

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

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.773/Bang/2019
Assessment Year: 2011-12

Madhuri Hingorani Pradeep G-1, Promenade, 763 Nandidurga Road, Benson Town Bangalore PAN NO : AFUPP6959G	Vs.	ITO Ward-1(2)(4) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Sridhar, A.R.
Respondent by	:	Smt. R. Premi, D.R.

Date of Hearing	:	15.10.2020
Date of Pronouncement	:	22.10.2020

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 20-02-2019 passed by Ld CIT(A)-1, Bengaluru and it relates to the assessment year 2011-12.

2. The grounds urged by the assessee relate to the following issues:-
- Addition of Rs.60.00 lakhs pertaining to surrender made during the course of survey.
 - non-granting of set off of brought forward loss and depreciation.

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3. The assessee was earlier running a garment manufacturing unit under the name and style M/s MSR Clothing Company. It was discontinued in 2006. After that, the assessee was in employment for some time. Subsequently, the assessee started a SPA and beauty parlour by name M/s Energie Inc in October, 2009.

4. The revenue carried out survey operations u/s 133A of the Act in M/s Energie Inc on 27-09-2010. A statement under oath was taken during the course of survey. In the statement, the assessee admitted that she did not maintain books of accounts. She also submitted that she has maintained receipt books, but not recorded all the transactions. Finally, she surrendered a sum of Rs.60.00 lakhs as additional income. Subsequently, the assessee has claimed to have filed a letter date 11th October 2010 giving various details relating to her income and investments. In the said letter, the income of the year was estimated at Rs.35.68 lakhs. It was also stated that the brought forward losses to the tune of Rs.33.94 lakhs are available for set off and hence no significant taxable income shall be available for AY 2011-12.

5. Subsequently, the assessee filed her return of income on 29-09-2011. In the return of income she declared her business income at Rs.26,69,449/- and set off the same against brought forward losses and unabsorbed depreciation. Accordingly the total income was declared at NIL. The assessee did not offer additional income of Rs.60.00 lakhs in the return of income.

6. The assessing officer rejected the claim for set off of brought forward losses and unabsorbed depreciation on the reasoning that the said claim was rejected in AY 2008-09 on the ground that the assessee has failed to produce proofs in support of the said claim.

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The Ld A.R submitted that the assessee had challenged the said rejection by filing appeal before Ld CIT(A) and it is pending before him. Since the assessee did not offer the additional income of Rs.60.00 lakhs surrendered during the course of survey, the AO added the same to the business income reported by the assessee.

7. In the appellate proceedings before Ld CIT(A), the assessee made various submissions and hence the Ld CIT(A) called for a remand report. The assessee also replied to the remand report. With regard to claim of set off of brought forward losses and unabsorbed depreciation, the Ld CIT(A) upheld the view taken by AO. With regard to the letter dated 11.10.2010 claimed to have been filed before the AO, the Ld CIT(A) noticed that the same is unsigned and further there is no proof of furnishing the same to the ITO. Accordingly he refused to take cognizance of the same. With regard to the business income, the Ld CIT(A) substituted the business income of Rs.26,69,449/- declared by the assessee with the amount of Rs.5.00 lakhs and confirmed the addition of Rs.60.00 lakhs relating to additional income surrendered during the course of survey operations.

8. The main contention of the Ld A.R was that the assessee did not maintain books of account at the time of survey and hence she surrendered the additional income of Rs.60.00 lakhs. He submitted that the assessee made the said disclosure under the belief that her income for the financial year 2010-11 would be around Rs.60.00 lakhs. However, subsequent to the survey operations only, she could ascertain factual aspects. Accordingly, she filed a letter dated 11th October 2010 before the assessing officer. The said letter was handed over to Mr. Ramachandra ITO personally. In that letter, the assessee has given estimates of her income and also details of brought forward losses. In the mean time, the business premises of the assessee was

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sealed by the Municipal corporation people and accordingly business was disrupted. The Ld A.R submitted that the assessee has subsequently maintained the books of accounts and the same has also been audited. Accordingly, she has filed her return of income. Accordingly, he submitted that there was no necessity to separately add the amount of Rs.60.00 lakhs surrendered during the course of survey operation, since it was only an estimate. With regard to the claim of set off of brought forward losses and unabsorbed depreciation, the Ld A.R submitted that the assessee has furnished copies of IT acknowledgements and returns of income of earlier years. Filing of returns of income within due dates is sufficient to claim set off. Accordingly, the Ld A.R submitted that the tax authorities are not justified in rejecting the claim.

9. The Ld D.R, on the contrary, submitted that the assessee has not proved that the letter dated 11.10.2010 was filed before the AO. Hence the Ld CIT(A) has rejected the same by making following observations:-

“...However, the appellant has relied on the letter supposedly filed before the AO on 11.10.2010. However, there is no mention of the said letter in assessment order and other connected proceedings and there is no other authentic evidence to show case as to that the said letter was indeed filed before the AO during the course of survey proceedings. The copy of the letter produced now is also an unsigned copy, without any acknowledgement of filing the same before the AO. Hence, the authenticity of the said letter as having been filed before the AO within 15 days of survey is doubted. Further, as mentioned in this letter, the appellant has worked out (reversal of income) revised loss from the proprietary concern, based on the credits appearing in the banks. However, in the light of the

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business in which the appellant is into, running a Spa-grooming service centre etc., where in majority of the sales/payments are received by way of cash. Hence, the revised workings based on the bank entries, cannot be considered as reflecting the true statement of affairs of the appellant.”

The Ld D.R further submitted that the assessee has surrendered the amount of Rs.60.00 lakhs as “additional income” and hence it is over and above the amount declared in the books of account. With regard to the claim of brought forward losses and unabsorbed depreciation, the Ld D.R submitted that the assessee has not proved the said claim.

10. We heard the parties and perused the record. We notice that the assessee did not maintain books of accounts at the time, when the survey took place. However, the return of income was filed on the basis of books of accounts maintained by the assessee. From the paper book, we notice that the assessee has also got her accounts audited u/s 44AB of the Act and tax audit report was also furnished along with the return of income.

11. From the letter dated 11.10.2010 claimed to have been filed before the AO, it appears that the assessee was under the impression that the amount of Rs.60.00 lakhs represented her income for the FY 2010-11 relevant to AY 2011-12. However, the tax authorities have taken the view that the same represented additional income. We have earlier noticed that the Ld CIT(A) has doubted the claim of filing of letter itself and accordingly rejected the said letter for the reasons discussed in his order. We notice that the assessee has not specifically retracted from the surrender of Rs.60.00 lakhs made by her during the course of survey operation. Instead, she has only

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estimated her income for the financial year 1.4.2010 to 31.03.2011 (which estimate has been made on 11.10.2010). Hence, in our view, the said letter may not be of any help to the assessee.

12. Subsequent to the survey operations, it is claimed that the assessee's business was disrupted by closure of shop by municipal corporation for about a month. It is further submitted that the disruptions continued in one form or other. The Ld CIT(A) has also recognised this fact and accordingly, he has estimated the income at Rs.5.00 lakhs as against Rs.26.69 lakhs declared by the assessee herself.

13. Be that as it may, we notice that the assessee has subsequently maintained books of accounts and got it audited also. We notice that the AO has not examined books of accounts at all. It is a fact that the assessee has surrendered the income during the course of survey and the assessee has tried to rebut the same by furnishing regular books of accounts. Hence, in our view, the AO should have examined the books of accounts and should have given proper reasoning as to why the surrendered amount of Rs.60.00 lakhs is still liable to be taxed.

14. We notice that the AO has accepted the books of account and hence assessed the business income of Rs.26,69,449/- declared by the assessee voluntarily. However, the Ld CIT(A) has reduced the same to Rs.5.00 lakhs, which may not be a correct action. The relief, if any, could be granted in respect of additional income only and it should be presumed that the relief of about Rs.21.69 lakhs granted by the Ld CIT(A) is towards alleged additional income of Rs.60.00 lakhs. Further, the Ld CIT(A) has also made various observations without examining books of accounts.

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15. In our considered view, the examination of books of accounts of the assessee would help to decide the question as to whether the addition of Rs.60.00 lakhs (to the extent sustained by Ld CIT(A)) is still warranted or not. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of AO for examining the issue afresh duly examining the books of accounts.

16. With regard to the claim of set off of brought forward losses and unabsorbed depreciation, it is the submission of the assessee that she has furnished copies of returns of income filed by her for earlier years. If the said returns of income have been accepted as it is and if they have been filed within the due dates prescribed u/s 139(1) of the Act, in our view, there should not be any impediment in allowing the claim. Since it is a matter of verification of facts, we restore this issue also to the file of the AO with the direction to examine the claim of the assessee vis-à-vis the documents furnished and decide the same in accordance with law.

17. Needless to mention, the assessee should be provided with adequate opportunity of being heard.

18. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 22nd Oct, 2020

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 22nd Oct, 2020.
VG/SPS

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Copy to:

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

By order

**Asst. Registrar,
ITAT, Bangalore.**