

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

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SHRI GEORGE GEORGE K, JUDICIAL MEMBER

ITA Nos. 1123 to 1127/Bang/2017
Assessment Years :2008-09 to 2012-13

The Income Tax Officer, Ward – 2, Haveri.	Vs.	M/s. Haveri Urban Development Authority, G G Magavi Chambers, P B Road, Haveri. PAN: AAALH 0188G
APPELLANT		RESPONDENT

Assessee by	:	None
Revenue by	:	Smt. Padma Meenakshi, JCIT (DR)

Date of hearing	:	31.10.2017
Date of Pronouncement	:	03.11.2017

ORDER

PER BENCH;

All these five appeals are filed by the revenue which are directed against separate orders of the learned CIT (A), Davangere dated 31.01.2017 for Assessment Years 2008-09 to 2012-13.

2. All these appeals were fixed for hearing on 31.10.2017 and the notice of hearing were sent to the assessee by RPAD and the same has been served on the assessee as per the acknowledgement available on record. In spite of this, none appeared on behalf of the assessee on the appointed date of hearing and there is no request for adjournment and therefore, we have heard these appeals of the revenue ex-parte qua the assessee.
3. At the very beginning, it was pointed out by the bench that three appeals of revenue for Assessment Years 2008-09 to 2010-11 are not maintainable because in these three appeals, the tax effect in each year is less than Rs. 10

lakhs and therefore, as per the latest board instruction, any appeal filed by the revenue before the Tribunal in which the tax effect is less than Rs. 10 lakhs is not maintainable. In reply, Id. DR of revenue had nothing to say. Hence these three appeals of revenue for Assessment Years 2008-09 to 2010-11 are dismissed because of low tax effect because it is seen that in Assessment Year 2008-09, the addition made by the AO is of Rs. 18,20,276/- only and similarly, in Assessment Year 2009-10, the addition made by the AO is only Rs. 16,10,586/- and in Assessment Year 2010-11, the addition made by the AO is Rs. 15,87,671/- and therefore, the tax effect in each year cannot be more than Rs. 10 lakhs.

4. In the result, these three appeals of revenue for Assessment Years 2008-09 to 2010-11 are dismissed because of low tax effect.
5. Now we take up the appeal of the revenue for Assessment Years 2011-12 and 2012-13 in which the tax effect is more than Rs. 10 lakhs in each of these two years. Regarding these two appeals, it was the first submission of the Id. DR of revenue that the assessment order passed by the AO is u/s. 144 and before the CIT(A), the assessee has made various submissions and the CIT(A) has decided this issue based on those submissions without obtaining any remand report from the AO and therefore, the matter should be restored back to the file of CIT(A) for fresh decision after obtaining remand report from the AO.
6. We have considered the submissions of Id. DR of revenue and find force in her submissions. We find that in both the years, the assessment order has been passed by the AO u/s. 144 against which the assessee filed appeal before the CIT (A). It is noted by CIT(A) that various submissions were made before him to the effect that the assessee is a local authority established under the Karnataka Urban Development Act, 1987 and the main purpose is to provide civil amenities and implementation of Master Plan for the balanced development of city. It is also submitted before CIT (A) that by virtue of statutory powers, the assessee has collected betterment levy, slum cess, development cess etc which are earmarked for development works. It is also submitted before the CIT (A) by Id. AR of assessee that there is no mandate to

deposit these levies and cess to the state governments or authorities designated to and therefore, these items are not in the nature of tax and duties within section 43B of the I T Act. In our considered opinion, these are factual submissions which should have been examined by the AO but since none appeared on behalf of the assessee before the AO and the assessment order is passed by the AO u/s. 144 and hence, the same could not be examined by the AO and therefore, the CIT (A) should have obtained remand report from the AO on these factual aspects based on those submissions. This was not done by CIT (A). Hence, we set aside the order of CIT (A) for these years and restore the matter back to his file for fresh decision after obtaining remand report from AO on all aspects. After obtaining remand report from AO, the CIT(A) should pass order as per law after providing adequate opportunity of being heard to both sides. In view of this decision, the issue on merit do not call for any adjudication at this stage.

7. In the result, the appeals of revenue for Assessment Years 2011-12 and 2012-13 are allowed for statistical purposes.
8. In the combined result the appeals of revenue for Assessment Years 2008-09 to 2010-11 are dismissed and the remaining two appeals for Assessment Years 2011-12 and 2012-13 are allowed for statistical purposes.

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

Sd/-
(GEORGE GEORGE K)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 03rd November, 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.