanation is not acceptable.*
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> *15. The AO in the RR has found that an amount of Rs.9,51,800/- has already been considered as funding received from HUF property and no further amount available to explain the sources for the investments made by the appellant.*
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> *16. The Appellant's AR was requested to file sale deeds and rental agreements and submit reply as to how availability of money / cash explains Appellant's position. I had asked specifically to submit evidences for claim over and above already considered by the AO."*

4.2 The assessee being aggrieved, has raised this issue before the Tribunal. The learned AR submitted a paper book comprising of 60 pages enclosing therein the written submissions filed before the AO / CIT(A). Copy of the sale deed of the site from BDA dated 09.03.2006, copy of sale deed for sale of agricultural land dated 22.06.2004 for a consideration of Rs.15 lakh, copy of the rejoinder to the remand report of the A.O. etc. The learned AR reiterated the submissions made before the Income Tax Authorities.

4.3 The learned Standing Counsel supported the orders of the AO / CIT.

4.4 I have heard rival submissions and perused the material on record. The total cost including other incidental charges for purchase of a site through auction from BDA by the assessee is a sum of Rs.41,89,654. During the course of assessment proceedings, the assessee explained the source of investment in the purchase of the said site in the following manner:-

Particulars		Amount
Total cost of the site		41,89,654
Loan availed from ABN Amro Bank	26,75,000	
Amount recived from HUF source	10,25,505	
Amount from savings and salary	4,89,149	41,89,654

4.5 The assessee filed copies of the loan availed from ABN Amro Bank. Therefore, the source to the extent of Rs.26,75,000 was accepted by the A.O. With regard to the balance amount (Rs,15,14,654), the assessee stated that agricultural property of the family (HUF) was sold for a total consideration of Rs.15,00,000 and proceeds which was received in cash was substantially used for investment in the property. Before the Tribunal, the assessee sought to explain the source for the balance amount of Rs.15,14,654 (Rs.41,89,654 – 26,75,000) in the following manner:-

Particulars		Amount
EMD to BDA – Dt.28.10.2004, (HUF sale proceeds)	1,00,000	
Deposit to BDA – Dt.28.10.2004 (HUF sale proceeds)	8,51,800	9,51,800 (Amount already accepted by AO)
Gift by father for purchase of property (HUF sale proceeds and rent)	1,18,354	
Savings and drawings from bank (Citi Bank 09.03.2006)	1,44,500	
Sale proceeds of HUF property (09.03.2006)	3,00,000	5,62,854
Total		15,14,654

4.6 As per the above tabulation, the assessee is seeking to explain the source of Rs.5,62,854 made by the Assessing Officer as unexplained investment in the following manner:-

(i)	Gift from father	Rs.1,18,354
(ii)	Saving and drawing from Citibank.	Rs.1,44,500
(iii)	Sale proceeds of HUF	Rs.3,00,000

	Total	Rs.5,62,854
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4.7 Assessee's father is in receipt of rental income and the same are deposited in the joint account of the assessee and his father with Vijaya Bank. The assessee's father is also had deposited the proceeds of sale of agricultural property in Vijay Bank. There has been bank transfer from Vijaya Bank to Citi Bank and the assessee has withdrawn a sum of Rs.3,44,500 from Citi Bank on 09.03.2006. Therefore, it cannot be stated there was no sufficient money available with the assessee's father for making a gift of sum of Rs.1,18,354. Hence I delete the addition of Rs.1,18,354 made by the A.O. As regards the savings and drawing from Citi Bank is concerned, I noticed from the statement of the Citi Bank (which is placed at pages 13 to 18 of the paper book filed by the assessee), the withdrawals are for meeting the specific expenditure such as credit card payments and cheque payments to specified entities. The cash withdrawals in the Citi Bank account is not much. The few cash withdrawals, in all probabilities, would have been only for the purpose of meeting the personal expenses of the assessee. Therefore, I confirm the addition of Rs.1,44,500 made by the A.O. As regards the sales proceeds of HUF property, I am of the view that a sum of Rs.3,00,000 cannot be given credit because agricultural property was sold in June 2004 and the same in all likelihood would not have been available for making a purchase of the site much subsequently, i.e., on 09.03.2006. In this context, it is important to mention that the A.O. has already given a credit of Rs.9,51,800 out of the sale proceeds of agricultural land of HUF towards the purchase of the site (since the initial installment towards payment for the purchase of site was made by the assessee in August 2004). Therefore, I confirm the addition of Rs.3,00,000 made by the A.O. In view of the aforesaid reasoning the gift made by the father of the assessee amounting to Rs.1,18,354 is regarded as explained and balance is treated as unexplained. In other words, sum of Rs.4,44,500 is sustained as unexplained investment out of the total addition of Rs.5,62,854 made by the A.O.

4.8 In the result, the ground relating to unexplained investment is partly allowed.

Addition of Rs.4,46,086 (Unexplained credit)

5. The Assessing Officer has made an addition of credits in two bank accounts of the assessee to the tune of Rs.4,46,088. The details of the banks and additions made in respect of each account are as follows:-

Citi Bank	Rs.1,29,326
Vijay Bank	Rs.3,16,760

Total	Rs.4,46,086
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5.1 The A.O. while examining bank statement of Citi Bank noticed that there was total credits in the said account for the period 01.04.2005 to 31.03.2006 totaling to Rs.7,53,779. The assessee was directed to explain the details of the credit with necessary evidences. The assessee's father being POA holder, vide letter dated 15.12.2008 gave explanation. The A.O. after verifying the explanation of the assessee held that an amount of Rs.3,24,453 was credited on account of salary and further a sum of Rs.3 lakh was credited on 10.08.2005 from ICICI Bank, M.G.Road Branch, Bangalore, towards loan taken. Accordingly, the Assessing Officer concluded that the assessee has not furnished any evidence for the balance credit of Rs.1,29,326 (7,53,779 – 3,24,453 – 3,00,000). The A.O. brought a sum of Rs.1,29,326 to tax u/s 69 of the I.T.Act as unexplained investment with reference to the credits in the Citi Bank account.

5.2 Further, it was seen from the assessee's bank statement with Vijaya Bank, Koramangala Branch, credits for period 01.04.2005 to 31.03.2006 was aggregating to Rs.20,45,330 including cash deposits of Rs.4,81,500. The assessee was directed to furnish the details of the credits with necessary evidence. The assessee's father, who being the POA holder, filed explanation vide letter dated 15.12.2008. After verifying the explanation of the assessee, the Assessing Officer added a sum of Rs.3,16,760 u/s 69 of the I.T.Act as unexplained investment. The relevant findings of the A.O. in this regard reads as follow:-

"The assessee's contentions are answered as under, after verifying the facts and the documents collected –

(a) The assessee's contention that, the bank account No.139401011000055 is a joint account in the name of himself and his father Sri.Lakshminarayana Reddy, is not correct, as it is evident from the statement furnished by the Chief Manager, Vijaya Bank, Koramangala branch, Bangalore that, the said account is only in the name of the assessee and there are not joint account holders.

(b) The said account may be operated by the assessee's father, only on the assessee's behalf, as he is the Power of Attorney holder of the assessee.

(c) The assessee has indeed obtained two Demand drafts, of Rs.1,80,908 and Rs.3,44,597 from his above account. The demand draft for Rs.3,44,597 has been taken on 09-03-2006 after depositing cash, of Rs.3,44,500 on the same day.

(d) It Is seen from the account statement, of Sri.Mohan.L, who happens to be the assessee's brother that, he has given a cheque for Rs.8,00,000, to the assessee and the same has been credited to the assessee's account, on 02-04-2005. The explanation of the assessee, on this credit Is accepted, since the same has been received from the Current account No.761, of the assessee's brother and the same may be an advance.

(e) As mentioned earlier, while working out the total credits in the assessee's account, the closure proceeds of fixed deposits have already been excluded and the assessee's comment about another F.O, for Rs. 7,00,000, Is irrelevant to the extent of explaining the total credits. As regards the claim that, the credit of Rs.5,83,973, on 09-07-2005, Is a loan taken on fixed deposit, the same Is found to be Explained and hence the explanation Is accepted.

Thus, out of the total credits, of Rs.20,45,330, the assessee's explanation is accepted In respect of credits, of Rs.5,83,973 and Rs.8,00,000. Further, an amount, of Rs.3,44,597, being credits In his account utilized for the purchase of property, have already been brought to tax as 'Unexplained investment' (Point 1 above). Hence, credit Is also given for the same. Thus, the balance credits of Rs.3,16,760 (20,45,300 – 5,83,973 – 8,00,000 – 3,44,597) remain unexplained.

Thus for the amount of Rs.3,16,760, the assessee has not offered a satisfactory explanation. Hence, the amount of Rs.3,16,760 is to be brought to tax under Section 69 of the Income Tax Act, as `Unexplained Investment'."

Thus, the A.O. has made an addition of Rs.4,46,086 (Citi Bank Rs.1,29,326 + Vijay Bank Rs.3,16,760).

5.3 Aggrieved, the assessee preferred an appeal to the first appellate authority. The CIT(A) confirmed the view taken by the Assessing Officer The relevant finding of the CIT(A) in confirming the addition, reads as follow:-

> *"18. The appellant has filed a copy of sale deed dt. 22.6.2004. However, this is already considered by the AO. To explain further the appellant claims that sale of HUF property dt. 9.3.2006 has receipt of Rs.3 lacs and savings are 1.44 lacs (para g) on page 3 of submission dt. 9.10.19]. I have considered the same. I find that no evidence for claim over and above already considered by the A.O. is provided.*
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> *19. The marriage loan [50000] vehicle loan [20000] reimbursement of expenses of [23,011] and wrong credits of [Rs.23,000] could not be proved. In house credit for Rs.30,790 is acceptable and is allowed. Thus, this is partly allowed to the extent of Rs.30,790.*
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> *20. Thus, I find that the AR has mostly failed to justify availability of money / which explains Appellant's position [except Rs.30,790 which is allowed].*
>
> *21. Thus, these grounds of appeal are partly allowed as above."*

5.4 Aggrieved by the order of the CIT(A), the assessee has raised this issue before the Tribunal. Copies of the bank statement of Citi Bank and Vijaya Bank, copy of the certificate issued by Vijay Bank stating that the assessee's bank account is a joint account with assessee's father, reconciliation of credit in Vijaya Bank, copy of the loan application filed with employer, copy of bank statement depicting the cash in hand and credits are placed on record. The learned Counsel for the assessee reiterated the submissions made before the Income Tax Authorities.

5.5 The learned Standing Counsel supported the assessment and the CIT(A)'s order.

5.6 I have heard rival submissions and perused the material on record. With regard to the credits of Citi Bank, the A.O. has made an addition of Rs.1,29,326. According to the A.O., the assessee was not able to prove the source of credits to the extent of Rs.1,29,324. On perusal of the Citi Bank account, which is placed at pages 13 to 18 of the paper book filed by the assessee, I noticed that the total credits is to the tune of Rs.7,73,779. By reducing the loan of Rs.3,00,000, salary to the extent of Rs.3,24,453 and interest on saving bank amounting to Rs.1,525, totaling to Rs.6,25,978, the balance of Rs.1,47,801, is sought to be explained by the assessee. It was stated that the assessee had credited marriage loan of Rs.50,000 and vehicle loan of Rs.20,000 received from his employer on 19.07.2005 and 25.07.2005 respectively. Further, it was submitted that wrong credit which reversed by the bank was taken as addition by the A.O. It was further submitted that other credits are reimbursement of expenses and in house transfers on various dates. The details of the Bank credits (Citi Bank) and explanation of the assessee with regard to the various credits are given in a tabulation below:-

Total credits in Citi Bank		7,73,779
Less : Interest on SB	1,525	
Less : Salary	3,24,453	
Less : Loan	3,00,000	6,25,978

Balance		1,47,801
Marriage Loan – employer (19.07.2005)	50,000	
Vehicle loan – employer (25.07.2005)	20,000	
Wrong credit 07.06.2005	20,000	
Wrong credit 09.08.2005 – 11.08.2005	3,000	
Reimbursement of expenses	23,011	
In house transfers	31,790	1,17,801
Difference		NIL

5.7 As regards the loans for marriage and vehicle, the assessee has placed on record copies of the loan application filed by the assessee before the employer and confirmation for the same. Therefore, I delete the credit of Rs.50,000 and Rs.20,000 appearing in the Citi Bank on 19.07.2005 and 25.07.2005. Further, I noticed that there is a reversal of entry to the extent of Rs.23,000. Therefore, the credits to the extent of Rs.20,000 on 07.06.2005 and 09.08.2005 to the extent of Rs.3,000 are reduced. Insofar as reimbursement of expenses amounting to Rs.23,011 on various dates (4 credits in April 2005, one credit of Rs.12,410 on 16.11.2005 and Rs.3,617 credited on 13.03.2006), there is no explanation or confirmation from the employer how these amounts have been paid to the assessee. Hence, I confirm the addition of Rs.23,011. As regards in house transfers of Rs.31,709, I find that the CIT(A) has given substantial relief of Rs.30,790. Hence, in view of the aforesaid reasoning, I sustain an addition of Rs.24,011 (reimbursement of Rs.23,011 + in house transfers of Rs.1,000). Therefore, the assessee gets a relief of Rs.1,05,350 on account of addition made by the A.O. for unexplained credits made in Citi Bank account maintained by the assessee. In other words, the addition to the extent of Rs.24,011 is sustained instead of addition of Rs.1,29,326 made by the A.O.

5.8 From the perusal of the Vijaya Bank statement of account, which is placed at pages 23 and 23 of the paper book, it is seen that the assessee's total credits was for a sum of Rs.32,24,567. The assessee has sought to reconcile and explain the credits in Vijaya Bank as follows:-

Total credits in Vijaya Bank			32,24,557
02.04.2005	Advance received	8,00,000	
19.04.2005	Interest on FD	1,490	
04.05.2005	Interest on FD	1,490	
14.05.2005	Loan	50,000	
20.05.2005	Interest on FD	1,490	
20.05.2005	FD encashed	8,00,000	
15.06.2005	Loan	1,20,363	
09.07.2005	Loan	5,83,973	
20.07.2005	DD cancelled	3,44,198	
20.07.2005	DD cancelled	35,029	
03.08.2005	Interest	12	
01.02.2006	Interest	12	27,38,057
Balance of credits			4,86,500
13.04.2005	Cash deposited – rent	20,000	
11.06.2005	Cash deposited – rent	5,000	
25.06.2005	Cash deposited – rent	5,000	
11.09.2005	Cash deposited – withdrawals from bank account and rent	1,00,000	
05.11.2005	Cash deposited – rent	5,000	
05.01.2006	Cash deposited – rent	2,000	
07.02.2006	Cash deposited – rent	5,000	
09.03.2006	Cash deposited – HUF proceeds and withdrawals	3,44,500	4,86,500
Difference			NIL

5.9 From the above tabulation, it is clear that the credits amounting to Rs.27,38,057 are transactions which pertains to loan availed or receipts of interest either from FD or SB accounts. The remaining amount of Rs.4,86,500, the assessee has explained by stating that Vijaya Bank account is a joint bank account of assessee and his father and this fact has been accepted by the A.O. in the remand report submitted. The Chief Manager, Vijaya Bank has confirmed that the impugned account is joint account of the assessee and his father (Refer page 25 of the paper book). Hence, the observation of the A.O. that Vijaya Bank account is in the single name of assessee, is erroneous. Assessee's father had made deposits of the rental income received by him in the Vijaya Bank account. The assessee has also deposited money from withdrawals from other bank accounts. Therefore, in the facts and circumstances of this case, the addition made by the A.O. on account of credits to the Vijaya Bank account amounting to Rs.3,16,760 is uncalled for and I delete the same. Hence, the issue relating to unexplained credits in the bank account is partly allowed.

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

Order pronounced on this 27th day of September, 2021.

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 27th September, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-12, Bengaluru
4. The Pr.CIT-5, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore