

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA Nos.7076 & 7077/M/2012
Assessment Years: 2009-10 & 2010-11**

Shri Gopal Agarwal, A-304, Niranjan Apts, Hira Nagar, Link Road, Mulund (W), Mumbai – 400 080 PAN: AAJPA1324L	Vs.	Asst. Commissioner of Income Tax, Central Circle -38, Aayakar Bhavan, Gr. Floor, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vijay Mehta, A.R. &
Shri Anuj Kisnadwala, A.R.

Revenue by : Shri Debashish Chanda, D.R.

Date of Hearing : 01.10.2015

Date of Pronouncement : 31.12.2015

ORDER

Per Sanjay Garg, Judicial Member:

The above titled appeals relevant to A.Y. 2009-10 & A.Y. 2010-11 have been preferred by the assessee against the separate orders both dated 17.10.2012 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)]. Since the appeals are relating to the same assessee and the facts and issues involved therein are identical in nature, hence the same are taken together for disposal by this common order. First we take up the assessee's appeal for A.Y. 2009-10 bearing ITA No.7076/M/2012.

ITA No.7076/M/2012 (for A.Y. 2009-10)

2. The assessee in this appeal has raised three effective issues. Vide ground No.1, the assessee has challenged the validity of the assessment order passed under section 153C of the Act. At the outset, the Ld. A.R. of the assessee has

stated that as per instructions of his client, he does not press ground No.1. The ground No.1 of the appeal is therefore dismissed being not pressed.

3. Vide ground Nos.2 & 3, the assessee has agitated the confirmation of addition of Rs.1,82,324/- being 1% of the total wages and salary. The Assessing Officer (hereinafter referred to as the AO) in the assessment order had made the disallowance at the rate of 2% of the total payment of wages to the labourers at Rs.3,64,347/- on the ground that all the payments were made in cash only; in the salary register, in many places no signatures of the persons were there to whom the payments were made; in some places, the signature was not taken on revenue stamp and further in many places one person has signed in more than one place.

4. The Ld. CIT(A), however considering the fact and circumstances of the case and relying upon his own decision on identical issue for A.Y. 2007-08 observed that considering the totality of the fact and circumstances it would be reasonable to disallow 1% of the expenditure incurred in this respect. He, therefore, restricted the disallowance at Rs.1,82,324/-.

5. The Ld. A.R. of the assessee has brought our attention to para 9.3 of the assessment order wherein the AO has reproduced the statement of the assessee under section 131 of the Act vide which the assessee himself had offered a sum of Rs.1,67,047/- as additional income on account of discrepancy in record relating to wages and labour charges. The Ld. A.R. of the assessee has stated that the telescopic benefit of the discloser made by the assessee of Rs.5,67,047/- is required to be given to the assessee.

6. We have gone through the records. We find that the assessee had offered the additional income on account of discrepancy in record in respect of certain payments made to certain parties on account of wages and labour charges. The AO has also made the disallowance finding discrepancies in the salary register. Hence, in our view, telescopic benefit is required to be given to the assessee in respect of the income offered on this account. Since the

assessee has already declared additional income of Rs.5,67,047/- in this respect, hence, in our view, no further disallowance of Rs.1,79,732/- was warranted in this case. In view of the above, addition made on this issue is hereby ordered to be deleted. These grounds of the appeal of the assessee are therefore allowed.

7. Vide ground No.4, the assessee has claimed that the interest under section 234B of the Act is to be calculated/computed from the date of original assessment order passed under section 143(1) of the Act and that the assessee is not liable to pay the interest on account of additions made in consequence of assessment made under section 153C of the Act for the period prior to the finalization of original assessment under section 143(1) of the Act. The assessee, in this respect, has relied upon the decision of the Hon'ble Karnataka High Court in the case of "Vijay Kumar Saboo, HUF & Others. Vs. ACIT" 340 ITR 382.

8. We have heard the rival contentions on this issue. We find that as per sub section (3) of section 234 of the Act as it stood and applicable for the assessment year under consideration, the assessee is liable to pay the interest, for the period commencing on the day following the date of determination of total income under sub section (1) of section 143 or under section 143(3) as the case may be and ending on the date of reassessment or re-computation under section 147 or section 153A. On the amount by which the tax on the total income determined on the basis of the reassessment or re-computation exceeds the tax on the total income determined under sub section (1) of section 143 or on the basis of regular assessment under section 143(3) of the Act. The Hon'ble Karnataka Bombay High Court in "Vijay Kumar Saboo, HUF & Others. Vs. ACIT" (supra) has also analyzed the above provision and has held that where in a case, the income is determined consequence to the filing of the return under section 143(1) or 143(3) and the income is increased in consequence of the reassessment proceedings, either under section 147 or

under section 153A of the Act, the interest will be leviable as per the provisions of sub section (3) of section 234B of the Act. In view of the above, the AO is directed to calculate and compute the interest accordingly.

9. This appeal of the assessee is, thus, treated as partly allowed.

10. Now coming to the appeal of the assessee for A.Y. 2010-11 bearing ITA No.7077/M/2012.

ITA No.7077/M/2012

11. The assessee in this appeal has taken three grounds of appeal. Vide ground No.1, the assessee has agitated the confirmation of addition of Rs.18,200/- under section 68 of the Act being unexplained bank deposits. The AO, during the assessment proceedings, made an addition of Rs.7,41,484/- on account of deposits in the bank account under section 68 of the Act. However, during the appellate proceedings before the Ld. CIT(A), the assessee explained the source of all the deposits upon which the Ld. CIT(A) called for a remand report from the AO. The AO in the remand report dated 29.08.12 stated that all the credits and deposits in question were verified except the following two deposits:

1. Rs.7,000/- dated 11.08.09
2. Rs.11,200/- dated 08.02.10

Total= Rs.18,200/-.

The Ld. CIT(A) accordingly restricted the additions made on this account to Rs.18,200/-.

12. The Ld. A.R. of the assessee has explained before us that in fact the assessee has explained the source of entire deposits. He has further stated that the amount of Rs.7000/- represented the deposit of cash which was withdrawn from M/s. Shree Sudha Enterprises. While the source of Rs.11,200/- was refund received from Sales Tax Department against the deposit of Radhakrishna Distributors. The Ld. A.R. of the assessee, in this respect, has

relied upon the cash account for the year under consideration and the capital account of M/s. Shree Sudha Enterprises for the year showing drawings. He has further relied upon the balance sheet of the assessee as on 31.03.09 showing deposit of sales tax of Rs.5000/- for Radhakrishna Distributors.

13. Considering the above submissions of the assessee and in view of the fact that the assessee has explained the source of entire deposits of more than Rs.7 lakhs, we do not find any justification on the part of the lower authorities in disbelieving the source of above deposits of meager amount of Rs.18,200/-. This ground of appeal is accordingly allowed and the addition of Rs.18,200/- confirmed by the Ld. CIT(A) is hereby ordered to be deleted.

14. Vide ground Nos.2 & 3, the assessee has agitated the addition of Rs.1,87,676/- being 1% of the total wages and salary claimed to have been paid by the assessee during the year. The addition on this issue has been made on identical grounds as discussed above in ground No.2 of the appeal of the assessee for A.Y. 2009-10. However, the Ld. A.R. of the assessee has fairly submitted that no additional income has been offered by the assessee in this respect for the year under consideration. Under the circumstances, the disallowance at the rate of 1% of total wages and salary on account of discrepancy in record confirmed by the Ld. CIT(A) seems to be justified. These grounds are accordingly dismissed. Accordingly, this appeal of the assessee is also treated as partly allowed.

15. In view of the above, both the appeals of the assessee are partly allowed.

Order pronounced in the open court on 31.12.2015.

Sd/-
(N.K. Billaiya)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 31.12.2015.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.