

**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.75/Bang/2012 (Assessment Year : 2006-07)		
M/s. Sapphire Holdings, 7 & 8 South End Road, Sirur Park Junction, Sheshadripuram, Bangalore-20 PAN AASFS 0874J	Vs.	The Income Tax Officer, Ward 6(4), Bangalore-560 001
Appellant		Respondent.

Appellant By : Shri Santhosha Kumar, C.A.

Respondent By : Shri Sunil Kumar Agarwala, JCIT (D.R.)

Date of Hearing : 15.09.2015.

Date of Pronouncement : 29.10.2015.

**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.30.10.2014 for Assessment Year 2006-07.

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

2.1 The assessee, a firm engaged in business as dealers and traders in precious and semi-precious artificial jewellery, etc., filed its return of income for Assessment Year 2006-07 on 31.10.2006 declaring income of Rs.4,360. The return was processed under Section 143(1) of the Income Tax Act, 1961 (in short 'the Act') and the case was

subsequently taken up for scrutiny. The assessment was completed under Section 143(3) of the Act vide order dt.24.11.2008, wherein the income of the assessee was determined at Rs.4,88,630 as against the returned income of Rs.4,360 in view of the following additions / disallowances :-

(i) Disallowance of interest paid to partners :	Rs.1,89,434.
(ii) Staff Salary :	Rs.2,49,835.
(iii) Sundry Expenses :	Rs.15,000.
(iv) Postage & telephone charges :	Rs.30,000.

2.2 Subsequently, the Assessing Officer observed from the enclosures filed along with the return of income that the total rental receipts are Rs.43,94,366 as per TDS Certificates enclosed as against receipts of Rs.35,03,291 declared by the assessee. In this context, the Assessing Officer initiated proceedings under Section 154 of the Act by issue of notice to the assessee proposing to bring to tax the difference of receipts amounting to Rs.8,91,075 (i.e. Rs.43,94,366 less Rs.35,03,291). After considering and rejecting the assessee's reply that the difference constituted payments of rent as being untenable, the Assessing Officer brought the same to tax in the assessee's hands, thereby determining the assessee's income at Rs.13,79,705 in the rectification order passed under Section 154 of the Act dt.14.9.2009.

2.3 Aggrieved by the order under Section 154 of the Act dt.14.9.2009 for Assessment Year 2006-07, the assessee preferred an appeal before the CIT (Appeals) - III,

Bangalore. The learned CIT (Appeals) dismissed the assessee's appeal vide order dt.30.10.2014.

3. Aggrieved by the order of the CIT (Appeals) - III, Bangalore dt.30.10.2014 for Assessment Year 2006-07, the assessee has preferred this appeal before the Tribunal raising the following grounds :-

- “1. The order of the learned authorities below in so far as it is against the appellant is opposed to law, facts, equity, and weight of evidence under the facts and circumstances of the case.*
- 2. The appellant denies itself liable to be taxed over and above the total returned income by the appellant of Rs.4,360 under the facts and circumstances of the case.*
- 3. The learned CIT (Appeals) is not justified in law and on facts in confirming the addition made of Rs.8,91,075 made by the learned Assessing Officer on account of difference in turnover as per Form No.16A and the Profit and Loss Account of the appellant.*
- 4. The learned authorities below failed to appreciate the fact that the appellant was only receiving commission for maintaining the show room and the rent was paid by the Principal i.e. M/s. Oysterbay Pvt. Ltd. to the land lord directly under the facts and circumstances of the case.*
- 5. Without prejudice the learned authorities failed to appreciate that if the said rental receipts though the appellant has not received or accrued to it but for the sake of arguments if the same is considered as receipt of the appellant then the corresponding expenditure ought to have been allowed by the learned authorities below being the rent payment made to the land lord as an outgo as an expenditure amounting to Rs.8,91,075 under the facts and circumstances of the case.*
- 6. The appellant denies itself liable to be charged to interest under Section 234B, C and D of the Income Tax Act, 1961 under the facts and circumstances of the case.*
- 7. The appellant craves leave of this Hon'ble Tribunal to add, alter, delete or substitute any of the grounds urged above.*
- 8. In view of the above and other grounds that may be urged at the time of 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, 2, 7 & 8 are general in nature and not been specifically urged before us, are rendered infructuous and accordingly dismissed.

5. In Ground No.6, the assessee denies itself liable to be charged interest under Section 234B, 234C and 234D 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, 234C and 234D of the Act, if any, while giving effect to this order.

6.1 In Grounds S.No.3 to 5, the sole issue for consideration in this appeal, the assessee assails the impugned order of the learned CIT (Appeals) in confirming the addition of Rs.8,91,075 made by the Assessing Officer, on account of the difference of receipts as per TDS Certificates in Form No.16A of Rs.43,94,366 vis-à-vis the receipts of Rs.35,53,291 reflected in the assessee's profit and loss account. It is contended that the assessee was only receiving commission for maintaining the show room and the rent was paid by the Principal M/s. Oyzterbay Pvt. Ltd. to the landlord directly. The assessee submits that, without prejudice to its contentions made above, if the above receipts are to be considered in the assessee's hands, then off set of the corresponding expenditure of Rs.8,91,075 should be allowed to the assessee as outgoings on account of rent payments to the landlord. In support of the grounds raised, the learned Authorised Representative,

has filed copies of the correspondence of the assessee in the matter with the Assessing Officer, copy of agreement between the assessee and Oyzterbay Pvt. Ltd. The learned Authorised Representative was heard in support of the grounds raised and reiterated the submissions put forth before the learned CIT (Appeals).

6.2 Per contra, the learned Departmental Representative strongly supported the impugned order of the learned CIT (Appeals). It was prayed that the assessee's appeal be dismissed, as the assessee has merely reiterated the arguments put forth before the learned CIT (Appeals) but has failed to controvert the finding of the learned CIT (Appeals) in the impugned order.

6.3.1 We have heard the rival contentions and perused and carefully considered the material on record. The dispute before us is the reconciliation of the difference of Rs.8,91,075 between receipts of Rs.43,94,366 as per TDS Certificates and receipts of Rs.35,03,291 disclosed by the assessee. Admittedly the assessee was engaged in the business of selling jewellery in a showroom of Oyzterbay Pvt. Ltd. for which the assessee received/earned commission on sales effected. Before us, the learned Authorised Representative for the assessee reiterated the submissions put forth before the learned CIT (Appeals) that expenditure incurred by it for running the showroom, including rents amounting to Rs.8,91,075 paid to the landlord, were reimbursed by Oyzterbay Pvt. Ltd. which are all reflected in its rental accounts and therefore does not find place in its profit and loss account.

6.3.2 On an appreciation of the facts on record we do not find the arguments and claims put forward by the assessee to be factually tenable. As per the business agreement dt.10.10.2003 and the letter dt.4.11.2003 supplementing the aforesaid agreement, the assessee's principal, M/s. Oyzterbay Pvt. Ltd. was to grant the assessee rentals of Rs.36,000 per month in lieu of rents paid to the landlord; which works out to Rs.4,32,000 per annum (viz. Rs.36,000 x 12). This, in our considered view, certainly does not account for the difference of Rs.8,91,075 between the receipts of Rs.43,94,366 as per the TDS Certificates and receipts of Rs.35,03,291 declared by the assessee. In this view of the matter, we concur with and uphold the finding of the learned CIT (Appeals) that the explanation put forth by the assessee in an attempt to reconcile the difference in the receipts / turnover declared in the profit and loss account vis-à-vis the receipts/turnover in the TDS Certificates, is unacceptable as it does not controvert the findings of the learned CIT (Appeals) in the impugned order. Consequently, the grounds raised at S.Nos.3 to 5 are dismissed.

7. In the result, the assessee's appeal for Assessment Year 2006-07 is dismissed.

Order pronounced in the open court on 29<sup>th</sup> October, 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