

Condition of Proving 'Source of Funds' under 68 not applicable to Non-Residents: ITAT Bangalore

Facts:

1. ITA Nos.1441 & 1442/Bang/2018 & CO 103 & 104/Bang/2018 ITA No.1443/Bang/2018 & CO No.105/Bang/2018 M/s. Kansur Developers India Pvt. Ltd., Bangalore M/s. Snowshine Realtors Pvt. Ltd., Bangalore
2. The issue involved in the appeal is the investment of Rs. 3,94,77,984/- (US Dollars \$ 9,39,952) by a non- resident. non-citizen. Sri. Samyak Chandrakanth Veera in shares of the company M/s. Kansur Developers (P) Ltd. The Assessing Officer in the order of assessment dated 31.12.2015 has added the said investment under the provisions of section 68 of the Income-tax Act, 1961.
3. As per records, assessee has received a sum of 939952 USD (Rs.4,07,88,170/-) from Samyak C. Veera, a share capital and share premium and his return of income from the year 2000 to 2006 is only 3312256 USD and he has no enough sources to invest in the assessee's company and in certain years he has also incurred loss to the tune of 56,628,098 USD.

ITAT Bangalore held as below:

1. The taxability of the income is to be decided with reference to section 5(2) of the Act and provisions of sections 68 or 69 of the Act cannot enlarge the scope of section 5(2) of the Act. What is not taxable u/s 5(2) of the Act cannot be taxed under sections 68 or 69 of the Act. Under section 5(2) of the Act, the income accruing or arising outside India is not taxable unless it is received in India.
2. Similarly, if any income is already received outside India, the same cannot be taxed in India merely on the ground that it is brought to India by way of remittance. If such income is shown in the books of accounts of the assessee as in the present case, if the assessee is unable to prove the source of such credit,

cannot be taxed u/s 5(2) of the Act, unless it is proved that such money is relatable to the income accrued or arising in India.

3. If the shareholder is a non-resident, the creditworthiness of the shareholders, if he is non-resident, does not have to be established by the assessee in respect of remittance received by him or it. Proviso to Sec 68 is applicable only to resident shareholders.

4. Being so, in the present cases, only identity and creditworthiness of investor and genuineness of the transactions for explaining the credit in the books of account of the assessee is sufficient, and the onus does not extend to explain the source of funds in the hands of the investor. Thus Sec 68 cannot be invoked in this case.