

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

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

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| ITA No.880/Bang/2015 |
| Assessment year : 2011-12 |

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| The Assistant Commissioner of Income Tax, Circle 1(1), Mysore. | Vs. | Shri C.C. Kondaiah, No.192, 2 nd Cross, 2 nd Main, Brindavan Extension, Mysore. PAN: ACZPK 8094M |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Shri T.N. Prakash, Addl. CIT(DR) |
| Respondent by | : | None |

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| Date of hearing | : | 20.01.2016 |
| Date of Pronouncement | : | 05.02.2016 |

ORDER

Per Inturi Rama Rao, Accountant Member

This appeal filed by the Revenue is directed against the order of the
CIT(Appeals), Mysuru dated 20.01.2015 for the assessment year 2011-12.

2. The Revenue has raised the following grounds of appeal:-

“1. The CIT(A) erred in directing the Assessing Officer to delete the addition made being the difference in opening and closing of work in progress based on the claim of the assessee

that it is an accounting error of not accounting pipes purchase of Rs. 20 lakhs.

2. The CIT(A) has failed to take note of the fact that the assessee had made the claim of purchase of pipe only at the time of appellate proceedings and even in the grounds of appeal the assessee has not raised the plea of purchase of pipes substantiating the difference.

3. The CIT(A) erred in directing the AO to delete the addition made u/s. 37 of the Act of Rs.1,09,561/-, by holding that it is not a penalty about "Departmental Recovery for Delay" for delayed project completion and failed to take note of the fact that though different nomenclature the same has to be treated as penalty.

4. The CIT(A) has erred in directing the Assessing Officer to delete the addition made u/s. 40A(3) of the I T Act on the ground that no specific defaults are pointed out, without considering the fact that the AO has categorically pointed out the reasons for disallowance made u/s. 40A(3) in the assessment order.

5. For these and such other grounds that may be urged at the time of hearing, the order of the CIT(A) be set aside and that of the Assessing Officer be restored."

3. Briefly the facts of the case are that the respondent-assessee is an individual and derives income from house property, income from business and other sources. Return of income for the AY 2011-12 was filed on 8.3.2012 declaring total income of Rs.22,96,120. Against such returned income, assessment was completed by the DCIT, Circle 1(1), Mysuru vide order dated 30.1.2014 passed u/s. 143(3) of the Income-tax Act, 1961 ["the Act"] at a total income of Rs.66,11,090. While doing so, the AO made the following additions:-

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| (a) Discrepancy in the closing work-in-progress as on 31.3.2010 and opening work-in-progress as on 1.4.2010 | 20,00,000 |
| (b) Addition on account of undisclosed rental income | 2,00,000 |
| (c) Penalty debited to P&L account | 1,09,561 |
| (d) Addition on account of cash payments | 20,00,000 |

4. Being aggrieved by the above additions, an appeal was filed before the CIT(Appeals), Mysuru, who vide his impugned order held that addition of Rs.20 lakhs on account of discrepancy in the closing work-in-progress as on 31.3.2010 and opening work-in-progress as on 1.4.2010 cannot be sustained as it is only an accounting error and it is not that the purchases are made outside the books of account. In respect of the addition made on account of cash purchase account, this item was deleted by the Id. CIT(A) by holding that the AO had failed to bring on record the specific instances where the cash payments exceeded Rs.20,000. In respect of penalty payment, the Id. CIT(A) held that the amount was paid only for the delay in execution of works contract and it does not amount to breach of any provisions of law and therefore deleted the addition. Being aggrieved, the Revenue has filed the present appeal.

5. The Id. Sr. DR vehemently contended that Id. CIT(Appeals) ought not to have deleted the addition of Rs.20 lakhs on account of discrepancy between the closing work-in-progress as on 31.3.2010 and opening work-

in-progress as on 1.4.2010 inasmuch as there was no evidence filed reconciling the difference between the two and that the Id. CIT(A) simply deleted the addition without referring to any material in support of contention urged by the assessee that it was only an accounting error. In respect of cash purchases, the Id. Sr. DR submitted that the issue may be restored back to the file of the Assessing Officer for fresh adjudication.

6. None appeared on behalf of the assessee.

7. We have heard the Id. Sr. DR and perused the material on record. As regards the addition on account of discrepancy in the closing work-in-progress as on 31.3.2010 and opening work-in-progress as on 1.4.2010, the discrepancy needs to be reconciled with the material. If the contention of the assessee that the pipes purchase of Rs.20 lakhs were not included in the closing work-in-progress as on 31.3.2010 is to be accepted, the same needs to be corroborated with the purchase invoices and also proved that it remains unutilized. But the Id. CIT(A) without considering or referring to any material, accepted the plea of the assessee that it is only an accounting error. The explanation of the assessee needs to be corroborated with evidence. In the absence of evidence, the mere plea cannot be accepted. Therefore, in the interest of justice, this issue is restored to the file of the Assessing Officer for fresh adjudication, after affording due opportunity of hearing to the assessee.

8. On the second issue relating to deletion of addition on account of penalty of Rs.1,09,651, the addition was deleted by the CIT(A) by accepting the submissions of the assessee that it is only a penalty levied for delay in execution of the contract, but the Id. CIT(A) has not referred to any material in support of the plea raised by the assessee. Therefore, this issue is also remanded to the file of the Assessing Officer for fresh adjudication. We direct the assessee to produce the evidence before the AO in support of the contention that penalty was levied only for delay in execution of the contract.

9. As regards the ground challenging the deletion of addition on account of cash payments exceeding Rs.20,000, we find that the AO had failed to bring on record the specific instances where the cash payments exceeded Rs.20,000. However, from the assessment order it is observed that the assessee was given an opportunity to explain the cash payments. The assessee also failed to explain as to under what circumstances the cash payments were made. Further, the assessee had not denied having made any cash payments. In the circumstances, we are of considered opinion that the interest of justice would be met if the matter is restored to the file of the Assessing Officer for fresh adjudication, after affording due opportunity of being heard to the assessee. We direct accordingly.

10. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Pronounced in the open court on this 5th day of February, 2016.

Sd/-

Sd/-

(VIJAY PAL RAO)
Judicial Member

(INTURI RAMA RAO)
Accountant Member

Bangalore,
Dated, the 5th February, 2016.

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Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.