

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC-B” BANGALORE BENCH**

BEFORE SHRI N.V VASUDEVAN, VICE-PRESIDENT

ITA No.2198/Bang/2019
Assessment Year : 2010-11

Shri. G. Nataraj, Near Old Karnataka Bank, Holenarasipura – 573 211. PAN : ABKPN 9540 K	Vs.	Income Tax Officer, Ward –2, Hassan.
Appellant		Respondent

Assessee by	:	Shri. V. Srinivasan, Advocate
Revenue by	:	Shri. Ganesh R. Ghale, Jr. Standing Counsel

Date of hearing	:	15.02.2021
Date of Pronouncement	:	18.02.2021

ORDER

This is an appeal of the assessee against the order dated 26.07.2019 passed by CIT(A), Mysore, relating to Assessment Year 2010-11. The first issue that arises for consideration in this appeal is as to whether the Revenue authorities were justified in making an addition of Rs.7,39,381/-.

2. The assessee is an individual. He derives income in the form of commission as agent of Life Insurance Corporation of India (LIC). For Assessment Year 2010-11, the assessee filed return of income declaring total income of Rs.3,94,130/-. In the course of assessment proceedings, the AO scrutinized the details of the credit in the bank statement of the assessee with SBM, Holenarasipura Branch which was furnished by the Manager of SBM, Holenarasipura Branch in response to a notice issued by the AO calling for the details. On perusal of the reply of the Manager SBM, Holenarasipura Branch, the AO found that some of the credit entries had a description “NSC commission received from Post Master, Holenarasipura”.

According to the AO, the assessee could not explain the credits in the form of NSC commission and therefore the AO added the sum of Rs.7,39,381/-. The details of the credits as explained by the Manager SBM, Holenarasipura Branch in Assessee's bank statement were as follows:

Sl.No	Date of transaction	Description	Amount credited	Source of credit as provided by the bank
4	20-05-2009	Credit RLSD	109.97	DD No 973438 for Rs 129.97 received from SBM Devanahalli.
5	21-05-2009	Dep TFR 401034/ Postal TR	20058	NSC Commission received from Post Master, H.N.Pura
6	21-05-2009	Dep TFR 401039/ Postal TR	20000	NSC Commission received from Post Master, H.N.Pura
8	24-06-2009	Dep TFR 656147/ Postal TR	54019	NSC Commission received from Post Master, H.N.Pura
9	26-06-2009	Dep TFR 656157/ Postal TR	25400	NSC Commission received from Post Master, H.N.Pura
14	28-08-2009	Dep TFR 654418/ Nataraj G	57156	NSC Commission
16	9/9/2009	Dep Trf 754435/ Nataraj G	60400	NSC Commission
23	18-01-10	Dep trf 270671/ Nataraj G	220000	NSC Commission received from Post Master, H.N.Pura
24	22-01-10	Dep trf postal tr trf fr 00640007134 70	20000	NSC Commission received from Post Master, H.N.Pura
26	1/3/2010	Credit 40026 Doddabaliapur	45500	Amount transferred from Doddaballapur Branch

28	20-03-2010	Credit 40016 LC road branch C D padmanabha	65000	Amount received from I.C. Road by C.D.Padmanabha
32	3/4/2010	Credit bt Govt transfer	151738	NSC Commission received from Post Master, H.N.Pura

Total 739380.97

3. Aggrieved by the addition made by the AO, assessee preferred appeal before the CIT(A). Before CIT(A), assessee contended that the AO erred in making addition of certain credits appearing in the bank account of the Assessee aggregating to Rs. 7,39,381/- under section 68 of the Act. The AO ought not to have relied upon the narrations given against the credits appearing in the bank account of the Assessee by the Manager, State Dank of Mysore, Holenarasipura Branch for the purpose of makind the addition of Such credits in the hands of the Assessee under section 68 of the Act. The Assessee submitted that he did not carry on any business of National Savings Certificates or receive any commission from the Post Office, Holenarasipura, the learned Income fax Officer ought to have exercised his powers under section 131 and issued summons to the concerned Post Master for eliciting information relating to the cheques issued by him in favour ot the Assessee before making the addition under section 60 of the Act. It was argued that the AO failed to appreciate that it has beyond probabilities for the appellant to have received such huge sum of Rs. 7,39,381 towards commission from the Post Office, Holenarasipura. The Assessee contended that the AO ought to have accepted the explanation offered by the Assessee that the credits appearing in his bank account towards amounts received from the Post Office, Holenarasipura represented the

maturity proceeds of Savings Certificates of his customers and accordingly, ought to have refrained from making addition of such credits under section 60 of the Act. Without prejudice to the above, it was contended that the AO erred in making the addition of Rs. 45,500 in respect of the credit appearing in the bank account on 1.3.2010 being the amount transferred from the state bank of Mysore, Doddaballapur Branch. Without prejudice to the above, it was contended that the AO ought not to have made the addition of Rs. 65,000 in respect of the credit appearing in the bank account on 20.3.2010 being the amount received by the Assessee from C.D. Padmanabha. Without prejudice to the above, it was contended that the AO erred in making the addition of the credit appearing in the bank account on 3.4.2010 amounting to Rs. 1,51,739 which was not a credit for the relevant assessment year.

4. The CIT(A) called for a remand report from the AO vide is letter dated 26.02.2015. In the aforesaid letter, the AO was directed to summon the Post Master Holenarasipur, with a specific direction to produce the relevant entries of payment of NSC commission to the assessee and the real nature of the transaction. It appears that the AO conducted an enquiry and submitted a remand report in the form of a letter from Post Master Gr.III, Hassan. It may be recalled that the entries were by the Post Master, Holenarasipura and not Post Master, Hassan. In the said letter, the Post Master has informed the AO that the records relevant to the transactions were weeded out as preservation period lapsed. This letter is dated 22.05.2018 and is available at page 15 of the assessee's Paper Book. The CIT(A) however without making any reference to the aforesaid ground of appeal with regard to addition of Rs.7,39,381/- dismissed the appeal of the assessee.

5. Learned Counsel for the assessee submitted that the impugned addition was made by the AO by invoking provisions of section 68 of the Income Tax Act, 1961 (hereinafter called 'the Act'). For application of Sec.68 of the Act, credit entry

should be found in the books of accounts of the assessee. It was submitted that the bank statement cannot be considered as books of accounts and consequently the addition made under section 68 of the Act cannot be sustained. It was also submitted by him that the Tribunal cannot take recourse to the provisions of section 69A of the Act and in this regard relied on the decision of Hon'ble Allahabad High Court in the case of Smt. Sarika Jain Vs. CIT 407 ITR 254 (Allahabad) wherein the Hon'ble High Court took the view that the Tribunal does not have the power to change the addition made under section 68 of the Act and sustain addition under section 69A of the Act. Learned DR on the other hand submitted that the Hon'ble Karnataka High Court in the case of Fidelity Business Services India Pvt. Ltd., Vs. ACIT ITA No.512/Bang/2017 judgment dated 23.07.2018 has taken a view that the Tribunal has such powers. It was also pointed out that the Hon'ble Karnataka High Court did not follow the ratio laid down by the Hon'ble Allahabad High Court in the case of Smt. Sarika Jain (supra).

6. I have given a careful consideration to the rival submissions and I am of the view that the impugned addition can be examined within the parameters of section 69A of the Act as that would be the proper provision of law applicable in the present case. As rightly contended by the learned DR, the Hon'ble Karnataka High Court has not chosen to follow the ratio laid down by the Hon'ble Allahabad High Court in the case of Smt. Sarika Jain (supra) and has upheld powers of Tribunal in an appeal as encompassing very wide range.

7. As far as the merits on the addition made by the AO is concerned, I am of the view that the addition to the extent of Rs.45,500/- which is a credit appearing in the bank account as on 01.03.2010 cannot be sustained as the same is an amount transferred from SBM, Doddaballapur Branch. Credit to this extent stands explained and addition to this extent is directed to be deleted. As far as addition of Rs.65,000/-

being an entry appearing in the bank account on 23.03.2010 being the amount received from C. D. Padmanabha, the issue has to be examined afresh by the AO and the assessee has to explain the nature of this credit. Similarly, addition of Rs.1,51,738/- being the credit appearing in the bank account as on 03.04.2010 is a credit appearing in the books of accounts of the assessee of the previous year relevant to Assessment Year 2010-11 and therefore this addition cannot also be sustained and the same is also directed to be deleted. With regard to other credits, the issue is remanded to the AO for considering afresh as the CIT(A) has not adjudicated the issue and the issue requires verification at the AO's end. The AO is directed to afford the assessee right to cross-examine the persons from whom the AO received information and based on which he made the impugned addition. The AO will afford opportunity of being heard to the assessee.

8. The next issue that arises for consideration is the issue with regard to disallowance of 40% of expenditure claimed by the assessee in earning income from LIC. The Assessee received from the Life Insurance Corporation of India commission income amounting to Rs. 13,71,779/- during the relevant previous year and claimed expenditure of Rs. 8,86,479/- therefrom. The AO disallowed 40% of the expenditure claimed amounting to Rs. 3,54,592/-. The disallowance was made on ad hoc basis and no reasons have been adduced for making the disallowance of 40% of the expenditure claimed.

9. On appeal by the Assessee, the CIT(A) agreed with the Assessee that the disallowance was not warranted. He however sustained the addition and thereby contracting his own findings. The following were the relevant observations of the CIT(A) on this issue:

“4. During the course of the appellate proceedings the appellant submitted that he received commission from the Life Insurance Corporation of India amounting to Rs. 13,71,779/- during the relevant previous year and claimed expenditure of Rs. 8,86,479/- therefrom. There was no dispute about the fact that the expenditure has been incurred by the appellant to earn the commission. In fact, the AO has in the assessment order stated that expenses on account of travel, printing postage, electricity charges, etc., are not ruled out. However, he has disallowed 40% of the expenditure claimed by him amounting to Rs. 3,54,592/-. The disallowance has been Made on an estimate basis. No reasons have been adduced for making the disallowance of 40% of the expenditure claimed by the appellant. Having regard to the nature of business carried on by the appellant and the quantum of commission received by him, the expenditure of Rs. 8,86,479/- claimed by the appellant is fair and reasonable. The AO ought not to have disallowed 40% of the expenditure to Rs. 3,54,592/- in the facts and circumstances of the case. The assessing officer has made the above addition since the assessee could not furnished any details in support of the expenses claimed during the scrutiny proceedings. The appellant has not furnished any evidences in support of his claim even during the appellate proceedings before me. Therefore, the addition made is hereby upheld.”

10. It is clear from perusal of the conclusion in the CIT(A)'s order that he has agreed with the contention of the assessee that the disallowance of expenses is on the higher side. Nevertheless, he has sustained the addition for want of supporting evidence filed by the assessee. I am of the view that disallowance of 15% of the expenses claimed by the assessee would be just and reasonable considering the facts and circumstances of the case and the observations of the CIT(A). I hold and direct accordingly.

11. In the result, appeal by the assessee is partly allowed.

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

Sd/-
(N.V VASUDEVAN)
Vice President

Bangalore,
Dated : 18.02.2021
/NS/*

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

By order

Assistant Registrar
ITAT, Bangalore.