

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

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

I.T. A. No.142/Bang/2016
(Assessment Year : 2008-09)

M/s. Maruthi Drug House,
No.3/1, Ground and Mezzanine Floor,
6th Main, Appu Rao Road,
Chamarajapet, Bangalore-560 018.

.... Appellant.

Vs.

Income Tax Officer,
Ward 8(3), Bangalore.

..... Respondent.

Appellant By : Shri H. Guruswamy, ITP.
Respondent By : Shri B.R. Ramesh, JCIT (D.R)

Date of Hearing : 24.08.2017.
Date of Pronouncement : 28.09.2017.

O R D E R

Per Shri Vijay Pal Rao, J.M. :

This appeal by the assessee is directed against the order dt.10.12.2015 of Commissioner of Income Tax (Appeals) for the Assessment Year 2009-10.

2. The assessee has raised the following grounds :

1. The impugned Appellate order dated 10-12-2015 passed by the Learned CIT(A), Bangalore-2, is opposed to law, facts and circumstances of the case.
2. The Learned CIT(A) Bangalore-2 has erred in passing the Appellate order without the valid jurisdiction notified on the basis of PIN CODE
3. The Learned CIT(A) Bangalor-2 has erred in confirming the addition of Rs. 81,41,141/- being the alleged deficit cash without causing examination of the evidence produced in the form of Reconciled Cash Book, Sales Register and Daily Cash Bills on the basis of which sufficient cash was available with the Appellant to meet the day to day expenditure.
4. The Learned CIT(A) Bangalore-2 has erred in confirming the addition of Rs. 81,41,141/- mainly relying upon the Remand Report of the AO who has neither examined the evidence nor provided an opportunity to the Appellant for effective representation of the case
5. The Ld. CIT(A) Bangalore-2 has erred in confirming the addition of Rs. 81,41,141/- placing reliance on the KACHA CASH BOOK which was impounded without the Authority of law and the same was not made available to the Appellant for reference and Reconciliation of the alleged deficit cash with reference to the daily cash bills.
6. **The learned CIT (Appeals) Bangalore-2 has erred in confirming the addition of Rs.1,11,599/- mae by the A.O. by causing disallowance u/s.40(a)(ia) of the Act without appreciating the facts and circumstances of the case.**
3. The assessee is a firm and filed its return of income on 28.09.2008 declaring loss of Rs.4,01,464. The scrutiny assessment under Section

143(3) was completed on 23.12.2010 whereby the Assessing Officer determined the total income of the assessee at Rs.78,51,276 after making the addition on account of unexplained difference of cash being excess expenditure over receipts in the cash book of Rs.81,41,141 and disallowance of expenditure on account of commission / brokerage for short deduction of TDS amounting to Rs.1,11,599. Thus the main dispute is addition made by the Assessing Officer on account of unexplained difference of cash. The assessee challenged the action of the Assessing Officer before the CIT (Appeals) but could not succeed.

4. Before us, the learned Authorised Representative has submitted that the assessee has pleaded and contended before the CIT (Appeals) that the Assessing Officer has not given sufficient opportunity and time to the assessee to furnish the details and explanation. The learned Authorised Representative of the assessee has referred to the assessment year and submitted that the Assessing Officer has asked the assessee to furnish the reply on 15.12.2010 and fixed the hearing of the case on 20.12.2010 thereafter the impugned assessment order dt.23.12.2010 was passed. Thus the assessee was not given sufficient time. The assessee has filed petition under Rule 46 of IT Rules before the CIT (Appeals) which was forwarded to the Assessing Officer for examination and comments. The learned Authorised Representative has then submitted that the Assessing Officer had submitted its remand report however, the assessee was again not given an opportunity of hearing by the Assessing Officer. He has referred to the remand report and submitted that the Assessing Officer has rejected the additional

evidence filed by the assessee without giving an opportunity to the assessee. Thus the learned Authorised Representative has contended that the assessee has reconciled the difference by filing a new cash book which was produced along with the petition under Rule 46A but the same was rejected by the Assessing Officer which was accepted by the CIT (Appeals).

5. On the other hand, the learned Departmental Representative has submitted that the CIT (Appeals) has duly examined the remand report and rejoinder filed by the assessee. Therefore when the assessee has failed to explain the cash deficiency in its books on various dates, the addition made by the Assessing Officer was justified. The learned Departmental Representative has further contended that the assessee made an attempt to change the cash book and accounts which was audited in the first place and therefore substituted cash book cannot be accepted. He has relied upon the orders of the authorities below.

6. We have considered the rival submissions as well as the relevant material on record. It is manifest from the assessment order that the Assessing Officer asked the assessee to explain the reasons for negative cash balance and source for introduction of the cash on various dates. We note that the Assessing Officer has stated in the assessment order that on 15.12.2010 the assessee was specifically directed to submit the reply by 20.12.2010. Thereafter the Assessing Officer passed the assessment order on 23.12.2010 and made addition on account of unexplained receipts. The assessee produced evidence including the new cash book before the CIT (Appeals) under Rule 46 of IT Rules, 1962.

The CIT (Appeals) forwarded the evidence produced by the assessee to the Assessing Officer for verification and comments. The assessee also filed the details of the reconciliation of cash book and balances. The Assessing Officer in the remand report stated that the new cash book produced by the assessee as additional evidence is a recasted and fabricated document and is not acceptable. It is undisputed that the Assessing Officer submitted remand report without giving an opportunity to the assessee to explain and present its case. The CIT (Appeals) accepted the remand report and confirmed the addition made by the Assessing Officer. Thus it is a clear case that the additional evidence has been rejected by the Assessing Officer without giving an appropriate and proper opportunity to the assessee to explain its case. Accordingly, we set aside the matter to the record of the Assessing Officer for deciding the issue afresh after giving an opportunity of hearing to the assessee.

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

Order pronounced in the open court on 28th Sept., 2017.

Sd/-
(INTURI RAMA RAO)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Bangalore,
Dt.28.09.2017.

*Reddy gp