

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

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

**ITA No.237(BNG)/2013
(Assessment year : 2011-12)**

M/s Sri Venkateshwara Developers,
No.51, Le Parc Richmonde,
Richmond Road,
Bangalore

PAN No.AAFFS1671N

Appellant

Vs

The Commissioner of Income-tax(A),
Bangalore

Respondent

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

**Date of hearing : 30-11-2015
Date of pronouncement : 13-01-2016**

O R D E R

PER SHRI INTURI RAMA RAO, AM :

This appeal filed by the assessee is directed against the order of the Commissioner of Income-tax (Appeals), Bangalore dated 30-0-2013 for the assessment year : 2009-10.

2. The assessee raised the following grounds in its appeal;

"1. The ld.CIT, Bangalore has erred in confirming the disallowances and additions to the admitted income by the assessing authority by not deleting such disallowances and additions in total.

2. Without prejudice to the CIT(A) Bangalore ought not to have sustained the disallowance of Rs.8,29,642/- being interest expenses paid to the CITI Bangalore on borrowings.

3. The CIT(A) Bangalore ought to have allowed the expenses of Rs.25,40,000/- which was considered wrongly as capital expenditure by the assessing authority and allowing only the depreciation on such expenses.

4. The CIT(A) Bangalore ought to have considered the details submitted alongwith documents as additional evidence under rule 46A(1) of the IT Rules.

5. The CIT(A) Bangalore ought to have relied upon the remand report of the Assessing authority which is against the assessee, equity and justice.

6. The CIT(A) Bangalore ought to have considered the fact that the additions to the total income said to have been agreed by the representative before the assessing authority was not authorized by the appellant.

7. Without prejudice to the CIT(A) Bangalore ought to have appreciated evidences and documents furnished in support of the grounds of appeal.

8. On the facts, the additions to the admitted income as sustained by the CIT(A) Bangalore are excessive, arbitrary and unreasonable which ought to be reduced in total.

3. Brief facts of the case are that the assessee firm derives income from house property and other sources. It filed its return of income for the assessment year 2009-10 declaring total income of Rs.8,88,72,350/-. Against the said return of income, the assessment was completed u/s 143(3) of the IT Act, 1961 vide order dated 16-11-2011 at a total income of Rs.9,19,87,990/-. While doing so, the AO disallowed a sum of Rs.8,29,642/- being the interest paid on the amounts borrowed from close relatives, while computing the income from house property. Further, disallowed a sum of Rs.25,40,000/- while computing the income from other sources on the ground that Rs.16,90,000/- was spent towards providing covering for the driveway and Rs.8,50,000/- was spent towards purchase of storage units and fabric panels. The AO held these two expenditures to be capital expenditure and after allowing the depreciation at the rate of 10% thereon made net addition of Rs.22,86,000/-.

4. Being aggrieved, an appeal was filed before the Id.CIT(A) who vide impugned order dismissed the appeal. Hence, the assessee is in appeal before us.

5. The learned counsel for the assessee submitted that the interest of Rs.8,29,642/- was not paid to the specified persons, but paid to the City Bank on over draft account and the details of which are filed before the Id.CIT(A) by way of additional evidence by making an application u/s 246A(1) of the IT Act, 1961. The Id. Counsel for the assessee further submitted that he expenses of Rs.25,40,000/- was incurred only in the nature of repairs and maintenance and they are not capital expenditure and submitted the details of expenditure. The CIT(A) without examining the details simply confirmed the addition on the ground that during the course of assessment proceedings. The learned AR of the assessee had conceded for the additions in respect of expenditure disallowed holding that it is capital expenditure.

6. We have heard the rival submissions and perused the material on record. The impugned additions were confirmed by the learned CIT(A) solely on the ground that the learned AR of the assessee agreed for such additions. It is well settled principles of law that no addition can be made solely based on the concession made by the counsel for the assessee without bringing any corroborative material on record in support of the additions. Further, we find from the record at the stage of proceedings before the Id.CIT(A) that the

assessee had filed additional evidence in support of the contention that the interest was paid not to the related parties, but to Citi Bank and also the expenditure of Rs.25,40,000/- was not incurred on capital items, but it is only in the nature of repairs and maintenance. The ld. CIT(A) without examining the additional evidence merely confirmed the additions. Thus, in our considered opinion, the interest of justice would be met, if the matter is restored to the file of the Ld.CIT(A) for fresh adjudication in the light of the additional evidence filed by the assessee before him during the course of hearing of the appeal, after giving an opportunity to the assessee as well as to the AO.

7. In the result, the appeal filed by the assessee is partly allowed for statistical purposes

Order pronounced in the open court on the 13th January, 2016.

Sd/-
(VIJAYPAL RAO)
JUDICIAL MEMBER
Place: Bangalore
D a t e d : 13-01-2016

Sd/-
(INTURI RAMARAO)
ACCOUNTANT MEMBER

ITA No.237 (B)/2013

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