

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

BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER AND
SHRI GEORGE GEORGE K, JUDICIAL MEMBER

ITA No. 887/Bang/2017
Assessment year: 2013 – 14

DCIT Circle – 4 (1)[1], Bangalore.	Vs.	M/s. Kavcon Engineers Pvt. Ltd., 20 KM, Mysore Road, Kumbalagud, Bangalore – 560 074. PAN: AACCK0289L
APPELLANT		RESPONDENT

Appellant by	:	Shri C. R. Raghavendra, Advocate
Respondent by	:	Smt. Padmameenakshi, JCIT DR

Date of hearing	:	01.11.2017
Date of Pronouncement	:	03.11.2017

ORDER

Per Shri A.K. Garodia, Accountant Member

This is a revenue's appeal directed against the order of Id. CIT (A) – 4, Bangalore dated 30.01.2017 for Assessment Year 2013 – 14.

2. Apart from other grounds on merit, this is one of the grounds raised by the revenue that the CIT (A) erred in not calling remand report from the AO when additional evidence were produced before him as required under Rule 46A.
3. Learned DR of the revenue that on pages 5 & 8 of his order, learned CIT (A) has reproduced the submissions of the learned AR of the assessee before him which is dated 19.01.2017 and as per the same, it is submitted by the assessee that the documents pertaining to 'purchases' such as bills and invoices as well as invoices in respect of addition to Galvanising Plant and bath in support of claim of depreciation on this item produced before CIT (A) were available and could have been produced before the AO on request and these should not be considered as an additional evidence. He submitted that from these, it is crystal

clear that the same were not produced before the AO and were produced before CIT (A) for the first time. Thereafter he submitted that as per Rule 46A (3), the CIT (A) should have obtained remand report from the A.O. and therefore, the matter should be restored back to his file for a fresh decision after obtaining remand report from the A.O. As against this, learned AR of the assessee submitted that the documents were called for by CIT (A) as per his powers under Rule 46A (4) and therefore, the same are not additional evidence and Rule 46A (3) is not applicable.

4. We have considered the rival submissions. We find that there is no doubt about this fact that new documents pertaining to 'purchases' such as bills and invoices as well as invoices in respect of addition to Galvanising Plant and bath in support of claim of depreciation on this item were produced before CIT (A) for the first time and the same were not produced before the AO. The only aspect to be decided by us is this that whether in the facts of the present case, Rule 46A (4) is applicable or Rule 46A (1) and (3). As per Rule 46A (4), CIT (A) can direct the assessee to produce any document or witness. In the present case, nothing is shown to us in support of this contention that the documents in question were called for by CIT (A). Even from the written submissions reproduced by CIT (A) in his order, this is not coming out that these documents were called for by CIT (A). In the facts of the present case, Rule 46A (4) is not applicable. Learned DR has not argued anything about admission of additional evidence and his arguments are regarding non obtaining of remand report from the A.O. Learned AR of the assessee has placed reliance on five judicial pronouncements but none of these is supporting the case of the assessee that remand report is not required to be obtained. As per Para 14 of the TM order of the tribunal rendered in the case of DCIT vs. Dolphine Marbles Pvt. Ltd. as reported in 2010 – TIOL – 858 – ITAT – JABALPUR, it is noted that in that case, Remand report was obtained in that case and in spite of that, the request of the revenue in that case was to restore the matter to the A.O. and this request was rejected by the tribunal. Hence, this tribunal order is not helping the assessee in the present case. In the case of CIT vs. Sanu family Trust, man 529 (Karnataka). In Para 8 of this judgment, it is noted that a copy of letter along with which extract of the accounts and receipts were produced would

clearly show that the said information was being furnished in view of the direction of the first appellate authority. In the present case, we have already noted that even from the written submissions reproduced by CIT (A) in his order, this is not coming out that these documents were called for by CIT (A). Therefore, this judgment is also not helping the assessee in the present case.

5. The learned AR of the assessee has placed reliance on three more tribunal orders. We have gone through the same. The ratio of these three tribunal orders is this that where the additional evidence is obtained by the first appellate authority on its own motion, there is no requirement of law to consult/confront the AO with such evidence. In the present case, we have already noted that even from the written submissions reproduced by CIT (A) in his order, this is not coming out that these documents were called for by CIT (A). Therefore, these judgments are also not helping the assessee in the present case.
6. As per above discussion, we have seen that none of the five judgments cited by the learned AR of the assessee is applicable in the present case. Rule 46A (4) is not applicable in the present case and hence, we set aside the order of CIT (A) and restore the matter back to his file for a fresh decision after obtaining remand report from the AO. Remaining grounds on merit do not call for any adjudication at the present stage.
7. In the result, the appeal filed by the revenue is 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/-
(A.K. 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.