

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH " C "

BEFORE SHRI VIJAYPAL RAO, JUDICIAL MEMBER AND
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

I.T.A. No.541/Bang/2014 (Assessment Year : 2009-10)		
M/s. Maruthi Clothing Co., No.7, Vishweswaraiah Industrial Area, Whitefield Road, Bangalore-560 048 PAN AAEFM 8094Q	Vs.	Asst. Commissioner of Income Tax, Circle 7(2), Bangalore.
Appellant		Respondent.

Appellant By : Shri G.S. Prashanth, C.A.

Respondent By : Dr. K. Shankar Prasad, JCIT (D.R)

Date of Hearing : 30.6.2015.

Date of Pronouncement : 7.8.2015.

O R D E R

Per Shri Jason P. Boaz, A.M. :

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-III, Bangalore dt.11.12.2013 for Assessment Year 2009-10.

2. The facts of the case, briefly, are as under :-

2.1 The assessee firm, in the business of manufacturing readymade garments, filed its return of income for Assessment Year 2009-10 on 28.9.2009 declaring total income of Rs.22,34,270. The case was selected for scrutiny and the assessment was concluded under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') vide order dt.21.12.2011 wherein the income of the assessee was determined at Rs.77,56,369, as against the returned income of Rs.22,34,270, in view of the following additions/disallowances :-

i) Discrepancy in the amounts reflected as 'payable' & 'receivable' to M/s. Arvind Brands.	Rs.42,11,320.
ii) Sundry Creditor balances disallowed :	Rs.4,48,468.
iii) Disallowance of expenses claimed towards employer's contribution to PF :	Rs.8,58,122.
iv) Interest on ESIC :	Rs.4,189.

2.2 Aggrieved by the order of assessment dt.21.12.2011 for Assessment Year 2009-10, the assessee preferred an appeal before the CIT (Appeals) - III, Bangalore on the additions / disallowances listed out above at (i) and (ii) in para 2.1 of this order. The learned CIT (Appeals) dismissed the assessee's appeal vide order dt.11.12.2013.

3. The assessee, being aggrieved with the order of the CIT (Appeals) - III, Bangalore dt.11.12.2013 for Assessment Year 2009-10, has preferred this appeal raising the following grounds :-

"1. The orders of the authorities below in so far as they are against the appellant are opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the appellant's case.

2. The appellant denies itself liable to be assessed on a total income of Rs.7,56,369 as against Rs.22,34,270 declared by the appellant under the facts and circumstances of the case.

3. Without prejudice, the income ought to be assessed at Rs.31,37,515 on the facts of the case.

4. The orders passed by the authorities below suffer from the want of principles of natural justice and thus the orders need to be cancelled in the interest of equity and justice.

5. The order of the CIT (Appeals) is bad in law as the CIT (Appeals) failed to appreciate that additions of Rs.42,11,320 was deleted by the Assessing Officer as per order of rectification passed under Section 154 of the Act on the facts of the case.

6. The CIT (Appeals) failed to take cognisance of the order passed under Section 154 of the Act and hence the order of the CIT (Appeals) needs to be set aside in the interest of equity and justice.

7. The writing off of outstanding balances to sundry creditors amounting to Rs.4,07,552 is bad in law as there was no cessation or remission of liabilities under Section 41(1) of the Act and hence the addition needs to be deleted under the facts of the case.

8. *The Assessing Officer erred in making additions on account of amounts payable to :*

(a) *M/s. Food Express Stores of Rs.1,56,555 under the facts and circumstances of the case.*

(b) *M/s. Feel Good of Rs.2,50,997 under the facts and circumstances of the case.*

9. *Without prejudice, the CIT (Appeals) erred in enhancing the assessment by making additions of Rs.42,11,320 which was already deleted by the Assessing Officer on the facts of the case.*

10. *Without prejudice, the action of the CIT (Appeals) in enhancing the assessment by making additions of Rs.42,11,320 without providing a reasonable opportunity to the appellant as per provisions of section 251(2) of the Act is not in accordance with law and needs to be deleted on the facts of the case.*

11. *The appellant denies itself liable to be levied to interest under Sections 234B and 234C of the Act and further the computation of interest was not provided to the appellant as regard to the rate, period and method of calculation of interest under the facts and circumstances of the case. The appellant expressly urges that the period of levy of interest is not in accordance with the provisions of the Act.*

12. *Without prejudice, the interest levied under Sections 234B and 234C ought to have been waived on the facts of the case.*

13. *The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.*

14. *In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity."*

4. The Grounds at S.Nos. 1 to 4, 13 and 14 are general in nature and not being urged before us are dismissed as infructuous.

5.1.1 In the Grounds at S.Nos.5 & 6, the assessee assailed the impugned order of the learned CIT (Appeals) dt.11.12.2013 being erroneous for upholding the addition of Rs.42,11,320 on account of outstanding sundry creditors made by the Assessing Officer in the order of assessment; when actually the Assessing Officer herself has passed an order under Section 154 of the Act deleting the said addition.

5.1.2 The learned Authorised Representative of the assessee was heard in support of the grounds raised. According to the learned Authorised Representative, the factual sequence of the case on this issue is that in the course of assessment proceedings the

Assessing Officer, inter alia, examined the assessee's records with respect to the assessee's purchases and job work dealings with Arvind Brands. On verification thereof, the Assessing Officer required the assessee to furnish details to explain the discrepancies noticed therein. On the assessee's failure to furnish the details called for the Assessing Officer proceeded to make an addition of Rs.42,11,320 on account of the difference between the amounts reflected as payable to Arvind Brands and receivable from them. It is submitted that, subsequently, vide letter dt.14.5.2012, the assessee preferred an application under Section 154 of the Act for rectification of the order of assessment for Assessment Year 2009-10 (placed at pages 4 to 8 of the assessee's paper book) on the issue of the addition of Rs.42,11,320 by furnishing reconciliation of the aforesaid difference in sundry creditor balance of Arvind Brands. The learned Authorised Representative submitted that the Assessing Officer, taking cognisance of the assessee's aforesaid application for rectification dt.14.5.2012, passed an order under Section 154 of the Act dt.21.6.2012, accepting the assessee's explanation and rectifying the mistake in the order of assessment dt.21.11.2011 thereby reducing the assessed income from Rs.77,56,369 to Rs.35,45,050 by deleting the addition of Rs.42,11,320. A copy of the same is placed at page 11 of the assessee's paper book.

5.1.3 It is further submitted that a copy of this rectification order dt.21.6.2012 was filed in office of the learned CIT (Appeals) on 21.11.2013, well before the learned CIT (Appeals) passed the impugned order on 11.12.2013 (copy placed at page 9 of the assessee's paper book). The learned Authorised Representative contends in spite of the rectification order dt.21.6.2012 being available with the office of the learned CIT (Appeals) on 21.11.2013 itself the learned CIT (Appeals) has failed to take cognisance of the same and made a factually incorrect statement that " no copy of the rectification order has been furnished before me....." instead of which she could have ascertained the position with the Assessing Officer by verifying the records to check the authenticity of

the assessee's claim. It was contended that once the Assessing Officer had rectified the order by order dt.16.6.2012 deleting the above addition of Rs.42,11,320, the learned CIT (Appeals) could not have confirmed this non-existent addition which resulted in an implied enhancement of income. In these circumstances, the learned Authorised Representative prayed that the order of the learned CIT (Appeals) be reversed and the income as assessed vide the order under Section 154 of the Act dt.21.6.2012 be restored.

5.2 Per contra, the learned Departmental Representative supported the impugned order of the learned CIT (Appeals) on this issue.

5.3.1 We have heard both parties and perused and carefully considered the material on record. From an appreciation of the details on record, we find that in the order of assessment for Assessment Year 2009-10, the Assessing Officer had made an addition of Rs.42,11,320 on account of the assessee's failure to explain the difference / discrepancies in the amounts reflected as 'payable to' and 'receivable from' Arvind Brands. It is also seen from the details placed on record that on the assessee preferring a rectification application dt.14.5.2012 in this regard, the Assessing Officer accepted the explanation / reconciliation of the balances of Arvind Brands put forth by the assessee and passed an order under Section 154 of the Act dt.21.6.2012 rectifying the order of assessment dt.21.11.2011, by deleting the addition of Rs.42,11,320 made in respect of Arvind Brands, thereby reducing the assessed income to Rs.35,45,050 (i.e. Rs.77,56,369 less Rs.42,11,320). As per the details placed on record by the assessee, we find that the assessee had, vide letter dt.21.11.2013, also brought to the notice of the office of the learned CIT (Appeals) the fact the aforesaid order under Section 154 of the Act dt.21.6.2012 was passed and filed a copy thereof. We are of the view that if the learned CIT (Appeals) had doubted the claim of the assessee that the aforesaid rectification order dt.21.6.2012 was placed before her vide letter dt.21.11.2013, she could have called for and verified the same factual position from the Assessing Officer or the records of

assessment; which she failed to do. Instead, she proceeded to confirm the non-existent addition of Rs.42,11,320 which she ought not to have done.

5.3.2 In the factual matrix of the case, as discussed above, we reverse the decision of the learned CIT (Appeals) in upholding the addition of Rs.42,11,320 and restore the position of the case on hand on this issue to that which exists subsequent to the rectification order under Section 154 of the Act dt.16.6.2012 where the assessee's income was recomputed / determined, pursuant to the deletion of the said addition of Rs.42,11,320. It is ordered accordingly. Consequently, Grounds at S.Nos.5 and 6 are allowed.

6. In Grounds at S.Nos.9 and 10, the assessee alternatively submits that, without prejudice to the grounds raised at S.Nos.5 & 6, the learned CIT (Appeals) in making / confirming the non-existent addition of Rs.42,11,320 already deleted by the rectification order dt.21.6.2012 of the Assessing Officer had implicitly enhanced the assessee's income by Rs.42,11,320, without affording the assessee reasonable opportunity of being heard under Section 251(2) of the Act; which action is not in accordance with law. Since the assessee's grievance in respect of the addition of Rs.42,11,320 on account of discrepancies in the balances of Arvind Brand has been addressed by us at paras 5 to 5.3.2 of this order, we are of the view that no adjudication on these alternative grounds at S.Nos.9 and 10 is required at this juncture.

7.1.1 In the grounds raised at S.Nos.7 &8, the assessee contends that the impugned order of the learned CIT (Appeals) is erroneous in upholding the Assessing Officer's action in making addition of Rs.4,07,552 under Section 41(1) of the Act since there was no cessation or remission of liabilities on account of amounts payable to :-

(i) M/s. Food Express Stores : Rs.1,56,555.

(ii) M/s. Feel Good : Rs.2,50,997.

7.1.2 The learned Authorised Representative submitted that the amounts due to the above parties had arisen in the course of regular business / trading activities and are due even now; being reflected in the assessee's audited books of accounts. It is submitted that the additions were made by the Assessing Officer since no confirmation was received from these parties in response to notices to prove the genuineness of the balances outstanding as on 31.3.2009. The learned Authorised Representative contends that just because the above parties have wound up their business, it does not automatically arise that these amounts are not payable to them and that the same are to be treated as cessation of liability under Section 41(1) of the Act. In this regard, the assessee, inter alia, placed reliance on the decision of Sugauli Sugar Works Pvt. Ltd. (236ITR 518) (SC). It is submitted by the learned A.R. that apart from the assessee's own ledger extracts which reflected the outstanding balances of these two parties, confirmations have been obtained by the assessee from these two parties in respect of their outstanding balances as reflected in the assessee's books and copies of these are placed at pages 12 and 14 of the assessee's paper book. It was prayed by the learned Authorised Representative that the issue of the genuineness of the outstanding balances of Rs.2,50,997 of M/s. Feel Good and Rs.1,56,555 of M/s. Food Express Stores may be considered in the light of the aforesaid confirmations.

7.2 Per contra, the learned Departmental Representative supported the orders of the authorities below, but submitted that the genuineness of the aforesaid two confirmations of outstanding balances by the two parties M/s. Feel Good and M/s. Food Express Stores require to be examined and verified by the Assessing Officer as the same were not before him in assessment proceedings.

7.3 We have heard both parties and perused and carefully considered the material on record. On a perusal of the order of assessment, it appears that the Assessing Officer invoked the provisions of section 41(1) of the Act to bring to tax the outstanding balances

of Rs.1,56,555 in respect of M/s. Food Expenses Stores and Rs.2,50,997 of M/s. Feel Good for the reason that neither of those parties confirmed the outstanding balances as notices issued to them returned unserved as they had wound up their business. We find from the paper book filed by the assessee in the course of proceedings on 29.6.2015 that the confirmations of these parties are certified as having been filed before the learned CIT (Appeals). On the contrary, the learned CIT (Appeals) in the impugned order states that no submissions have been made before him to substantiate the claim that outstanding creditors are genuine. We are of the view that, due to the contrary claims of both the assessee and the learned CIT (Appeals), in the interest of justice and equity, issue of the genuineness of the confirmations filed in respect of both parties i.e. M/s. Feel Good and M/s. Food Express Stores (copies of which are placed at pages 12 and 14 of the assessee's paper book) be remanded back to the file of the Assessing Officer for necessary examination and verification in accordance with law for adjudication thereon after affording the assessee adequate opportunity of being heard and to file details / submissions required. Consequently, grounds at S.Nos.7&8 are allowed for statistical purposes.

8. In the Grounds at S.Nos.11 & 12, the assessee's denies itself liable to be charged interest under Section 234B and 234C of the Act. The charging of interest is consequential and mandatory and the Assessing Officer has no discretion in the matter. This proposition has been upheld by the Hon'ble Apex Court in the case of Anjum H Ghaswala (252 ITR 1) and we, therefore, uphold the action of the Assessing Officer in charging the said interest. The Assessing Officer is, however, directed to recompute the

interest chargeable u/s. 234B and 234C of the Act, if any, while giving effect to this order.

9. In the result, the assessee's appeal for Assessment Year 2009-10 is partly allowed.

Order pronounced in the open court on 7th August, 2015.

Sd/-
(VIJAYPAL RAO)
Judicial Member

Sd/-
(JASON P BOAZ)
Accountant Member

*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard File.

(True copy)

By Order

Asst. Registrar, ITAT, Bangalore