

IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER AND  
SHRI JASON P BOAZ, ACCOUNTANT MEMBER

ITA No. 325 & 326/Bang/2017
Assessment Years : 2012-13 & 2013-14

Shri V. Anantha Kumar, D-1001, Mantri Greens, No. 1, Sampige Road, Malleshwaram, Bangalore – 560 003.  <b>PAN: AFSPK 9224K</b>	Vs.	The Additional Commissioner of Income Tax, Range – 2(2), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri C. Ramesh, CA
Revenue by	:	Shri L.V. Bhaskara Reddy, Addl. CIT (DR)

Date of hearing	:	06.10.2017
Date of Pronouncement	:	13.10.2017

**ORDER**

*PER BENCH*

ITA No. 326/Bang/2017 is an appeal by the assessee against the order dated 13.12.2016 of CIT(A), Bangalore – II, Bangalore related to Assessment Year 2012-13. ITA No. 325/Bang/2017 is also an appeal by the assessee against another order dated 13.12.2016 of CIT(A), Bangalore – II, Bangalore related to Assessment Year 2013-14.

2. Since common issues are involved in both these appeals, they were heard together. We deem it convenient to pass a common order.

**ITA No. 326/Bang/2017(Assessment Year 2012-13):-**

3. The ground no. 1 raised by the assessee is general in nature and does not call for any specific adjudication. In ground nos. 2 to 8, the assessee has projected

his grievance against the action of the revenue authorities in making a disallowance of Rs. 14,57,886/- by invoking the provisions of section 14A of the Income Tax Act, 1961 (Act). The assessee is an individual. He is a proprietor of M/s. Biligiri Granites, B.R. Hills Road, Chamarajanagar. The assessee carries on the business of extraction, processing and export of granite monuments. The assessee was also a partner in a partnership firm M/s. Kum International. During the previous year the assessee earned share of profit from the partnership firm M/s. Kum International of Rs. 40,75,517/-. This income was exempt from tax u/s. 10(2A) of the Act. In view of the provisions of section 14A of the Act, the AO wanted to disallow expenses which were incurred in earning income which was not chargeable to tax, in the computation of total income. The assessee had following investments in its balance sheet.

1. M/s. Biligiri Granites (P) Ltd. (shares) – Rs. 17,90,000/-
2. M/s. Kum Internationals (firm) – Rs. 51,02,232/-
3. Mutual fund- Rs. 10,00,000/-

4. The AO called upon the assessee to explain as to why the assessee has not offered any disallowance of expenses in terms of section 14A of the Act. The assessee explained before the AO that the investments which are likely to earn tax free income were made by the assessee out of his own funds and therefore there was no interest expenditure which can be attributed to earning of exempt income. The assessee took a stand that the assessee had sufficient capital of Rs. 11,65,74,134/- as on 31.03.2012 which was far in excess of the investments. In the Profit & Loss Account of the assessee there was debit of interest expenditure to the tune of Rs. 66,54,457/-. (Note 19 to the P & L account gives the break-up of financial charges debited in P & L account and Rs.66,54,457 out of finance charges debited to the profit and loss account is interest expenses). The details of secured loans in respect of which the aforesaid interest expenses was incurred by the assessee is given in Schedule II to the balance sheet and P & L account as on 31.03.2012 and the same is as follows.

## 2. SECURED LOANS

<i>M/s. Cholamandalam Finance – Bolero</i>	157,905
<i>M/s. Cholamandalam Finance</i>	6,339,170
<i>M/s. Cholamandalam Finance-Hundai I 10</i>	79,693
<i>M/s. Cholamandalam Finance-Khivraj Trailor</i>	1,758,557

<i>M/s. Cholamandalam Finance-New Tipper</i>	625,502
<i>M/s. Cholamandalam Finance-Tata 407</i>	66,421
<i>M/s. Cholamandalam Finance-Tata 207</i>	66,421
<i>M/s. Cholamandalam Finance-Tata 407-new</i>	418,669
<i>M/s. Cholamandalam Finance-LPS-4923</i>	901,500
<i>M/s. Cholamandalam Finance-Tayota Fortuner 1</i>	1,568,179
<i>HDFC Bank-Godrej Forklift</i>	450,888
<i>HDFC Bank-Khivraj Tractor</i>	1,841,757
<i>HDFC Bank-Excavator</i>	4,303,319
<i>HDFC Bank-L G Compressor</i>	485,507
<i>TATA Capital-Excavator</i>	4,379,836
<i>UTI Bank</i>	1,157,425
<i>SBM-FCRNB A/c 90490</i>	6,260,532
<i>SBM-64081506935</i>	3,841,853
<i>SBM-64087882279-Loan</i>	4,545,691
<i>SBM-Adhoc Limit-64095319009</i>	9,966,901
<i>SBM-FCNRB-DL 64078705313</i>	6,087,624
<i>SBM Loan-INR-64090150623</i>	2,419,474
<i>SBM-LC A/c 09234</i>	2,025,928
<i>SBM Preshipment Credit</i>	30,286,213
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	90,034,965
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5. The Assessee also claimed that no other expenses were incurred to earn tax free income and therefore no disallowance can be made u/s. 14A of the Act.

6. The AO however was of the view that disallowance of interest and other expenses has to be made in terms of Rule 8D(2)(ii) and (iii) of the IT Rules, 1962(Rules). The AO proceeded to compute the disallowance u/s. 14A of the Act, as follows.

“

<i>A</i>	<i>Total amount of Direct interest / other expenses pertaining to tax-exempt investments</i>			-
<i>B</i>	<i>Total amount of indirect interest pertaining to tax-exempt investments</i>			<i>Rs. 66,54,457</i>
		<i>A.Y. 2011-12</i>	<i>A.Y. 2012-13</i>	<i>Average</i>
<i>C</i>	<i>Average amount of tax exempt investments</i>	<i>7,51,87,232</i>	<i>79,67,232</i>	<i>4,15,77,232</i>
<i>D</i>	<i>Average amount of total assets</i>	<i>20,62,15,264</i>	<i>23,61,96,632</i>	<i>22,12,15,948</i>
<i>E</i>	<i>Proportionate indirect interest to be disallowed</i>	$\frac{B \times C}{D}$	$\frac{66,50,457 \times 4,15,77,232}{22,12,15,948}$	<i>=Rs. 12,50,000</i>
<i>F</i>	<i>0.5% of average amount of tax exempt investments</i>			<i>Rs. 2,07,886</i>

<i>G</i>	<b><i>Total disallowance attracted u/s 14A read with Rule 8D</i></b>	<i>A + E + F</i>	<i>Rs. 14,57,886</i>
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*The above amount of Rs. 14,57,886 was disallowed u/s. 14A read with Rule 8D of the Income tax Act. ”*

7. Aggrieved by the disallowance of expenses u/s.14A of the Act, the assessee filed appeal before the CIT(A). The CIT(A) was of the view that the disallowance made by the AO u/s. 14A of the Act was fully justified and upheld the addition made by the AO. Aggrieved by the order of CIT(A) the assessee has raised grounds 2 to 8 before the Tribunal.

8. We have heard the submissions of the Id. Counsel of the assessee and the Id. DR. The Id. Counsel for the assessee drew our attention to the balance sheet of the assessee as on 31.03.2012 and pointed out that the opening capital of the assessee was a sum of Rs. 10,58,96,879/- and the closing capital as on 31.3.2013 was Rs. 11,65,74,134/-. He submitted that own funds were more than the investments made by the assessee as found in the balance sheet. The bench raised a query as to the year in which the investments in question were made. The Id. Counsel submitted that the investments had been made three years prior to the Financial Year 2011-12. The bench raised a query as to whether the own funds were sufficient the year in which investments were made. The Id. Counsel submitted that the required details were not available and therefore the issue can be remanded to the AO for fresh consideration to enable the assessee to substantiate availability of own funds when the investments in question had been made. The Id. DR did not raise any specific objection. We therefore deem it proper to set aside the order of CIT(A) on this issue and remand for consideration by the AO the question of disallowance of interest expenses under Rule 8D(2)(ii).

9. The Id. Counsel for the assessee also made a submission that the secured loans on which the interest expenses was incurred by the assessee were taken for specific purpose of the business and had been used for the purpose of business and therefore no interest expenses can be disallowed u/s. 14A of the Act. The Id. DR however pointed out that the assessee on his own in one of the submissions made before the AO submitted that a loan availed from State Bank of Mysore under A/c.

No. 64081506935 and pre-shipment credit availed from State Bank of Mysore had been diverted for making investment. The Id. Counsel for the assessee submitted that proper presentation of facts had not been made before the authorities and he should be afforded an opportunity to explain before the AO that the loans on which interest expenses were incurred by the assessee were in fact used for the purpose of business and not for making investments and for this purpose order of CIT(A) should be set aside and the issue remanded to the AO for fresh consideration. We accept the request of the Id. Counsel of the assessee and remand for consideration by the AO the question of disallowance of interest under rule 8D(2)(ii) of the Rules.

10. As far as disallowance of expenses under Rule 8D(2)(iii) is concerned, after considering the rival submissions we are of the view that considering the quantum of tax free income earned by the assessee and the expenditure debited in the P & L account the disallowance made by the revenue authorities is reasonable and does not call for any interference. Accordingly ground nos. 2 to 8 raised by the assessee are treated as partly allowed for statistical purposes.

11. In ground no. 9 the assessee has challenged the determination of income under the head income from house property by the AO. The Assessee is owner of flat No.1001, Mantri Greens, Sampige Road, Malleswaram, angalore-56003. The flat is used for the business activity of the appellant. The Assessee is proprietor of M/s. Biligiri Granites. The Assessee was also a partner in a firm M/s.Kum International which is in the business of export of granite slabs and monuments. The said firm was using the premises as its office. A rent of Rs.8,000/- p.m. was received from M/s.Kum International and such actual rent received was considered for computation of income under the head house property. Accordingly the following computation was made under the head house property.

Rent received from Mantri Apartments		96,000
Less: 30% of annual letting value	28,800	
Interest on loan	1,63,372	
Pre-construction period loan		
Rs.6,18,206/- 3rd year	1,23,641	
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		3,15,813
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(-) 2,19,813  
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12. The Assessing Officer was of the view that u/s.23 of the Act, Annual value for the purpose of computing income under the head "Income from House Property" has to be recomputed by taking the higher of the actual rent received or the sum for which the property might reasonably be expected to be let. The AO was of the view that the flat in question was let out to a firm in which the assessee is a partner and therefore actual rent received may not be appropriate yardstick. The AO was of the view that even by any conservative estimate, considering the location and other features of the flat, it should fetch a rent of atleast Rs. 30, 000/- p.m. The AO accordingly adopted the ALV of the property at Rs. 3, 60, 000/- and computed income from house property as follows:

ALV of the property	3,60,000
Less: 30% of annual letting value	1,08,000
Interest on loan	1,63,372
Pre-construction period loan Rs. 6,18,205/- 3 <sup>rd</sup> yr	1,23,641
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	3,95,013
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Loss from this source	(-) 35,013
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Accordingly the Assessing Officer has assessed the loss from house property at Rs. 35,013/- as against the loss claimed by the Assessee of Rs.2,19,813/-. Thus there was disallowance of loss of Rs.1,84,800/-.

13. On appeal by the Assessee, the CIT(A) confirmed the addition with the following finding in para 4.3 of the order, which is reproduced here under: -

"4.3 After considering the facts of the case, it is seen that the rent declared by the appellant is indeed low. The AO has worked out the ALV at a reasonable Rs.3, 60, 000/- under facts of the case which is in accordance with law. The action of the AO is upheld."

14. Before us, the learned Counsel for the Assessee submitted the Assessing Officer has estimated the rent of the flat at Rs. 30,000/- p.m. as against rent of Rs.8,000/-

p.m. declared and thereby determined an annual value of Rs.3,60,000/- without any basis. While concluding the assessment the Assessing Officer has just stated that, even by a conservative estimate the flat should fetch a rent of atleast Rs.30,000/- p.m. However, for this estimate there is no basis. It was submitted by him that, the size of the flat was in the range of 13 sqs. The estimation of the Assessing Officer is unreasonably high and has no basis. It was further submitted that municipal authorities have determined municipal taxes at Rs.9,163/- per annum. Therefore rent received by the Assessee was higher and that should be the basis of determination of ALV.

15. The learned counsel for the Assessee drew out attention to the provisions of Sec.23 of the Act which defines annual value of property for the purpose of determination of Income under the head "Income from House Property", as under: -

"23. (1) For the purposes of section 22, the annual value of any property shall be deemed to be

(a) The sum for which the property might reasonably be expected to let from year to year; or

(b) Where the property or any part of the property is let and the actual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a), the amount so received or receivable; or

(c)..... "

16. He also drew our attention to the provisions of section 22 of the Act which reads as under: -

"The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income tax, shall be chargeable to income tax under the head 'Income from house property'."

17. It was his submission that since the property was occupied by the owner for the purpose of his own business, no income is chargeable under the head "Income from House Property". It was his submission that in the present case, the flat in question

was occupied by the Assessee for the purpose of his own proprietary business M/s.Biligiri Granites. Therefore as per the provisions of the act there is no income chargeable to tax. However, since the premises was being used for the business of the partnership firm M/s.Kum International also, a rent of Rs.8,000/- p.m. was collected and such rent offered for tax.

18. We have heard the submissions of the Id. Counsel of the assessee and are of the view that the order of CIT(A) on this issue does not call for any interference. Under these provisions of section 23(1)(a)(b) the hire of the sum for which the property might reasonably be expected to be let from year to year or actual rent received is the basis of determination of annual value. In the present case it cannot be disputed that the sum for which the property might reasonably be expected to be let from year to year was higher though such value was based on an estimate by the AO which in our view was reasonable. The Assessee has claimed that the premises was also occupied by the Assessee for his own business. No details whatsoever were furnished in this regard by the Assessee as to what was the area let out and what was occupied by the lessee. In these circumstances we are of the view that the CIT(A) was justified in upholding the income computed by the AO under the head income from house property. This finding is confined to the present AY only and the Assessee is at liberty to show correct facts and seek appropriate relief in any other assessment years. The order of CIT(A) on this issue does not call for any interference in the present AY. Ground no. 9 raised by the assessee is accordingly dismissed.

19. In the result, the appeal in ITA No. 326/Bang/2017 is partly allowed for statistical purposes.

**ITA No. 325/Bang/2017(Assessment Year 2013-14):-**

20. The issues raised in this appeal are identical to the issues raised in Assessment Year 2012-13. The parties agreed that the facts and circumstances in Assessment Year 2013-14 are identical to the facts and circumstances as provided in Assessment Year 2012-13 and therefore the decision rendered in Assessment Year 2012-13 will equally apply to Assessment Year 2013-14 also. We therefore hold that

the disallowance u/s. 14A of the Act r.w.r. 8D(2)(ii) of the Rules be reconsidered by the AO afresh as per the directions given in Assessment Year 2013-14. We also confirm the order of CIT(A) in so far as it relates to determination of income under the head income from house property.

21. In the result, the appeal in ITA No. 325/Bang/2017 is partly allowed for statistical purposes.

Pronounced in the open court on this 13<sup>th</sup> day of October, 2017.

Sd/-  
(JASON P BOAZ)  
Accountant Member

Sd/-  
(N.V. VASUDEVAN)  
Judicial Member

Bangalore,  
Dated, the 13<sup>th</sup> October, 2017.  
/MS/

Copy to:

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

By order

Senior Private Secretary,  
Income Tax Appellate Tribunal,  
Bangalore.