

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH 'C', BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER

AND

SHRI. S. JAYARAMAN, ACCOUNTANT MEMBER

I.T.A No.1103/Bang/2016  
(Assessment Year : 2009-10)

Income Tax Officer,  
Ward -1. Raichur

.. Appellant

v.

Shri. D. Durgappa,  
KPCL Contractor, 1<sup>st</sup> cross, Labour colony,  
Shakti Nagar, Raichur  
PAN : AHDPD1846P

.. Respondent

Assessee by : Shri. V. Srinivasan, Advocate  
Revenue by : Shri. M. K. Biju, JCIT

Heard on : 17.04.2017  
Pronounced on : 21.04.2017

**ORDER**

**PER S. JAYARAMAN, ACCOUNTANT MEMBER :**

This is an appeal filed by the Revenue against an order of the CIT(A), Gulbarga, dt.22.03.2016, for the assessment year 2009-10.

02. The assessee, an individual, is a contractor. The assessment order passed in his case for a y. 2008-09 was a subject matter of an action u/s.263 by the CIT, Gulbarga, inter-alia , for the reason that he made payments to 12 persons at Rs.33,84,656/- for building work, labour hire and tractor hire, which fell u/s.194C , and hence was liable for TDS. The AO

while completing the assessment , the AO has not disallowed the amount as required u/s.40(a) (ia) , though the auditor in his form 3CD audit report stated that the assessee has not complied with TDS provisions. Consequently, the AO completed the assessment u/s.143(3) r.w.s.263. While doing so, he disallowed the amount paid to the above 12 persons at Rs.33,84,656/-. The minimum /maximum payment made to a person was Rs.1,75,000/- / Rs.3,18,000/-, respectively. Aggrieved, the assessee filed an appeal before the CIT (A), Gulbarga.

04. During the appellate proceedings, the assessee submitted before the CIT (A) that the payments made to various persons are genuine, the persons are petty workers having income far below the taxable limits and then submitted affidavits to that effect. The assessee further produced copies of the certificates obtained from the Chartered Accountant, certifying the parties to whom payments made were persons whose income is below the minimum taxable limit. The CIT (A) allowed the appeal. Aggrieved the Revenue filed this appeal. Ground no.2, which is reproduced below, is the main ground :

*"2. The learned CIT (A) erred in admitting the additional evidences during the appellate proceedings such as certificate from a chartered accountant certifying the return of income, payment of taxes in respect of contractors etc., without giving an opportunity to the AO under Rule 46A of the IT Rules, 1962."*

The learned DR submitted that the CIT (A) without giving any opportunity of being heard to the A O, had allowed the appeal.

05. We have heard the rival submissions and perused the materials on record. On the facts and circumstances of the case, we remit this issue to the AO, who shall examine the affidavits etc., and after giving due opportunity to the assessee shall pass a speaking order.

06. In the result, the appeal of the Revenue is allowed.

Order pronounced in the open court on 21<sup>st</sup> day of April, 2017.

Sd/-

Sd/-

(SUNIL KUMAR YADAV)  
JUDICIAL MEMBER

(S. JAYARAMAN)  
ACCOUNTANT MEMBER