

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

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

ITA Nos.456/Bang/2011 & 1614/Bang/2013
Assessment years : 2007-08 & 2008-09

Karnataka State Tourism Development Corporation Ltd., No.49, II Floor, West Avenue, Khanija Bhavan, Race Course Road, Bangalore – 560 001. PAN: AACCK 3563F	Vs.	The Assistant Commissioner of Income Tax, Circle 11(5), Bangalore.
APPELLANT		RESPONDENT

ITA No.519/Bang/2011
Assessment year : 2007-08

The Assistant Commissioner of Income Tax, Circle 11(5), Bangalore.	Vs.	Karnataka State Tourism Development Corporation Ltd., Bangalore – 560 001. PAN: AACCK 3563F
APPELLANT		RESPONDENT

Assessee by	:	Shri Satyanarayan Murthy, CA
Respondent by	:	Dr. P.K. Srihari, Addl. CIT(DR)

Date of hearing	:	02.06.2016
Date of Pronouncement	:	12.08.2016

ORDER

Per Sunil Kumar Yadav, Judicial Member

These are appeals preferred by the assessee as well as the revenue against the respective orders of the CIT(Appeals).

2. Since these appeals were heard together, these are being disposed of through this consolidated order for the sake of convenience.

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3. These appeals are preferred against the respective orders of the CIT(Appeals) on a common ground that the CIT(Appeals) erred in confirming adding back of notional income of Rs.1,61,20,000 towards land leased to Karnataka Golf Association ("KGA"). In this regard, our attention was invited that the assessee has leased out its land of 124 acres to KGA for development of Golf club in the Challaghatta Tank bed, near Old Airport Road, for a period of 30 years at the annual rental charged by the assessee at Rs.1 per acre per annum. Since the lease rental charges were very low, the Assessing Officer issued a show cause notice to the assessee to explain the reasons for charging of lesser annual rent. In response thereto, it was contended by the assessee that the land has been granted by the Govt. of Karnataka to lease it to KGA and the lease rent was fixed in 1986 as per the direction of the Government. Therefore, valuation and treatment of the assumed sum by the AO was not proper. The AO was

not convinced with the explanation of the assessee and having observed that KGA was earning huge income on account of membership fees and also held investment in fixed deposit, but is not paying the reasonable rental to the assessee. Having taken into account the market value of the surrounding areas, the AO has estimated the lease rent at Rs.1,30,000 per acre per year and he accordingly worked out the notional lease rent received by the assessee at Rs.1,61,20,000.

4. The assessee has preferred an appeal before the CIT(Appeals) with the submission that the assessee is a State Govt. Public Sector and is purely controlled by the Government and its activities are also monitored by the Government through Senior Officers. The land was allotted to KGA at the direction of the Government and the annual rent was also fixed as per the Govt. norms. Therefore the assessee does not have much say in fixing the annual rent. Moreover, there is no provision in the Income-tax Act, 1961 ["the Act"] which says that notional income can be taxed in the hands of the assessee, without its actual receipt. The CIT(Appeals) was not convinced with the explanation of the assessee and confirmed the addition.

5. Now the assessee is before us and has filed copy of lease agreement and a copy of the proceedings of the Govt. of Karnataka to demonstrate that land was given on licence at fixed annual rent at the instruction of the Government. A copy of the bills and invoices with respect to lease rent is also placed on record. The Id. counsel for the assessee

further contended that nobody can force the assessee to earn income of particular activities. Therefore, the addition cannot be made on the basis of notional income. There must be real income which can only be taxed.

6. The Id. DR, on the other hand, has placed reliance upon the order of the CIT(Appeals).

7. Having carefully examined the order of lower authorities in the light of rival submissions, we find that undisputedly the land was given on lease by the assessee to KGA at fixed annual rent at the instruction of the Government. It is also a fact that the assessee is a public sector of the State Govt. and its activities are controlled and monitored by the State Govt. through Senior Officers. Since the land was leased out at the instruction of the Government, the assessee has no discretion to fix the annual rent more than the rent fixed by the Govt. Moreover, under the Income-tax Act, there is no provision which entails the revenue to force the assessee to earn income on particular activities. Income can only be charged to tax which has been actually received or accrued to the assessee and not on the basis of notional income. At the most, revenue can disallow the expenditure for the reason that the expenditure was not incurred for the business activity of the assessee, but notional income cannot be charged. Since the revenue has made the addition on the basis of notional income, we find no merit in the addition. We accordingly set

aside the order of CIT(Appeals) and delete the addition made in this regard.

8. The other ground in appeal No.456/Bang/2011 is with regard to disallowance of Rs.86,386 made u/s. 40A(3) of the Act. In this regard, the Id. counsel for the assessee has contended that the assessee company has paid a sum of Rs.4,31,932 in cash to Govt. of Karnataka Undertaking towards supply of liquor at Nandi Hills Restaurant as they insisted to make payment only in cash or DD and not by cheque. At Nandi Hills, there were no banking facilities, hence the assessee was forced to make the payment in cash. He also placed reliance upon various case laws, but it was not accepted by the lower authorities and the CIT(Appeals) confirmed the addition. It was further contended before us that since payment was made to the Govt. of Karnataka Undertaking in cash as they were not ready to accept payment through cheque, it was case of extraordinary circumstances. Thus the payment made in cash should not be disallowed.

9. The Id. DR placed reliance upon the order of CIT(Appeals).

10. Having carefully examined this issue, we find that assessee is a public sector undertaking of the State Govt. and has made payment in cash to other public sector undertaking of Govt. Since there was no banking facility at Nandi Hills and payee insisted for cash payment, assessee has

made the payment in cash. Therefore, we find no justification in making disallowance u/s. 40A(3) of the Act.

ITA No.519/Bang/2011

11. This appeal is preferred by the revenue assailing the order of the CIT(Appeals) on the ground that the CIT(A) was not justified in deleting the addition of Rs.12,50,000 made on account of disallowance of claim of interest on loan from Govt. of Karnataka u/s. 43B of the Act, without appreciating the facts and circumstances under which the addition was made by the AO.

12. During the course of assessment proceedings, the AO has noted that the assessee company has made a provision of Rs.12,50,000 towards loan granted by Govt. of Karnataka. Having invoked the provisions of section 43B, the AO has made the disallowance of the same.

13. The assessee preferred an appeal before the CIT(Appeals) with the submission that as per the State Govt. Circular dated 18.03.2004, payment of interest @ 12.5% p.a. is an allowable expenditure. He also placed reliance upon the order of the CIT(Appeals) and the Tribunal's order in assessee's own case wherein the same expenditure was held to be an allowable expenditure. The CIT(Appeals) being convinced with the explanation of the assessee has deleted the addition; having observed that the amount even if not paid to the Govt., such was an ascertained liability

being covered by a State Govt. notification and hence deserves to be allowed as an expenditure, even if debit is made under the provision.

14. During the course of hearing, the Id. DR could not point out any particular defect in the order of CIT(Appeals). He has simply placed reliance upon the order of the Assessing Officer; whereas the Id. counsel for the assessee placed reliance upon the order of CIT(Appeals).

15. Having carefully examined the order of CIT(Appeals), we find that the CIT(A) has properly adjudicated the issue in the given facts and circumstances of the case. Since we do not find any infirmity therein, we confirm his order.

16. In the result, the appeals of the assessee are allowed and that of the Revenue is dismissed.

Pronounced in the open court on this 12th day of August, 2016.

Sd/-

(ABRAHAM P. GEORGE)
Accountant Member

Sd/-

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 12th August, 2016.

/D S/

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.