

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'B', BANGALORE**

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER
AND
SMT ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER**

**ITA No.1696 (Bang) 2013
(Assessment year : 2008-09)**

The Income Tax Officer,
Ward-1(2),
Mysore

Appellant

Vs

M/s Shalom Sankalp Ventures,
No. D/6A Temple Road,
V.V.Mohalla,
Mysore
Pan No.AHFS5359N

Respondent

**Revenue by : Ms. Neera Malhotra, CIT_DR
Assessee by : Shri A. Shankar, Advocate**

**Date of hearing : 17-10-2016
Date of pronouncement: : 03-11-2016**

ORDER

PER SHRI A. K. GARODIA, AM

This is revenue's appeal directed against the order of the ld. CIT(A), Mysore dated 22-08-2013 for the assessment year 2008-09. The grounds raised by the revenue are as under;

1.The Order of the CIT(A) is opposed to law and facts of the case.

2.The CIT(A) erred in allowing deduction u/s. 8018(10) overlooking the fact that the assessee has executed the

building project as works contract since neither the ownership rights in the property nor the building was constructed by assessee.

3.The CIT(A) has erred in relying on the Hon. Karnataka High court decision in the case of M/s. Shrivane constructions though the Hon. Supreme court has only dismissed the SLP filed by the department by way of non-speaking order which does not tantamount to declaration of law under Article 141 of the constitution as held by the Supreme Court in 245 ITR 360.

4.The CIT(A) erred in allowing the deduction overlooking the fact that the permission of local authorities for construction of building was not obtained in the name of the assessee.

5.The CIT(A) erred in considering certificate given by a Chartered Engineer to the effect that none of the flats constructed by the assessee has built up area above 1500 Sq. Feet, which is a fresh evidence and the same cannot be admitted under Rule 46A(iii) without providing opportunity to the AO.

6.The CIT(A) erred in allowing deduction u/s. 8018 overlooking provision of section 8018(10)(d) as per which built up area for shops and commercial establishments should not exceed 5% of aggregate built up area or 2000 Sq feet whichever is less.

7. The CIT(A) failed to note that the assessee has constructed club house with multipurpose' hall, gymnasium etc which are commercial establishments and also over looked sanction plan available on records as per which area earmarked for commercial use works out to 28% of the total project

and thus contravenes Section 8018(10)(d).

8. The CIT(A) erred in concluding that each phase is in itself a separate housing project for the purpose of section 80-IB(10) and that the assessee was eligible for deduction U/S 80- IB since it had obtained completion certificate for the first phase whereas, the assessee had completed only the first phase of the project thereby rendering it ineligible in terms of sub section (10) of section 80- IB for claiming deduction.

9. The CIT(A) further erred in concluding that the assessee was eligible for deduction u/s 80-1B merely on the ground that separate completion certificate and separate khata were obtained by the assessee in respect of the first phase consisting of 288 flats. The CIT(A) failed to appreciate the fact that first phase as only a part of the project which had not reached completion.

10. The CIT(A) erred in relying upon the decision of the Hon'ble Bombay High Court in the case of CIT Vs Vandana Properties since in that case, the assessee had obtained phase-by-phase approval whereas in the instant case the assessee had not obtained phase-wise approval but for the entire project.

11. The CIT(A) erred in giving a liberal construction of section 80-IB when the conditions specified in the section were not satisfied by the assessee.

12. The CIT(A) erred in holding that the assessment order passed deserves to be cancelled for the reason that reasons recorded for initiating action u/s 147 were not furnished to the assessee ignoring the deduction of ITAT, Delhi in the case of Smt. Gaurinder Kaur reported in 102 ITD 189 in view of the fact that assessee was well aware of the reasons for which assessment was re-opened and also had participated in the assessment proceedings.

13. The appellant craves for leave to add further grounds or amend these and such other grounds that may be urged at the time of hearing, the order of the CIT(A) may be set aside and that of the AO be restored”.

3. The ld. DR of the revenue supported the assessment order whereas the ld. AR of the assessee supported the order of the ld. CIT(A). He also submitted that as per ground no.12 of the revenue's appeal, grievance of the revenue is that the ld. CIT(A) was not justified in holding that the assessment order passed by the AO deserves to be cancelled for the reason that reasons recorded for initiating action u/s 147 of the IT Act, were not furnished to the assessee. He submitted that the ld. CIT(A) has followed the Tribunal order rendered in the case of Smt Gaurinder Kaur reported in 102 ITD 189. He also submitted that this issue is covered in favour of the assessee by the Tribunal order rendered in the case of Sri S. Ashok Kumar (HUF) & Smt. Hema S Reddy in ITA Nos.1306 & 1307(B)/2014 dated 25-05-2016. He submitted a copy of this Tribunal order and pointed out that in this case, the Tribunal had followed the judgment of the Hon'ble Bombay High Court rendered in the case of CIT Vs Trend Electronics 379 ITR 456 and it was held that when the AO failed to furnish the reasons recorded for re-opening of the assessment, the re-assessment order passed by the AO is bad in law and the same was quashed by the Tribunal. He submitted that in the present case also, reasons were not furnished by the AO and hence, the assessment order has been rightly quashed by the ld. CIT(A).

4. We have considered the rival submissions. We find that as per ground no.12 raised by the revenue, this is the contention of the revenue

that the ld. CIT(A) was not justified in quashing the assessment order for non-furnishing of reasons recorded by the AO for re-opening and the claim is on the basis that the assessee is well aware of the reasons for which the assessment was re-opened and the assessee had also participated in the assessment proceedings. Hence, this is not a case of the revenue that the reasons recorded were furnished by the AO to the assessee. Under these facts, the issue is squarely covered in favour of the assessee as per the Tribunal order rendered in the case of Shri S. Ashok Kumar & Smt.Hema S Reddy (Supra) in which the Tribunal has followed the judgment of the Hon'ble Bombay High Court rendered in the case of CIT Vs Trend Electronics (Supra). Para-10 of the Tribunal order is relevant which is reproduced herein below;

“10. Accordingly, in the case in hand when the AO has failed to furnish the reasons recorded for re-opening of the assessment and consequently, failed to dispose of the objections which would have been raised by the assessee against such reasons prior to the completion of re-assessment. Hence, the re-assessment order passed by the AO in the case of both the assessee are bad in law for want of furnishing the reasons recording for reassessment of assessment despite the specific request made by the assessee and consequently we quash the impugned orders of the AO passed u/s 143(3) r.w.s 147 of the Act”.

Under these facts, in the present case, as discussed above where this is not disputed that the reasons recorded were not furnished by the AO to the assessee, we decline to interfere with the order of the ld. CIT(A) on this issue i.e. regarding quashing the assessment order on this basis that the reasons recorded for re-opening were not furnished to the assessee by the

AO. Respectfully following the Tribunal order cited by the ld. AR of the assessee and in turn by following the judgment of the Hon'ble Bombay High Court rendered in the case of CIT Vs Trend Electronics (Supra), ground no.12 of the revenue is rejected.

5. In view of our above decision, we have rejected ground no.12 of the revenue's appeal and confirmed the order of the ld. CIT(A) regarding quashing of the assessment order. Other grounds aside by the revenue do not call for any adjudication because once the assessment order itself is quashed, no addition survives and as a consequence, deletion of these addition by the ld, CIT(A) do not require any adjudication on merit of such deletion of various additions. We want to make it clear that we do not express any opinion on merit of various additions deleted by the ld. CIT(A).

6. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-

**(SMT ASHA VIJAYARAGHAVAN
JUDICIAL MEMBER**

Place: Bangalore:

D a t e d : 03.11.2016

am*

Copy to :

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

Sd/-

**(A.K. GARODIA)
ACCOUNTANT MEMBER**

By order

AR, ITAT, Bangalore

1. श्रुतलेख की तारीख.....
DATE OF DICTATION.....
2. तारीख, जिस पर टाइप किया हुआ मसौदे, संबंधित सदस्य के सामने रखा गया है
DATE ON WHICH TYPED DRAFT IS PLACED BEFORE THE DICTATING
MEMBER.....
3. तारीख जिस पर अनुमोदित मसौदे व. निजी सचिव/निजी सचिव के पास वापस आए
DATE ON WHICH THE APPROVED DRAFT COMES TO THE PS/Sr.PS.....
4. घोषणा के लिए आदेश संबंधित सदस्य के सामने रखने की तिथि
DATE ON WHICH THE ORDER IS PLACED BEFORE THE DICTATING MEMBER
FOR PRONOUNCEMENT.....
5. आदेश नि.सचिव/व.नि.सचिव के पास वापस आने की तिथि
DATE ON WHICH THE ORDER COMES BACK TO THE PS/Sr.PS.....
- 6 आदेश अपलोड करने की तिथि
DATE OF UPLOADING THE ORDER ON WEBSITE.....
7. अगर अपलोड नहीं किया तो, उसका कारण
IF NOT UPLOADED, FURNISH THE REASON FOR DOING SO.....
8. बेंच लिपिक के पास फाइल जाने की तिथि
DATE ON WHICH THE FILE GOES TO THE BENCH CLERK.....
9. आदेश ज़ेरोक्स/पृष्ठांकन के लिए भेजने की तिथि
DATE ON WHICH ORDER GOES FOR XEROX & ENDORSEMENT.....
10. फाइल मुख्य लिपिक के पास जाने की तिथि
DATE ON WHICH THE FILE GOES TO THE HEAD CLERK.....
11. आदेश पर हस्ताक्षर के लिए फाइल सहायक रजिस्ट्रार के पास जाने की तिथि
THE DATE ON WHICH THE FILE GOES TO THE ASSISTANT REGISTRAR FOR
SIGNATURE ON THE ORDER.....
12. अधिकरण आदेश के प्रेषण के लिए फाइल प्रेषण विभाग में जाने की तिथि
THE DATE ON WHICH THE FILE GOES TO DESPATCH SECTION FOR DESPATCH
OF THE TRIBUNAL ORDER.....
13. आदेश की प्रेषण की तिथि
DATE OF DESPATCH OF ORDER.....