

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

BEFORESHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND  
SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA No.60/Bang/2014
Assessment Year : 2004-05

Shri George Thangaiyah, No. 21, 80 Ft. Road, Jeevanbhimanagar, Indiranagar, Bangalore-560 038.  <b>PAN: ACOPT 2665G</b>	Vs.	The Assistant Commissioner of Income Tax, Circle – 7(1), Bangalore.
APPELLANT		RESPONDENT

ITA No. 1085/Bang/2016
Assessment Year : 2005-06

The Assistant Commissioner of Income Tax, Circle – 1(2)(1), Bangalore.	Vs.	Shri George Thangaiyah, M/s. Dakshina Musical Industries, HMV House & George Thangaiyah Complex, 80 Feet Road, Indiranagar, Bangalore-560 038.  <b>PAN: ACOPT 2665G</b>
APPELLANT		RESPONDENT

Assessee by	:	Shri Raghavendra Chakravarthy, CA
Revenue by	:	Shri B.R. Ramesh, JCIT (DR)

Date of hearing	:	26.09.2017
Date of Pronouncement	:	27.10.2017

**ORDER**

*Per Shri A.K. Garodia, Accountant Member*

Out of these two appeals, one appeal for Assessment Year 2004-05 is filed by assessee and the second appeal for Assessment Year 2005-06 is filed by revenue and both these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. First we take up the appeal of the assessee for Assessment Year 2004-05. The grounds raised by the assessee are as under.

1. The order of the 1d. Commissioner of Income Tax (Appeals) - LTU, Bangalore insofar as it is against the appellant is opposed to law, weight of evidence, facts and circumstances of the case.
2. The 1d. Commissioner of Income Tax (Appeals) - LTU, Bangalore is not justified in upholding the order of the 1d. A.O vide assessing officer's order u/s 154 of the Act dt. 27.10.2006.
3. Appellant denies himself liable to be assessed at a total income of Rs.78,33,152/- as against declared income of Rs.12,37,316/-.
4. The 1d. Commissioner of Income Tax (Appeals) - LTU, Bangalore is not justified in upholding the profit estimated by the 1d. A.O from the business of Dakshina Musical Industries at 5% of the turnover at Rs.5,689/- as against declared loss from the said unit at Rs.17,41,049/-.
5. The 1d. Commissioner of Income Tax (Appeals) - LTU, Bangalore is not justified in upholding the profit estimated by the 1d. A.O from the business of HMV House at 5% of the turnover at Rs.52,478/- as against declared loss from the said unit at Rs.6,49,890/-.
6. The 1d. Commissioner of Income Tax (Appeals) - LTU, Bangalore is not justified in taxing income from bringing to tax an amount of Rs.42,313/- as income from business of George Thangaiah Maintenance as against declared loss from the said unit at Rs.56,42,517/-.
7. The 1d. Commissioner of Income Tax (Appeals) - LTU, Bangalore is not justified in upholding the disallowance

made by the ld. A.O in respect of Conveyance Expenditure to the tune of Rs.4,510/-.

8. The ld. Commissioner of Income Tax (Appeals) - LTU, Bangalore is not justified in upholding the disallowance made by the ld. A.O in respect of Miscellaneous Expenses to the tune of Rs.5,88,665/-.
9. The ld. Commissioner of Income Tax (Appeals) - LTU, Bangalore is not justified in upholding the disallowance made by the ld. A.O in respect of Maintenance Charges to the tune of Rs.7,899/-.
10. The ld. Commissioner of Income Tax (Appeals) - LTU, Bangalore is not justified in upholding the disallowance made by the ld. A.O in respect of Gardening Expenses to the tune of Rs.25,575/-.
11. The ld. Commissioner of Income Tax (Appeals) - LTU, Bangalore is not justified in upholding the disallowance made by the ld. A.O in respect of claim of Medical Expenditure of Rs.1,50,000/-.
12. The ld. Commissioner of Income Tax (Appeals) - LTU, Bangalore is not justified in upholding the disallowance made by the ld. A.O in respect of Consumables Expenditure of Rs.28,563/-.
13. The ld. Commissioner of Income Tax (Appeals) - LTU, Bangalore is not justified in upholding the disallowance made by the ld. A.O in respect of Sales Promotion Expenditure of Rs.97,593/-.
14. The ld. Commissioner of Income Tax (Appeals) - LTU, Bangalore is not justified in upholding the disallowance made by the ld. A.O in respect of Employee Welfare of Rs.12,222/-.
15. The ld. Commissioner of Income Tax (Appeals) - LTU, Bangalore is not justified in upholding the disallowance made by the ld. A.O in respect of Traveling Expenses of Rs.37,02,198/-.
16. The ld. Commissioner of Income Tax (Appeals) - LTU, Bangalore is not justified in upholding the disallowance



made by the ld. A.O in respect of Consultancy Charges of Rs.6,42,400/-.

17. The ld. Commissioner of Income Tax (Appeals) - LTU, Bangalore is not justified in upholding the disallowance made by the ld. A.O in respect of Salaries & Wages to the tune of Rs.4,06,570/-.
18. The ld. Commissioner of Income Tax (Appeals) - LTU, Bangalore is not justified in upholding the disallowance made by the ld. A.O in respect of Depreciation on Car to the tune of Rs.16,339/-. The ld. Commissioner of Income Tax (Appeals) - LTU is further not justified in disallowing the claim of depreciation allowance as it is a compulsory deductible allowance specifically provided under Explanation 5 to Sec. 32(1)(ii) of the Act.
19. The ld. Commissioner of Income Tax (Appeals) - LTU, Bangalore is not justified in upholding the disallowance made by the ld. A.O in respect of Insurance Expenditure to the tune of Rs.2,296/-.
20. The ld. Commissioner of Income Tax (Appeals) - LTU, Bangalore is not justified in upholding the disallowance made by the ld. A.O in respect of Depreciation to the tune of Rs.2,13,375/-. The ld. Commissioner of Income Tax (Appeals) - LTU is further not justified in disallowing the claim of depreciation allowance as it is a compulsory deductible allowance specifically provided under Explanation 5 to Sec. 32(1)(ii) of the Act.
21. The ld. Commissioner of Income Tax (Appeals) - LTU, Bangalore is not justified in mentioning that the income is assessed at Rs.78,33,152/- as against the income assessed by the ld. A.O u/s 154 of the Act at Rs.14,57,571/- under surmise, suspicion, conjecture, assumptions and presumptions.
22. The ld. Commissioner of Income Tax (Appeals) - LTU, Bangalore is not justified in mentioning that the tax demanded is Rs.26,78,683/- as against the tax determined by the ld. A.O u/s 154 of the Act at Rs.5,30,218/- under surmise, suspicion, conjecture, assumptions and presumptions.

23. It is further prayed that the orders of the authorities below are made purely under surmise, suspicion, conjecture, assumptions and presumptions without appreciating the details, information and explanations furnished.

24. Ld. Commissioner of Income Tax (Appeals) - LTU, Bangalore is not justified in mentioning that the income is assessed at Rs.78,33,152/- as against the income assessed by the ld. A.O u/s 154 of the Act at Rs.14,57,571/- and further not justified in mentioning that the tax demanded is Rs.26,78,683/- as against the tax determined by the ld. A.O u/s 154 of the Act at Rs.5,30,218/- without giving sufficient opportunity to show cause against such enhancement as is statutorily required u/s 251(2) of the Act while passing the appellate order.

25. Appellant denies himself liability u/s 234B & 234C of the Act.

26. For the above and such other grounds that may be urged or raised during the course of appellate proceedings before the Hon'ble Income Tax Appellate Tribunal, Bangalore the appellant prays that the appeal may be allowed for advancement of substantial cause of equity and justice.

3. It was submitted by ld. AR of assessee that ground nos. 1, 2 and 3 are general which require no separate adjudication. Thereafter, he submitted that the remaining grounds are in respect of various disallowances on ad hoc basis. In this regard, he drawn our attention to page no. 3 Para nos. 6 to 8 of the order of CIT (A) and pointed out that in these paras, it is noted by CIT (A) that the assessee has not produced books of accounts with supporting evidence in the form of bills, vouchers, invoices etc. Thereafter, he submitted that division-wise copy of trading and P & L account for year ending 31.03.2004 is available on pages 228 to 235 of paper book. He drawn our attention to page no. 233 of paper book containing P & L account for this year and pointed out that the assessee has debited an amount of Rs. 37,02,198.78 under the head travelling expenses. He submitted that this issue is not pressed by him and this disallowance may be upheld. He also submitted that in the interest of justice, the matter maybe restored back to the file of AO for fresh decision and if this is

done, then assessee will produce all relevant materials and evidence before the AO. The Id. DR of revenue supported the order of authorities below.

4. We have considered the rival submissions. We find that the AO has computed the income by making disallowance of depreciation in respect of television, mobile, walker and watch by holding that these assets were for the personal use of the assessee and his family members and depreciation cannot be allowed on these assets out of business income. Regarding this disallowance of depreciation, we find no reason to interfere in the order of CIT(A). The AO has made disallowance of Rs. 4,510/- out of conveyance expenses of which Rs. 18,042/- on this basis that most of the expenses were incurred in cash and supporting bills / vouchers were not made available and only evidence made available was in the form of self made vouchers. The second disallowance is regarding the claim of the assessee for Rs. 5,88,665/- under the head miscellaneous expenditure. The entire amount of this claim was disallowed by the AO on this basis that assessee has not substantiated the expenses with supporting evidence and entire expenses is incurred in cash and business relevance of the same is not known. In the absence of business relevance, the disallowance was made by the AO. The next disallowance made by him is of Rs. 7,899/- out of the claim of assessee of Rs. 31,577/- under the head car maintenance expenditure. The AO held that personal element in the said expenditure cannot be ruled out and therefore, he disallowed 25% of the said expenses.
5. The next disallowance made by him is of Rs. 25,575/- @ 25% of Rs. 1,02,300/- incurred in cash and debited under the head gardening expenses in addition to expenses under the same head for which payment was made by cheque of Rs. 1 lakh. This disallowance was made for this reason that no supporting evidence was produced on the amount incurred in cash.
6. The next disallowance made by the AO is of Rs. 1.50 lakhs out of total claim of Rs. 1,73,986/- under the head medical expenditure. The AO has noted that the assessee has admitted that out of these, an amount of Rs. 1.50 lakhs relates to

medical expenditure of proprietor and his family and he held that this amount can be allowed as business expenditure.

7. The next disallowance made by him is of Rs. 28,563/- being 25% of Rs. 1,14,255/- under the head consumables on this basis that there is no evidence brought on record to substantiate this claim.
8. The next disallowance made by him of Rs. 97,593/- being 50% of the expenses of Rs. 1,95,186/- claimed under the head sales promotion and this disallowance is also on the basis that no supporting evidence is produced.
9. The next disallowance made by him is of Rs. 12,222/- being 25% of employees welfare expenses claimed at Rs. 48,890/- and this disallowance was also made on the same basis that no supporting evidence was produced.
10. Regarding disallowance of Travelling expenses of Rs. 37,02,198/-, the AR of assessee has already conceded that this allowance may be confirmed.
11. The next disallowance is of Rs. 6,42,400/- being entire amount claimed under the head consultancy charges. This disallowance is made on this basis that looking into the nature of the business and the income under which the assessee has claimed this expenditure, it is clear that there is hardly any business relevance of these expenses.
12. The next disallowance is of Rs. 4,06,570/- being 20% of Rs. 20,32,850/- claimed under the head salary and wages. This disallowance is made on the basis that the assessee was asked to furnish the details of salary expenses but the assessee failed to furnish any details in respect of salary and wages expenditure against the maintenance income. The AO has also noted that as per the agreement with the tenant, the assessee has to provide security of the complex, liftman and cleaning staff for the building and he has held that expenses of Rs. 20 lakhs on these heads for a small complex is very high because the entire maintenance receipts itself is about Rs. 39 lakhs. In this manner, after making these disallowances, the AO computed the income of assessee under maintenance work at Rs. 42,313/- out of gross receipt of Rs.



39,56,350/- as against huge loss claimed by the assessee in respect of this receipt. Neither before the CIT(A) nor before us, the assessee has produced any evidence in support of assessee's claim and pointed out any defect in the assessment order in making these disallowances. Hence, we find no reason to interfere in the order of CIT(A) because the expenses are unsubstantiated and the assessee has not established this also that the expenses are reasonable and not excessive and the A.O. has disallowed only a small part of such unsubstantiated expenses and even after the various disallowances, the income assessed at Rs. 42,313/- is only about 1% of the gross receipt of Rs. 39,56,350/-..

13. In the result the assessee's appeal is dismissed.
14. Now we take up the appeal of the revenue. The grounds raised by the revenue are as under.

1. The order of the Learned CIT (Appeals), in so far as it is prejudicial to the interest of revenue, is opposed to law and the facts and circumstances of the case.
2. The Learned CIT(A) erred in deleting the additions made by the Assessing Officer w.r.t. (i) Miscellaneous expenses of Rs.11,18,209/-; (ii) Consultancy Charges of Rs.7,43,286/-; (iii) Salary & wages of Rs.5,38,315/-; (iv) Depreciation of Rs.90,641/-; (v) Others of Rs.2,30,712/-; (vi) Building depreciation of Rs.20,97,877/- without clearly appreciating the reasons and facts brought out by the Assessing Officer in the assessment order.
3. The Learned CIT(A) erred in accepting the explanation of the assessee while deleting the additions made by the A.O in the assessment order as the order of CIT(A) is contrary to material available on records and facts.
4. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A) be reversed and that of the Assessing Officer be restored.
5. The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of appeal.

15. The Id. DR of revenue supported the assessment order whereas the Id. AR of assessee supported the order of CIT(A).
16. We have considered the rival submissions. We find that the disallowance of building depreciation of Rs. 20,97,877/- was deleted by CIT(A) on this basis



that no depreciation from the let out property was claimed as stated by the AO. This finding of CIT(A) could not be controverted by Id. DR of revenue and therefore, on this aspect, we find no reason to interfere in the order of CIT(A).

17. The remaining disallowances were made by the A.O. on this basis that the assessee could not establish the relevance of these expenses for the activities of the assessee for earning income by bringing evidences on record. Some of these disallowances are deleted by CIT (A) without a concrete finding about the relevance of these expenses for the activities of the assessee for earning income on the basis of any cogent evidences available on record. Similar disallowances are already confirmed by us in A. Y. 2004 – 05 and no difference in facts is pointed out by the learned AR of the assessee. Hence, we reverse the order of CIT (A) in respect of these disallowances except depreciation on building and restore the order of the A. O.
18. In the result, the appeal of the revenue is partly allowed.
19. In the combined result, the assessee's appeal is dismissed and the revenue's appeal is partly allowed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-  
(VIJAY PAL RAO)  
Judicial Member  
Bangalore,  
Dated, the 27<sup>th</sup> October, 2017.  
/MS/

Sd/-  
(ARUN KUMAR GARODIA)  
Accountant Member

- 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.