

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA Nos.289 to 292/Bang/2020
Assessment years : 2008-09 to 2011-12

Smt. K.N. Nandini, Opp. APMC Yard, Dam Road, Hospet – 583 201. Bellary. PAN: ABCPN 5042Q	Vs.	The Assistant Commissioner of Income Tax, Central Circle 2(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri H.N. Khincha, CA
Respondent by	:	Shri Pradeep Kumar, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	06.07.2021
Date of Pronouncement	:	12.07.2021

ORDER

Per Chandra Poojari, Accountant Member

These appeals by the assessee are against the separate orders, all dated 31.12.2019 of the CIT(Appeals)-11, Bengaluru for the assessment years 2008-09 to 2011-12. These appeals were heard together and disposed of by this common order for the sake of convenience.

2. The grounds of appeal are common in nature for all the years with only change in the figures. The grounds for the AY 2008-09 are as follows:-

“1. The learned Commissioner of Income-tax (Appeals) has erred in confirming the order passed by Assessing Officer. The order passed by learned assessing officer being bad in law and

void-ab-initio was required to be quashed in toto instead of being confirmed partially.

2. In any case, the learned Commissioner of Income-tax (Appeals) has erred in rejecting the contention of the appellant that the application of section 153C of the Act lacked jurisdiction. The order passed by the Assessing officer is bad in law especially in the absence of satisfaction to be recorded before the issue of notice u/s 153C of the Act and such order is liable to be quashed.

3. In any case and without prejudice, the learned Commissioner of Income-tax (Appeals) has erred in partially confirming the additions made by the Assessing officer. On proper appreciation of facts and the law applicable, the additions made/confirmed are wholly erroneous and are liable to be deleted.

4.1 The learned CIT(A) has erred in not adopting the peak theory with respect to addition made on the bank deposits and confirming 10% of the addition made on account of total bank deposits by the Assessing officer. On the facts and circumstances of the case and the law applicable, the addition sustained by the CIT(A) is adhoc, without any basis and is to be deleted in entirety.

4.2 The learned CIT(A) having confirmed 10% of total additions, also erred in holding that out of the sources explained for bank deposits, a sum of Rs 3,90,40,000/- being advance received from Ayyappa Minerals remained unexplained, not supported with documentary evidence and same is to be added to the income of the appellant. The addition made is already subsumed in the addition sustained and amounts to double addition to the extent of 10% of the advances and such addition is liable to be deleted.

5. The learned CIT(A) has erred in confirming the addition made by the Assessing officer on account of URD purchases to the extent of 10% . On proper appreciation of facts and the law applicable, the addition made being adhoc, purely on estimation basis is to be deleted in entirety.

6. In any case, the additions as sustained is erroneous and excessive.

7. The learned Commissioner of Income-tax (Appeals) has erred in confirming the levy of interest u/s. 234A, 234B & 234C. The interest having levied been erroneously is to be deleted.

8. In view of the above and on the grounds to be adduced at the time of hearing it is requested that the impugned order passed by the Assessing Officer be quashed or atleast the addition as sustained/confirmed by the CIT(A) be deleted, and the interest levied be also deleted.”

3. The facts of the case are that a search and seizure operation u/s 132 of the Income-tax Act, 1961 [the Act] was conducted in the case of Sri K. V. Nagaraj and others on 25/10/2010. The appellant KN Nandini is proprietrix in M/s Swastik Steels, a dealer in iron ore. The appellant filed return of income for AY 2008-09 on 20/10/2008 declaring a total income of Rs. 5,76,700/-. Notice u/s 153C dated 23/09/2011 was issued and served on the appellant. In the assessment order, AO made an addition of Rs. 1,04,56,712/- on account of unregistered purchases. The said purchases were disallowed u/s 37(1). The AO also made an addition of Rs. 23,98,85,211/- as undisclosed bank credits. In the first round of appeal, the CIT(Appeals) confirmed the order of AO. The Tribunal vide order dated 27.7.2016 restored the entire matter back to the file of AO for fresh decision.

4. While passing the order giving effect to the ITAT order, the AO computed the income for these assessment years as follows:-

AY 2008-09

1.	Undisclosed income an account of disallowance of URD purchases	1,04,56,712
2.	Undisclosed bank credits	23,98,85,212
	TOTAL :	Rs.25,03,41,924

AY 2009-10

1.	Undisclosed income an account of disallowance of URD purchases	26,97,000
2.	Undisclosed bank credits	54,22,66,435
	TOTAL :	Rs.54,49,63,435

AY 2010-11

1.	Cash Deposit	38,37,47,910
2.	Cheque deposit	76,78,13,044
	TOTAL :	Rs.115,15,60,954

AY 2011-12

1.	Undisclosed bank deposits	7,42,28,122
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5. Against this, the assessee went in appeal before the CIT(Appeals), who sustained 10% of the additions.

6. On merits, the contention of the Id. AR before us is that the assessee has furnished full details of bank account and source of deposits and also details of sales made by the assessee in these assessment years and the CIT(Appeals) ought to have deleted the entire addition, instead of sustaining 10% of the addition made by the AO.

7. The Id. DR relied on the orders of lower authorities.

8. We have heard both the parties and perused the material on record. In these cases, in our opinion, the assessee must prove each deposit in the bank accounts so as to explain the source and nature of deposit. The

assessee is also required to prove the genuineness of the unregistered purchases with supporting evidences. Without examining the facts, the CIT(Appeals) sustained 10% of the addition. Therefore, it is appropriate to remit the entire issue to the file of the Assessing Officer for re-examination and *de novo* consideration, with a direction to the assessee to prove all the unregistered purchases and deposits into bank accounts to the satisfaction of the AO. Ordered accordingly.

9. The assessee also raised a ground in all these assessment years with regard to recording of satisfaction before issuing the notice u/s. 153C of the Act. At the time of hearing, no arguments were advanced by the Id. AR on this issue, however, he prayed that the issue may be kept open to be raised at appropriate stage. We concede to the request of the Id. AR and accordingly this issue is kept open.

10. In the result, all the appeals are allowed for statistical purposes.

Pronounced in the open court on this 12th day of July, 2021.

Sd/-

(N V VASUDEVAN)
VICE PRESIDENT

Sd/-

(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 12th July, 2021.
/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.