

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri A.K.Garodia, AM & Shri George George K, JM

ITA No.1170/Bang/2017 : Asst.Year 2012-2013

The Income Tax Officer Ward 6(2)(5) Bangalore.	Vs.	Sri Lakur Gopala Nagarajaiah M/s.Yashwanth Industries No.130, Machohalli Gate Magadi Road Bangalore-560 091. PAN : ABOPN7043F.
(Appellant)		(Respondent)

Appellant by : Smt.Padmameenakshi, JCIT

Respondent by : --- None ---

Date of Hearing : 31.10.2017	Date of Pronouncement : 03.11.2017
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ORDER

Per George George K, JM

This appeal at the instance of the Revenue is directed against the CIT(A)'s order dated 27.01.2017. The relevant assessment year is 2012-2013.

2. The grounds raised read as follows:-

"1. The order of the CIT(Appeals) is opposed to law and the facts and circumstances of the case.

2. On the facts and in circumstances of the case, the CIT(A) erred in deciding the matter based on the fresh evidences submitted by the assessee without giving an opportunity to the assessing officer to examine such evidences which is contravened to the provision of Rule 46A(3).

3. *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) is so far as it relates to the above grounds may be reversed and that of the Assessing Officer be restored.*

4. *The appellant craves leave to add, alter, amend or delete any of the grounds that may be urged at the time of hearing of the appeal.”*

3. The brief facts of the case are as follows:-

3.1 The assessee is an individual, who is engaged in the business of steel fabrication. For the assessment year 2012-2013, the return of income was filed on 28.08.2012 declaring total income of Rs.13,79,950. The assessment u/s 143(3) was completed vide order dated 30.03.2015 fixing the total income at Rs.58,35,533. In completing the assessment u/s 143(3) of the Act, the Assessing Officer made the following additions / disallowances :-

- (i) Addition of Rs.31,78,390 on account of difference in stock.
- (ii) Disallowance of Rs.8,57,193 being the difference in balance for sundry credits.
- (iii) Addition of Rs.4,20,000 being unsecured loans, which was un-confirmed during the assessment.

3.2 Aggrieved by the assessment completed u/s 143(3) of the Act, the assessee preferred appeal to the first appellate authority. Before the first appellate authority, the assessee has produced additional evidences for each of the additions /

disallowances. The CIT(A) on examination of the additional evidence, deleted the additions / disallowances made by the Assessing Officer and allowed the appeal of the assessee.

3.3 The Revenue being aggrieved has filed the present appeal before the Tribunal.

3.4 The learned Departmental Representative submitted that the additional evidences have been filed before the first appellate authority by the assessee and no opportunity was provided to the Assessing Officer to examine such evidences. Hence, it was submitted that the matter may be restored to the CIT(A) so that the additional evidences submitted by the assessee can be examined by the Assessing Officer.

3.5 None was present on behalf of the assessee. However, we proceeded to dispose of the appeal after hearing the learned Departmental Representative.

3.6 We have heard the learned DR and perused the material on record. Admittedly in this case, the CIT(A) has admitted additional evidences filed by the assessee. This is evident from paras 10, 13 and 14 of the impugned order of the CIT(A). Rule 46A(1) clearly enumerates the circumstances and situations where an additional evidence can be taken on record. Rule 46A(2) states that additional evidences can be taken on record by the first appellate authority only on recording the reasons for admission of the same. Rule 46A(3) stipulates that the Assessing Officer should be allowed reasonable opportunity to examine the evidence or document that is produced as

additional evidence. The CIT(A) has not called for any remand report from the Assessing Officer. Hence, no proper opportunity was provided to the Assessing Officer to rebut the additional evidences that are produced before the first appellate authority. This is in clear violation of provisions of Rule 46A(3) of the Act. Therefore, we restore the appeal to the CIT(A). The CIT(A) shall call for a remand report from the Assessing Officer and thereafter decide the issues that arise in this appeal. Needless to state, the CIT(A) shall afford reasonable opportunity of being heard to the assessee and the Assessing Officer. It is ordered accordingly.

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

Order pronounced on this 03rd day of November, 2017.

Sd/-
(A.K.Garodia)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Bangalore ; Dated :03rd November, 2017.
Devdas*

Copy of the Order forwarded to :

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

True copy
BY ORDER,

(Asstt. Registrar)
ITAT, Bangalore