

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

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

**ITA No.331(Bang) 2013  
(Assessment year : 2008-09)**

M/s Shanth Raaj Associates,  
No.260, II Main Road,  
7<sup>th</sup> Block, Jayanagar,  
Bangalore -560 082  
**PAN No.ABEFS 5109B**

Appellant

**Vs**

The Asst. Commissioner of Income Tax  
Circle-4(1),  
Bangalore

Appellant

**Assessee by : Shri V. Chandrashekar, Advocate  
Revenue by : Dr. P.K.Srihari, Addl.CIT**

**Date of hearing : 14-07-2016**

**Date of pronouncement : 12-08-2016**

**ORDER**

**PER SHRI A. K. GARODIA, AM:**

This appeal is filed by the assessee directed against the order of the ld. CIT(A)-II, Bangalore dated 11-01-2013 for the assessment year 2008-09.

2. In this appeal, the assessee has raised the following grounds;

*"1. The order passed by the ld AO and to the extent as confirmed by the ld. CIT(A) in so far prejudicial to the interest of the appellant, is opposed to law weight of evidence, natural justice, probabilities, facts and circumstances of the case.*

*2. The order of the assessment is bad in law as the mandatory condition to assume jurisdiction is not existing and not complied with and hence the assessment is bad in law and requires to be canceled on the facts and circumstances of the case.*

*3. The ld.CIT(A) erred in law in not holding that the reasons recorded are mere 'Reasons to Suspect' but not 'Reasons to Believe' as contemplated under the provisions of section 48 of the Act.*

4. Without prejudice the ld. CIT(AS) erred in law in not appreciating that the issuance of notice under section 148 of the Act is without proper sanction under law

5. Without prejudice the ld. CIT(A) erred in law in not appreciating that the issuance of notice under the provisions of sec.148 of the Act is without proper application of mind.

6. Without prejudice the ld. CIT(A) erred in law and facts in confirming the disallowance of commission and brokerage expenses of Rs.14,40,000/- on facts and circumstances of the case.

7. Without prejudice the ld. CIT(A) erred in law and facts in confirming the disallowance of Bank charges of Rs.5,630/- on facts and circumstances of the case.

8. Without prejudice the ld. CIT(A) erred in law and facts in confirming the disallowance of a sum of Rs.1,63,500/- towards business promotion expenses on facts and circumstances of the case.

9. Without prejudice the ld. CIT(A) erred in law and facts in holding that 20% of business expenses are amounting to Rs.1,21,584/- attributable to personal expenses of the partners of the appellant firm on facts and circumstances of the case.

10. The appellant without prejudice submits that the amount disallowed under various heads as submitted above are very high and requires to be substantially reduced on the facts and circumstances of the case.

11. Without prejudice the ld. CIT(A) is not justified in confirming the levy of interest under the provisions of sec.234A, 234B and 234C of the Act on facts and circumstances of the case.

12. The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.

*13. In view of the above and other grounds as 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.*

3. The assessee has also raised additional grounds which are as under;

*“1. Without prejudice the assessment concluded under the provisions of section 143(3) of the Act, in the instant case on rejection of the books of accounts is bad in law and without jurisdiction on the facts and circumstances of the case.*

*2. Without further prejudice on rejection of the books of accounts of the appellant, the assessment ought to have been concluded under the provisions of sec.144 of the Act in accordance with said provisions on the facts and circumstances of the case.*

*3. The appellant crave leave to add, alter, amend substitute, change and delete any of the grounds of appeal.*

*4. For the above and other grounds that may be urged at the time off hearing of the appeal, the appellant prays that the appeal may be allowed and justice rendered”.*

4. It is submitted by the ld. AR of the assessee before us that the issues raised in additional grounds were not raised before the ld.CIT(A) but, these grounds of appeal do not involve any investigation of new facts and these are only a question of law and therefore, the same should be admitted in view of the judgment of the Hon’ble Apex Court rendered in the case of NTPC Vs DCIT as reported in 229 ITR 283.

5. The ld. DR of the revenue did not have any serious objection

regarding admission of additional grounds and therefore, we admitted the additional grounds. After admission of additional grounds, both sides agreed that the entire matter should be restored back to the file of the ld. CIT(A) for a fresh decision because all the legal and technical objection of the assessee are as per these additional grounds.

6. We have heard the rival submissions. We feel that when the assessee is objecting the jurisdiction of the AO to complete the assessment u/s 143 (3) instead of invoking provisions of sec.144 because the books of accounts were rejected, the entire matter should go back to the file of the ld. CIT(A) for a fresh decision. Accordingly, we set aside the order of the ld.CIT(A) and restore the entire matter back to his file for a fresh decision. He should decide this aspect whether the assessment should be completed u/s 143 (3) or u/s 144 of the IT Act and thereafter, he should decide the objection regarding quantum of assessed income. Under these facts, we make no comment on the merit of various additions made by the AO.

In the result, the appeal of the assessee is allowed for statistical purposes.

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

*Sd/-*  
**(ASHA VIJAYARAGHAVAN)**  
**JUDICIAL MEMBER**  
Place: Bangalore:  
D a t e d : 12.08.2016  
**am\***

*Sd/-*  
**(A.K.GARODIA)**  
**ACCOUNTANT MEMBER**

**Copy to :**

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

By order, AR, ITAT, Bangalore

1.	Date of Dictation .....
2.	Date on which the typed draft is placed before the dictating Member .....
3.	Date on which the approved draft comes to the Sr. P. S. ....
4	Date on which the order is placed before the dictating Member for pronouncement .....
5.	Date on which the order comes back to the Sr. P.S. ....
6.	Date of uploading the order on website .....
7.	If not uploaded, furnish the reason for doing so.....
8.	Date on which the file goes to the Bench Clerk .....
9.	Date on which order does for Xerox & endorsement .....
10.	Date on which the file goes to the Head Clerk.....
11	The date on which the file goes to the Assistant Registrar for signature on the order .....
12	The date on which the file goes to the dispatch section for dispatch of the Tribunal order.....
13	Date of dispatch of order.....