

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-C” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.1951/Bang/2017
Assessment Year : 2012-13

M/s. Silicon City Education Trust, No. 155/4B, Kumar Nursery, New Bank Colony, Konanakunte, Bangalore – 560 062.  <b>PAN: AAFTS 4008P</b>	Vs.	The Income Tax Officer (Exemptions), Ward – 3, Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Sridhar, CA
Respondent by	:	Smt. Swapna Das, JCIT (DR)

Date of hearing	:	16.01.2018
Date of Pronouncement	:	19.01.2018

**ORDER**

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

This is an assessee's appeal directed against the order of Id. CIT(A) – 14, LTU, Bangalore dated 31.07.2017 for Assessment Year 2012-13.

2. The grounds raised by the assessee are as under.

*“1. The order of the CIT(A)-14 is opposed to the law and facts of the case.*

*2. The CIT(A) erred in concluding that the appellant had accepted the addition before Addl. CIT whereas the appellant had accepted only the building fund received of Rs.24,48,000/- which was omitted to taken into gross receipts and not the other additions made in the order.*

*3. Without prejudice the appellant had agreed for the addition before the AO only in respect building fund for consideration to gross receipts which is also failed to consider the other legal grounds for which the appeal may kindly be set aside for fresh consideration.*

*4. The CIT(A) failed to give a finding that the appellant has not*

*accepted the addition in the assessment order except for building fund of Rs.24,48,000/- for the which the appellant replied letter vide dt. 25.02.2015 which the AO failed to consider reply dt.25.03.2015 and also the contention in the grounds of appeal and in the written submission filed on 17.04.2017 even though referring the same in the appellate order.*

*5. The CIT(A) erred in not considering the various decisions quoted in the grounds of appeal as well as in written submission including the jurisdictional High Court decision simply rejecting for having accepted the addition before the assessing officer which is against the board circular in No,14/(XL-35), dt. 11.04.1955.*

*6. The CIT(A) could have been another opportunity since there was a change in Authorized Representative who's address was on file the notice of hearing has been sent to the earlier representative who has filed a letter of adjournment dt.26.07.2017 which was received by the office of CIT(A) on 28.07.2017, the CIT(A) have pass the order on 31.07.2017.*

*7. For these and other ground that may be urged the appellant humbly prays that the appeal may kindly be set aside to CIT(A) for giving one more opportunity in the interest of Justice and equity.”*

3. At the very outset, it was submitted by Id. AR of assessee that the order passed by Id. CIT (A) is ex-parte. He drawn our attention to Para no. 3 of the order of CIT (A) and pointed out that in this Para, it is noted by CIT (A) that written submissions were filed by assessee on 17.04.2017 and although he has stated in the same para that the appeal is proposed to be disposed of based on such written submissions available on record but in fact, the same were not considered. He pointed out that the relevant submissions filed before CIT (A) on 17.04.2017 are available on pages 49 to 57 of paper book and the same were not considered in the order of CIT (A). Therefore, the matter may be restored back to the file of CIT (A) for fresh decision after providing adequate opportunity of being heard to the assessee. The Id. DR of revenue submitted that the written submissions are duly considered by CIT (A) as stated by him in para no. 3 of the order of CIT (A) and therefore, the order of CIT (A) should be confirmed.
4. I have considered the rival submissions. I find that in para no. 3 of his order, it is noted by CIT (A) that the assessee has filed written submissions on

17.04.2017 and the appeal will be decided by considering the same. The appeal was decided by CIT (A) as per para no. 4 but in this Para, there is no reference to written submissions dated 17.04.2017 which are available on pages 49 to 57 of paper book. In the written submissions filed before CIT (A) on dated 17.04.2017, this contention was also raised that an amount of Rs. 24.48 Lakhs was received towards corpus fund (building fund) but the AO has considered the same as fees collection and added the same to the income. It is also submitted in the written submissions that the funds were collected by way of building funds and have been utilized for the purpose of construction of the building. There is no finding given by CIT (A) in the impugned order regarding these contentions raised before him and hence, I feel it proper to restore this matter back to the file of CIT (A) for fresh decision by way of a speaking and reasoned order. Accordingly I set aside the order of CIT (A) and restore the entire matter back to the file of CIT (A) for fresh decision after providing adequate opportunity of being heard to both sides. In view of this decision; I do not make any comment on the merit of the case.

5. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

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

Sd/-  
(ARUN KUMAR GARODIA)  
Accountant Member

Bangalore,  
Dated, the 19<sup>th</sup> January, 2018.  
/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.