

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

**BEFORE SHRI GEORGE GEORGE, K. JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

ITA No.868/Bang/2009
(Assessment year : 2006-07)

Deputy Commissioner of Income-tax
Circle 9(1),
Bangalore. : APPELLANT

Vs.

Shri G.Selva Kumar,
58/3, 1st floor, 6th Mai, 17th Cross,
Malleswaram,
Bangalore. : RESPONDENT

AND

Cross Objection No.66/Bang/2009
(in ITA No.868/Bang/2009)
(Assessment year: 2006-07)

Shri G.Selva Kumar,
Bangalore. : Cross-Objector

Vs.

Deputy Commissioner of Income-tax
Circle 9(1), Bangalore. : Respondent

Revenue by : Smt. Jacinta Zimik Vashai, Addl.CIT(DR)
Revenue by : Shri S. Parthasarathi, Advocate

ORDER

Per A. Mohan Alankamony, Accountant Member

This appeal in ITA No.868/B/2009 is filed by the Revenue and the Cross Objection in CO No.No.66/B/2009 is filed by the assessee (along with a request for condonation of delay), directed against the order of Id. CIT(A) in ITA No.130/C-9(1)/CIT(A)-V/08-09 dated 24.6.2009 for the A.Y. 2006-07.

2. Since the issues involved in the appeal of the Revenue and the Cross Objection of the assessee are same, they are heard together and a common order passed for the sake of convenience.

3. The Revenue has raised five grounds in its appeal, wherein ground No.1, 4 & 5 are general in nature and do not survive for adjudication. The crux of the issue arising from ground Nos. 2 & 3 are that Id. CIT(A) has erred in deleting the addition made by the AO towards undisclosed investment in a property in "Peenya" for Rs.76,30,000 which came to the knowledge of the Revenue due to AIR information and the assessee failed to produce his books of accounts to substantiate otherwise.

4. The assessee has raised three grounds in his cross-objection wherein ground No.3 is general in nature and do not survive for adjudication. The other two cross objections of the assessee can be summarized as follows:

"(i) Ld. CIT(A) had rightly deleted the impugned addition after having satisfied from the evidences produced by the assessee before the Id. CIT(A).

(ii) Ld. AO has erred to have come to a conclusion that the CIT(A) was incorrect for deleting the additions made on account of undisclosed investment.”

5. The assessee is an individual engaged in the business of real estate development, filed his return of income on 31.10.2006 for the A.Y. 2006-07 admitting an income of Rs.13,85,470. The case was taken up for scrutiny under CASS and notices were issued u/s. 143(2) and 142(1) of the Act. As per the AIR received by the Revenue, it was revealed that the assessee had purchased two immovable properties detailed as follows:

- (a) Immovable property located at No.488, 1st KIADB 14th Cross, Peenya, Bangalore – 560058 for a consideration of Rs.70,00,000/-.
- (b) Immovable property at Arasaradi, Madurai for a consideration of Rs.60,00,000/-.

6. Initially the assessee had not furnished schedule of fixed assets before the Revenue in order to examine whether these properties forms part of the assets disclosed in the balance sheet. Subsequently the Id. AR submitted before the Id. AO the schedule of fixed assets and established that the property purchased by the assessee in Madurai forms part of the balance sheet and an amount of Rs.62,20,000 was included therein. According to the Id. AO, the assessee had no answer with regard to the property purchased at Peenya for a consideration of Rs.70,00,000. Therefore relying on the AIR report, the Id. AO treated the property supposed to have been purchased by the assessee in Peenya as income from undisclosed investment and made an addition of Rs.76,30,000/- based on the purchase consideration of Rs.70,00,000/-, and assumption of,

8% towards stamp duty - Rs.5,60,000/-, registration fee at 1 % - Rs.70,000/-.

7. The assessee came in appeal before the Id. CIT(A). The CIT(A) after due deliberation and after obtaining a remand report of the Id. AO came to the following conclusion:

“From the above chart, it is seen that an amount of Rs.76,30,000 being investment in the property situated at Khata No.337, Nagashetty Halli Village, Kasaba Hobli, Bangalore North Taluk was made through Indian Bank Account of the appellant which is properly reflected in the books of accounts maintained and audited as per the provisions of the Income tax Act, 1961. As the appellant is a Builder and Developer, the cost of land purchased including the registration and stamp duty charges therein are reflected as cost of construction and as expenditure. As such, the investment made by the appellant for the purposes of residential complex has not been reflected under Fixed Assets in the financial statements. In this connection, the addition of Rs.76,30,000/- without any evidence or material on record cannot be sustained and upheld. The A.O. has no cogent reason to disallow the said expenditure when the payment was made through appellant’s bank account and the expenses are accounted in the books of accounts. In view of this, I am of the considered opinion that the disallowance made by the A.O. is not justified and the same has to be deleted. I, therefore, direct the A.O. to delete the addition accordingly.”

8. Ld. AR forcefully submitted before us that the assessee had produced the books of accounts and relevant documents before the Id. CIT(A) to establish all the investments made by him. He further submitted that the assessee did not purchase any property in Peenya and therefore was not in a position to submit either the purchase details before the Id. AO or it found a place in the balance sheet of the assessee. Ld. AR prayed that the matter could be remitted back to the Id. AO for the AO to establish that the assessee has purchased the property in Peenya for Rs.70,00,000/-

by producing the purchase deed. The assessment order based only on the reliance placed upon the information found in the AIR report is bad in law. The Revenue has to establish that the assessee had purchased the property by producing the sale deed from the Sub-Registrar, when the assessee claims that there was no such registration of sale executed by him. The document executed with the Sub-Registrar can be obtained by the Revenue in the event if it is not produced by the assessee. This is a case where the assessee denies for having executed any such sale deed. Therefore the onus is on the Revenue to establish that the assessee had made such investment.

9. Ld. DR vehemently supported the order of the Id. AO. She argued by stating that the AIR report can be relied upon by the Revenue, when the assessee has not co-operated by producing the relevant documents. Ld. DR contended that the AIR report had disclosed two properties purchased by the assessee. One of the purchases is established to be correct, and disclosed in the balance sheet of the assessee. Therefore, there was no reason for the AO to suspect that the information contained in the AIR pertaining to the other property purchased by the assessee to be incorrect. As a result, the AO was right in his realm to make the addition of Rs.76,30,000/- towards undisclosed investment based on the AIR information.

10. We have heard the rival submissions and minutely perused the records produced before us including the paperbook pages 1 to 20 submitted by the Id. AR. On the close perusal of the Ld.CIT(A)'s order it is observed that the appellant had explained that the Investment was not

projected as an Asset in the Balance sheet but was shown as the expenditure forming part of cost of construction of the project since the appellant is a builder. The Id. CIT(A) had also examined the payments met out of Indian Bank current account and verified the schedule of cash and bank balances. Extract of the Id.CIT(A)'s order is reproduced hereinbelow at the cost of repetition for reference:

"...On the other hand, the appellant stated that any land purchased for the purposes of construction of residential apartments would be accounted as direct expenses and accordingly included said investment as cost of construction. The accounts of the assessee are audited and the appellant has filed his return of income along with the said report. The Profit and Loss account reflected the same as contract receipts/construction cost and Ledger abstract of land purchase and contract receipts account for the relevant period. On perusal of the bank transactions and the schedule of Fixed Assets, I am of the view that the property, which do not find place in the schedule of fixed assets, cannot be the only reason and ground to conclude that the said land is from unexplained investments. The AO should come to a logical conclusion to prove that the property was purchased from outside the books of account and transaction were not routed through the said bank account of the appellant. But in the present case, the payments were met out of Indian Bank current account, which is also reflected in the schedule to cash and bank balances. As per the Absolute Sale Deed dt.7-5-05, the appellant paid three cheques of Rs.25 lakhs by cheques No.643390 dt.5-5-05 drawn on Indian Bank, RMV 2nd Stage Extension Branch, Bangalore, Rs.25 lakhs by cheques No.643391 dt.6-5-05 and Rs.20 lakhs by cheques No.643392 dt.7-5-05 on the same bank. On 5-7-05, vide cheque No.643393 Bank Pay Order (BPO) was issued for Rs.697,698/- for registration charges and Rs.90,111/- for BWSSB deposits. The appellant being a Builder Developer has accounted for the same as part of construction cost. The ledger extract is as under:

Date	Particulars	Vch type	Debit	Credit
7-5-05	C.A. 587 Ch.No.643393/Bank pay order issued towards purchase of land at Dollars colony Registration charges 6,97,698.00 BWSSB deposit 90,111.00	Payment	6,97,698.00	

17-5-05	C.A. 587 Ch.No.643391 issued Shankaraiah towards a/c towards purchase of land at Dollars Colony	Payment	25,00,000.00	
18.5.05	CA 587 Ch.No.643390 issued Shankaraiah towards a/c. towards purchase of land at Dollars Colony	Payment	25,00,000.00	
18.5.05	CA 587 Ch.No.643392 issued Shankaraiah towards a/c. towards purchase of land at Dollar colony	Payment	20,00,000.00	
Opening balance				
			Current total	76,97,698.00
			Current balance	76,97,698.00

From the above chart, it is seen that an amount of rs.76,30,000/- being investment in the property situated at Khata No.337, Nagashetty Halli Village, Kasaba Hobli, Bangalore North taluk was made through Indian Bank Account of the appellant which is properly reflected in the books of accounts maintained and audited as per the provisions of the Income-tax Act 1961. As the appellant is a Builder and Developer, the cost of land purchased including the registration and stamp duty charges therein are reflected as cost of construction and as expenditure. As such, the investment made by the appellant for the purpose of residential complex has not been reflected under Fixed Assets in the financial statements. In this connection, the addition of Rs.76,30,000/- without any evidence or material on record cannot be sustained and upheld. The AO has no cogent reason to disallow the said expenditure when the payment was made through appellant's bank account and the expenses are accounted in the books of accounts. In view of this, I am of the considered opinion that the disallowance made by the AO is not justified and the same has to be deleted."

The arguments put forth by the Id. AR and the Ld.DR, before us, are quit contrary to the facts observed by the Id.CIT(A) in his order. In these circumstances, we are of the opinion that the matter may be remitted back to the file of the Id.AO for *de novo* consideration **with respect to the loan**

issue of purchase of property in Peenya. In the event the assessee claims that he has not purchased the property, as revealed in the AIR, before the Id.AO, then, it would be proper for the Id.AO to obtain the Sale Deed from the Sub Registrar's office to prove the revenue's claim. Assessment order based only on the AIR report will not stand in the eye of law. The assessee is also directed to co-operate with the proceedings by promptly producing the relevant documents and books of account required by the Id. AO. Since the grounds raised by the Revenue and CO by the assessee pertains to the same issue, the delay in filing the CO is condoned and admitted for hearing.

11. In the result, the appeal of the revenue and the cross-objections of the assessee are allowed for statistical purposes.

Pronounced in the open court on this 22nd day of October, 2010.

Sd/-

(GEORGE GEORGE, K .)
Judicial Member

Sd/-

(A. MOHAN ALANKAMONY)
Accountant Member

Bangalore,
Dated, the 22nd October, 2010.
AM / Ds

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.