

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

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI A.K. GARODIA, ACCOUNTANT MEMBER

MP No. 10/Bang/2020 [in CO. 120/Bang/2018 [in ITA 1904/Bang/2018]
Assessment year: 2007-08

Shri. G. Somashekar Reddy, No. 8, Ashok Nagar, Havambhavi, Siruguppa Road, Bellary – 583 103. PAN: AJOPR 6213R	Vs.	The Deputy Commissioner of Income Tax, Central Circle – 1(3), Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri B.S. Balachandran, Advocate
Respondent by	:	Shri Bipin C.K., JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	06.03.2020
Date of Pronouncement	:	18.03.2020

ORDER

Per N.V. Vasudevan, Vice President

This is a petition filed by the Assessee u/s. 254(2) of the Income Tax Act, 1961 (Act) praying to recall its order 28.8.2019 insofar as it relates to dismissal of the Cross Objection No.120/Bang/2018 in ITA No.1904/Bang/2018 for AY 2007-08 filed by the Assessee and to direct hearing of the Cross Objection and decide the same on merits.

2. The Assessee is an individual. Pursuant to a search and seizure operation carried out in the case of the Assessee u/s.132 of the Act, an order of assessment was passed in relation to AY 2007-08. One of the addition made in such assessment was addition of a sum of Rs.63,27,500/- representing unexplained investment in jewellery. The Assessee challenged the aforesaid addition made in the order of assessment in an appeal filed before the first appellate authority, i.e., CIT(A). The first appellate authority confirmed addition to the extent of Rs.56,71,005/-. The revenue had filed appeal against the said order of the CIT(A) and the Assessee filed Cross-objection in the said appeal of the revenue. The revenue's appeal came to be dismissed by an order dated 28.8.2019 on account of the tax effect being less than Rs.50 lakhs, which is the tax effect prescribed by the CBDT in its Circular dated 8.8.2019 for the revenue to file appeal before Tribunal. The Cross objection was also dismissed in view of the dismissal of the appeal of the revenue.

3. In this Petition the Assessee has pointed out that the issues raised in the cross objection are not merely supportive of the order of the CIT(A) to the extent relief allowed to the Assessee, but contests the order of CIT(A) in relation to the validity of the assessment framed u/s.153A of the Act and also challenges the validity of the order of CIT(A) in sustaining addition of Rs 63,26,500 made by the AO to the extent of Rs.56,71,005. The relevant grounds of appeal in the Cross Objection in this regard were as follows:

“LIMITATION U/S. 153A.

2. The Learned Appellate Commissioner failed to appreciate that the impugned assessment order passed under section 153A r.w.s. 143(3) of the Act, is barred by limitation as per section 153 of the Act.

INVESTMENT IN JEWELLARY.

3. Having recorded the finding that an amount of Rs.63,27,500/-, representing investment in jewellery, was accounted in the hands of Mrs.Vijaya, wife of the Respondent-assessee, the Learned Appellate Commissioner erred in upholding the addition of Rs.56,71,005/- out of the total investment of Rs.68,98,057/- as per the invoices for purchase of jewellery found during the search.”

4. Since the aforesaid grounds are independent of the grounds raised by the revenue in its appeal, the CO ought to have been decided independently and not dismissed on the ground that the revenue's appeal has been dismissed. In other words, it is the plea of the Assessee that, CO which is independent of the grounds raised in the revenue has to be decided even though the revenue's appeal is dismissed or is withdrawn by the revenue. It is the plea of the Assessee that the order of the Tribunal dismissing the CO as infructuous owing to dismissal of the revenue's appeal suffers from a mistake apparent from the face of the record and should be recalled and the CO should be directed to be heard and decided on merits after affording opportunity of hearing to the parties.

5. The learned counsel for the Assessee reiterated the stand taken by the Assessee in the application and has further drawn our attention to two decisions viz., (i) Decision of the Hon'ble Supreme Court dated July 16, 2019, in the case of ***Shri Badru (since deceased) v. NTPC Limited Civil Appeal No. 5557-59 of 2019 dated 16.7.2019*** wherein it was held that cross objection has to be disposed of on its merits by assigning reasons notwithstanding the dismissal of the appeal. The issue arose in the context of revenue's appeal challenging the order of the Hon'ble High Court of Himachal Pradesh dismissing an appeal by the State against award passed by the Court to which the question of correctness of compensation awarded

for acquisition of lands were dismissed. The Hon'ble High Court did not adjudicate the cross objection of the land owner. The Hon'ble Supreme Court noted that the High Court had dismissed the cross objection filed by the landowners under **Order 41 Rule 22** of the **Code of Civil Procedure, 1908**, without assigning any reason. The Bench observed that it was obligatory on the part of the High Court to have independently examined the issues raised by the landowners before the High Court in the cross objection with a view to find out as to whether any case was made out on facts by the landowners for further enhancement in the compensation and, if so, to what extent. (ii) decision of the ITAT Delhi Bench in the case of *Ajay Kalia Vs. ACIT (CO 254/Del/2014 in ITA No.245/Del/2014 for AY 2010-11 order dated 7.1.2016* wherein before the Delhi Bench, the revenue pleaded that the Assessee's cross objection should also be dismissed. The Tribunal held as follows:

“5. Insofar as the Cross Objection of the assessee is concerned, the Id. DR at the very outset vigorously argued that the same should also be consequentially dismissed because the Revenue's appeal, pursuant to which the cross objection was filed, is likely to be dismissed as a result of low tax effect. His contention was that the CO has no independent existence distinct from the Departmental appeal and hence the same cannot be allowed to survive. This was opposed by the Id. AR who submitted that the issue raised in the CO is different from the one raised in the Revenue's appeal.

6. We have heard the rival submissions and perused the relevant material on record. Before embarking upon the question of the maintainability or otherwise of the Cross objection filed by the assessee pursuant to the Revenue's appeal, which involves tax effect of less than Rs.10 lac and has been dismissed supra, we need to concentrate on the prescription of section 253(4) which empowers the respondent to file cross objection, the relevant part of which reads as under:-

`(4) The Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of ... the Commissioner (Appeals) has been preferred under sub-section (1) or sub-section (2) or sub-section (2A) by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof; within thirty days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of ... the Commissioner (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3) or sub-section (3A).'

7. A bare perusal of the above provision transpires that the AO or the assessee (hereinafter referred to as 'the other side'), on receipt of notice of an appeal having been preferred by the appealing party against the order passed by the CIT(A), notwithstanding not having filed separate appeal, may file a Cross objection 'against any part of the order of the ... Commissioner (Appeals)'. It is amply clear from the language of sub-section (4) that the right to file cross objection has been given to the other side against any part of the order of the CIT(A), whether or not connected with the issues raised in the appeal by the appealing party. There can be one possibility when the cross objection is filed by the other side in support of the order passed by the CIT(A) and the other possibility can be of filing CO against the issues decided against it in the impugned order. There can be still one more possibility when the other side, apart from supporting the impugned order appealed against, may also assail certain other issues decided against it. This divulges that the CO can be filed by the other side, on receipt of notice of appeal having been filed by the appealing party, on any issue dehors the issues raised by the appealing party. On filing, a CO assumes the character of an appeal, which is apparent from section 253(4), which provides that: 'such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3) or sub-section (3A)'. Rule 22 of the ITAT Rules, 1963 also provides that: 'A memorandum of cross-objections filed under sub-section (4) of section 253 shall be registered and numbered as an appeal and all the rules, so far as may be, shall apply to such appeal. This shows that a cross

objection is treated in no way different from a separate appeal by the tribunal.

8. The language of section 253(4) makes it abundantly vivid that the scope of a Cross objection is not restricted only to the points decided against the appealing party, but, also extends to the points decided against the other side. The mandate of the provision is quite vast and is unlike the prescription of rule 27 of the ITAT Rules, which is limited in its realm empowering the respondent to support the impugned order by providing that: 'The respondent, though he may not have appealed, may support the order appealed against on any of the grounds decided against him.'

9. The Id. DR's contention that the Cross objections filed by the assessee should be invariably dismissed in limine for the reason of the dismissal of the appeals of the Department because of low tax effect, in our considered opinion, does not stand to any logic in all circumstances. In a situation where the cross objection is in support of the impugned order, then, of course, such a cross objection has no independent existence and is liable to be dismissed as infructuous pursuant to the dismissal of the appeal of the Revenue. However, in a case where the cross objection filed u/s 253(4) is on an issue independent of the appeal filed by the Revenue, then, such a cross objection cannot be dismissed simply on the ground of dismissal of the appeal by the Revenue involving low tax effect. Acceptance of this contention of the Id. DR would amount to snatching a valuable right given by the statute to the assessee to file and pursue an appeal before the Tribunal irrespective of any tax effect. We, therefore, negate the contention of the Id. DR by holding that the instant CO challenging the impugned order, is maintainable."

7. It was pointed out that the issues raised in the cross objection is independent of the issue raised by the revenue in its appeal and therefore the same ought to have been heard and decided on merits and ought not to have been dismissed as infructuous.

8. The learned DR submitted that the CO has no legs to stand in view of the dismissal of the appeal of the revenue as unadmitted and therefore the misc. application should be dismissed.

9. We have given a very careful consideration to the rival contentions. As rightly contended on behalf of the Assessee, the grounds raised in the CO are independent of the appeal filed by the Revenue and therefore such a cross objection cannot be dismissed simply on the ground of dismissal of the appeal by the revenue involving low tax effect. The residential premises of the Assessee was searched u/s. 132 of the Act on 26.10.2007. An order of assessment dated 31.12.2017 was passed by the AO. The Assessee had filed return of income in response to notice u/s.153A of the Act declaring income of Rs.24,06,380/-. In the assessment order, the AO computed by making addition of Rs.94,105 as income from House Property not declared, Rs.56,17,005 being unexplained investment in purchase of jewellery as per seized document and Rs 25,52,000 being unexplained cash remittances to bank account u/s.69 of the Act. In respect of addition of Rs.56,17,005, the CIT(A) sustained the addition made by the AO against which the Assessee has filed cross objection before the Tribunal. The addition of Rs.25,52,000 was deleted by the CIT(A) against which the revenue filed appeal before the Tribunal but that appeal was dismissed for low tax effect. Therefore the issue to be decided in the CO was an issue independent of the appeal filed by the Revenue. In such cases, the CO cannot be dismissed simply on the ground of dismissal of the appeal by the revenue involving low tax effect. The decision of the ITAT Delhi Bench in the case of *Ajay Kalia (supra)* supports the plea of the Assessee. We therefore recall the order dated 28.8.2019 in so far as it relates to dismissal of CO No. 120/Bang/2018 in ITA No.1904/Bang/2018 as infructuous and direct that the said CO will be heard and decided on merits. The registry is

directed to fix the CO No.120/Bang/2018 for hearing in due course after notice to the parties.

10. In the result, the miscellaneous petition by the assessee is allowed.

Pronounced in the open court on this 18th day of March, 2020.

Sd/-

Sd/-

(A.K.GARODIA)
ACCOUNTANT MEMBER

(N V VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 18th March, 2020.

/Desai S Murthy/

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore