

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

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI A.K. GARODIA, ACCOUNTANT MEMBER

ITA No.1128/Bang/2014
Assessment year : 2009-10

M/s. Davangere Nirmithi Kendra, KIADB Main Road, Industrial Area, Lokikere Road, Davangere – 577 005. PAN: AAATD 5939P	Vs.	The Assistant Commissioner of Income Tax, Circle 1, Davangere.
APPELLANT		RESPONDENT

Appellant by	:	Shri Chythanya, K.K., Advocate
Respondent by	:	Shri Sunil Kumar Agarwala, Jt. CIT(DR)

Date of hearing	:	30.03.2016
Date of Pronouncement	:	31.03.2006

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal is preferred by the assessee against the order dated 25.3.2014 of the CIT(Appeals), Hubli *inter alia* on the following grounds:-

- “1. The Order of the Learned CIT (Appeals) is not justified in law and on facts and circumstances of the case.
2. The Learned CIT (Appeals) is not justified in upholding the action of Learned Assessing Officer in disallowing project expenditure incurred by the Appellant such as purchase of

material, labour charges, wages, repair & maintenance and transportation charges of Rs. 1,80,00,000/- on adhoc basis.

3. As regards disallowance of Labour Charges and Wages, Purchase of Construction Material and Repairs and Maintenance:

- (1) The Learned CIT (Appeals) is not justified in upholding the action of the Learned Assessing Officer in disallowing the labour charges merely on the basis that the expenditure is claimed against the self made vouchers by failing to appreciate that those vouchers clearly establish the payments are made to each individual labourer who has acknowledged the receipts.
- (2) The Learned CIT (Appeals) is not justified in disallowing the labour charges & wages on the basis that the same are supported by the self made vouchers by failing to appreciate that the labourers are unorganized and largely illiterate and do not issue invoices like established business houses and only way, which is universally adopted, of establishing the expenditure is by securing properly authenticated vouchers as held in ACIT vs. A Balarama Reddy, 2010-TIOL-373-ITAT-BANG.
- (3) The Learned CIT (Appeals) is not justified in denying the expenditure accounted in respect of purchase of construction material on adhoc basis merely on the basis that the same were purchased against the vouchers.
- (4) The Learned CIT (Appeals) has failed to appreciate that the purchase of construction materials such as jelly, sand, gravel etc. are accounted on the basis of self made vouchers which is in line with the trade practice as the sellers are mainly unregistered dealers from unorganised sector.
- (5) The Learned CIT (Appeals) is not justified in disallowing Repairs and Maintenance charges on the basis that the same are against self made vouchers whereas in fact, the same were accounted by the Appellant against tax invoices.
- (6) The Learned CIT (Appeals) is not justified in upholding the action of the Learned Assessing officer in disallowing

the expenditure incurred towards transportation charges on adhoc basis, when the Appellant has not accounted nor expended any amount towards transportation charges.

- (7) The Learned CIT (Appeals) has failed to appreciate that no cash payment has exceeded Rs. 20,000/- as per section 40A (3) of the Act.
- (8) The Learned CIT (Appeals) is not justified in making additions on adhoc basis without even recording any finding that the same is excessive or unreasonable.
- (9) The Learned CIT (Appeals) and Learned Assessing officer are not justified in disallowing the expenditure on adhoc basis without disproving the said transaction and their action is contrary to the decision in the case of CIT vs. S.S.P. (P) Ltd., (2011) 202 Taxman 386 (P&H).
- (10) The Learned CIT (Appeals) having not doubted the grants received by the Appellant and the projects executed by the Appellant, is not justified in disallowing expenditure which are reasonable on the basis of the projects executed by the Appellant.
- (11) The Learned CIT (Appeals) has failed to appreciate that the no provision under Income tax Act authorises the Learned Assessing officer to make adhoc and arbitrary disallowance without bringing on record any evidence to prove that the expenditure is bogus.
- (12) The Learned CIT (Appeals) has failed to appreciate that the grants of the projects undertaken by the Appellant are approved by the Government on the basis of the amount expended by the Appellant towards the project.
- (13) The Learned CIT (Appeals) is not justified in upholding the action of Assessing Officer in making arbitrary disallowance which is in contravention of board in Instruction Nos. 574, dated 27.07.1973 and 767, dated 04.10.1974.

4. As regards failure to adhere to principles of natural justice:
- (1) The Learned CIT (Appeals) has unjustly held that the Appellant has failed to furnish the details called for during the assessment proceedings without appreciating that the details furnished on 14.12.2011 and 22.12.2011 were not considered by the Learned Assessing officer.
 - (2) The Learned CIT (Appeals) has failed to appreciate that the Learned Assessing officer has passed the assessment order in a hasty manner, without providing sufficient time to Appellant after the issue of proposition notice.
 - (3) The Learned CIT (Appeals) has unjustly passed an order without even forwarding the remand report of the Learned Assessing officer to the appellant and failing to appreciate that no opportunity was provided to the Appellant during the remand proceedings.
5. The Learned CIT (Appeals) is not justified in levying interest under Section 234B of Rs. 20,74,710/- & section 234C of Rs. 6,249/- when the said disallowance is not tenable.

For the above reasons and for such other reasons which may be allowed by the Honourable members to be urged at the time of hearing, it is prayed that the aforesaid appeal be allowed.”

2. During the course of hearing, the Id. counsel for the assessee has invited our attention to the fact that the Assessing Officer has made addition on adhoc basis after making disallowance of the expenses claimed by the assessee in respect of works done. Before the CIT(Appeals), the assessee has furnished all the relevant evidence of the expenses incurred for executing the work for its verification, but the CIT(A) did not look into it.

3. The CIT(Appeals), however, called for a remand report from the AO and the remand report was submitted by him, which was considered by the CIT(A) and the addition was confirmed. In his entire order, the CIT(A) has reproduced the grounds of appeal, submissions made by the assessee and also the remand report, but did not give his conclusive finding on what basis he has confirmed the addition.

4. The Id. counsel for the assessee further contended that during the pendency of appeal before the CIT(Appeals), the assessee has made repeated requests for supply of remand report so that effectively assessee can counter it, but the remand report was not supplied. In support of this contention, he has also invited our attention to the application made to the CIT(A) dated 3.3.2014 requesting the CIT(A) to provide copy of remand report so that he can make effective reply to it. But this remand report was not supplied to the assessee and the CIT(A) relying upon the remand report decided the appeal against the assessee.

5. The Id. counsel for the assessee further contended that it is settled position of law that once the authority relies upon a particular evidence, that evidence should be confronted to the party against whom the authority intends to draw an inference on the basis of that document. Therefore, it was submitted that the order of CIT(A) deserves to be set aside and he may be directed readjudicate the issue afresh after supplying copy of the remand report and obtaining the comments of the assessee thereon.

6. The Id. DR, on the other hand, has placed heavy reliance upon the order of the CIT(Appeals). The Id. DR has also submitted that the lower authorities had afforded sufficient opportunity of being heard to the assessee, therefore it cannot be said that proper opportunity was not afforded to the assessee.

7. Having carefully examined the orders of lower authorities in light of the rival submissions, we find that the AO has disallowed a part of the expenses on the ground that the same was not open for verification, but before the CIT(A) the assessee has filed all relevant evidence in respect of expenditure incurred by it, on which the remand report was also sought by the CIT(A). Undisputedly, copy of remand report was not supplied to the assessee despite his request. From a perusal of the order of the CIT(A), we find that the CIT(A) has confirmed the addition having strongly relied upon the remand report, but the remand report was not confronted to the assessee. Following the principles of natural justice, we are of the view that if any document is being used against the assessee, it should have been confronted to him before its use. But in the instant case, the CIT(A) has not confronted the remand report obtained from the AO to the assessee before relying upon the same for confirming the addition. Therefore, we set aside the order of CIT(Appeals) and restore the matter to his file with a direction to supply copy of the remand report to the assessee and obtain his comments thereon and thereafter adjudicate the issues

raised before him in light of the submissions and evidence on record afresh, after affording opportunity of being heard to the assessee.

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

Pronounced in the open court on this 31st day of March, 2016.

Sd/-

(A.K. GARODIA)
Accountant Member

Sd/-

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 31st March, 2016.

/D S/

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.