

IN THE INCOME TAX APPELLATE TRIBUNAL  
BENGALURU BENCH 'C', BENGALURU

BEFORE SHRI. INTURI RAMA RAO, ACCOUNTANT MEMBER

AND

SHRI. LALIT KUMAR, JUDICIAL MEMBER

I.T.A No.32/Bang/2014  
(Assessment Year : 2009-10)

Deputy Commissioner of Income-tax,  
Circle – 7(2), Bengaluru .. Appellant

v.

M/s. Vivek Builders & Developers,  
No.132, I floor, 4<sup>th</sup> Cross, Kasturinagar,  
NGEF (East), Bengaluru 560 043 .. Respondent  
PAN : AAFFV6084J

Assessee by : Shri. Mallah Rao, Advocate  
Revenue by : Shri. M. K. Biju, JCIT

Heard on : 06.11.2017  
Pronounced on : 17.11.2017

**ORDER**

**PER LALIT KUMAR, JUDICIAL MEMBER :**

The present appeal is filed by the Revenue against the order of the CIT (A)-II, Bengaluru, dt.03.10.2013, for the assessment year 2009-10, raising therein the following grounds :

2. On the facts and in the circumstances of the case the learned CIT(A) erred in law by allowing the assessee's claim that he amount of Rs 44,50,000 is eligible for being telescoped into the amount of Rs 52,63,098 added by the AO to the assessee's income and thereby deleting the addition made to the extent of Rs 44,50,000.
3. On the facts and in the circumstances of the case the learned CIT(A) erred in law by not appreciating the fact that the survey declaration made during the course of survey has no relevance on the addition made which is an independent enquiry made after the survey and the AO detected that the purchases shown by the assessee are not genuine one and rightly brought to tax by the AO.
4. On the facts and in the circumstances of the case the learned CIT(A) erred in law by not appreciating the fact that the question of availability of funds does not arise and there is no question of telescoping the same as the creditors have clearly denied the receipt of the amount from the assessee to the extent of Rs 52,63,098.

02. Facts apropos are, the assessee filed return of income declaring total income of Rs.79,63,570/-. Case of the assessee was selected for scrutiny. During the course of hearing it was noticed that the assessee in the P & L account had shown the amount of Rs.54,42,024/- on account of purchases made from eight parties. Notices u/s.133(6) of the Act was issued. During the course of assessment, the AO recorded that there is a discrepancy of Rs.52,63,098/-. Accordingly, the AO has brought to the notice of the Ld. AR. The Ld. AR agreed to the addition and thus the amount of Rs.52,63,098/- was added back to the income of the assessee. Aggrieved the assessee filed appeal before the CIT (A).

03. Before the CIT (A), the assessee has raised the following grounds of appeal :

1. The impugned Order u/s 143(3) dated 23/12/2011 passed by the learned Assistant Commissioner of Income-tax, Circle 7(2), Bangalore with Tax demand of Rs. 29,05,550/- is against the principles of natural justice and equity.
2. The Learned Assistant Commissioner of Income-tax, Circle 7(2), Bangalore, has erred in passing the Order u/s 143(3) dated 23/12/2011 without appreciating the fact that the appellant had voluntarily surrendered additional income consequent upon Survey u/s 133A of the Income-tax Act after taking into consideration the above omissions which is evidenced by the amounts credited to the profit and loss account furnished along with the return of income.

On a perusal of the above grounds, it is clear that assessee has not raised ground of wrong recording of admission by the assessee during the proceeding before AO. AO has recorded in the assessment order that the Ld. AR has agreed for the addition. The assessee in the proceedings before the AO has submitted that the assessee has agreed to file return of income showing the net profit before remuneration and interest of Rs.1,35,00,000/- in the sworn statement made at the time of survey and has accordingly credited a sum of Rs.44,50,000/- representing investment made towards land at Yelahanka for the proposed new project and arrived at an income of Rs.1,35,00,000/-.

04. Before the CIT (A), the assessee had made a submission that the telescoping of an amount of Rs.52,63,098/- is required to be done as the amount which was agreed of Rs.44,50,000/- was forming a part and parcel of Rs.52,63,098/-. The CIT (A) had also taken on record an affidavit filed by the Ld. AR on 16.09.2013, which was duly attested by the Notary Public

and has deleted the addition of Rs.44,50,000/-. The Revenue is thus in appeal before us.

05. Before us the Ld. DR submitted that the order passed by the CIT (A) is without any basis as the sum agreed during the course of survey was on account of investment in the form of advance made for purchase of land at Yelahanka for the new project, whereas the addition made by the AO was on account of the discrepancy noticed in the purchases shown by the assessee as mentioned in the table reproduced in AO order .

06. On the other hand the Ld. AR has supported the order passed by the CIT (A) on the strength that the amount agreed to be shown in the return of income was nothing but the same amount which was shown as discrepancy by the AO.

07. We have heard the rival contentions and perused the material. The letter dt.08.12.2009 and other letters filed by the assessee before the AO clearly shown that the amount agreed to be declared at the time of survey was towards the investment in advances for the purchase of Yehalanka property, whereas the amount debited in the P & L account towards eight persons were with respect of plywood, glass work, timber etc., For ready reference, we are reproducing herein below the table as given in page 3 of the assessment order :

Name of the party	Amount claimed as paid by the assessee	Amounts confirmed by the parties	Discrepancy
Sunitha Associates	Rs 14,77,184/-	Nil	Rs 14,77,184/-
Sree Balaji Glass & Plywood	Rs 3,41,020/-	Rs 700/-	Rs 3,40,320/-
Shree Renuka Enterprises	Rs 2,99,124/-	Nil	Rs 2,99,124/-
Meenakshi Glass & Plywood	Rs 8,56,245/-	Nil	Rs 8,56,245/-
Jai Durga Maa Glass & Plywood	Rs 9,18,801/-	Nil	Rs 9,18,801/-
Capital Glass Works	Rs 5,18,657/-	Rs 1,78,262/-	Rs 3,40,413/-
Mahalaxmi Timber Depot	Rs 9,93,293/-	Nil	Rs 9,93,293/-
Meenakshi Paints and Sheet Suppliers	Rs 37,700/-	Nil	Rs 37,700/-
Total	Rs 54,42,024/-	Rs 1,78,962/-	Rs 52,63,098/-

08. The discrepancies pointed out by the AO are not relatable to any advances / investment made by the assessee in the Yelahanka project, but they are in respect of the construction activity. Therefore both the sums operate in different fields and are not overlapping with each other. In view of the above, the justification given by the CIT (A) is not in accordance with law. Further in our opinion the finding of the AO cannot be disputed merely on the basis of the affidavit filed by the Ld. AR, after a period of two years. Admittedly the assessment order was passed on 23.12.2011 and the affidavit was filed on 16.09.2013. Further there is no ground before the CIT (A) to the effect that the admission recorded by the AO was not in accordance with law or the assessee/ Ld. AR had ever agreed for such addition. Beside the above the CIT (A) cannot give a finding on the basis of the affidavit filed by AR, at the back of the AO, contradicting the

proceeding taken place before AO, without seeking report/ response from the AO.

09. In view of the above, we are of the considered opinion that the order passed by the CIT (A) is required to be cancelled and the addition made by the AO is confirmed.

10. In the result, appeal of the Revenue is allowed.

Order pronounced in the open court on 17<sup>th</sup> day of November, 2017.

Sd/-

Sd/-

(INTURI RAMA RAO)  
ACCOUNTANT MEMBER

(LALIT KUMAR)  
JUDICIAL MEMBER

Bengaluru

Dated : 11.2017

MCN\*

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order

SENIOR PRIVATE SECRETARY