

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-C” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

Appeal No.	Appellant		Respondent	Assessment Year
ITA No. 2914/Bang/2017	Sri Mahadev T. Yelamali, Yelamali Plot, Kashi Vishwanath Nagar, Near APMC Yard, Gadag. PAN: AAEPY8187G	Vs.	The Income Tax Officer, Ward – 2, Gadag.	2014-15
ITA No. 2915/Bang/2017	Sri Shiddalingesh T. Yelamali, Yelamali Plot, Kashi Vishwanath Nagar, Near APMC Yard, Gadag. PAN: AACPY7485P			
ITA No. 2916/Bang/2017	Sri Anup Shankar Yelamali, Yelamali Plot, Kashi Vishwanath Nagar, Near APMC Yard, Gadag. PAN: ABPPY6877M			
ITA No. 2917/Bang/2017	Sri Jayadev T. Yelamali, Yelamali Plot, Kashi Vishwanath Nagar, Near APMC Yard, Gadag. PAN: AACPY7484N			
ITA No. 2918/Bang/2017	Sri Shankar T. Yelamali, Yelamali Plot, Kashi Vishwanath Nagar, Near APMC Yard, Gadag. PAN: AACPY7483M			

Appellant by	:	Shri Ashok A. Kulkarni, Advocate
Respondent by	:	Shri L.V. Bhaskar Reddy, Addl. CIT (DR)

Date of hearing	:	20.03.2018
Date of Pronouncement	:	20.03.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

All these five appeals are filed by different but connected assesseees and these are directed against five separate orders of Id. CIT(A), Hubli all dated 25.10.2017 for Assessment Year 2014-15.

2. The grounds raised by the assessee in ITA No. 2914/Bang/2017 are as under.

“1. The order passed by the learned CIT Appeals is illegal, baseless and opposed to the facts of the case.

2. The learned CIT Appeals and Learned Income Tax Officer have erred in not considering the plea of the assessee of deleting the loan repaid by son in law of Rs. 442,578 and Income tax refund of Rs. 196,110 wrongly credited to the Profit and Loss account. The learned ITO has agreed that the loan repaid of Rs. 442,578 by the Son in law and Income Tax refund of Rs. 196,110 has been credited to the Profit and Loss Account.

3. The learned CIT Appeals has erred in not deleting entire addition on account of cost of construction of Rs. 40,38,208. The valuation report of the District Valuation Office, Valuation report of the Approved Valuer and the expenses debited in the books toward cost of construction almost match and no addition is required on this account.

5. The assessee prays leave to add any more grounds of appeal before or at the time of hearing.”

3. The grounds raised by the assessee in ITA No. 2915/Bang/2017 are as under.

“1. The order passed by the learned CIT Appeals is illegal, baseless and opposed to the facts of the case.

2. The learned CIT Appeals has erred in not deleting the entire addition on accounts of cost of construction of Rs. 40,38,208. The valuation made by the District Valuation Officer, Approved Valuer and the expenses debited towards cost of construction match each other and does not required any addition to the returned income.

3. The learned CIT Appeals has erred in sustaining addition of Rs. 3,76,000 being Loan from father Shri. Totappa Yelamali.

4. The assessee prays leave to add any more grounds of appeal before or at the time of hearing.”

4. The grounds raised by the assessee in ITA No. 2916/Bang/2017 are as under.

“1. The order passed by the Learned CIT Appeals is illegal, baseless and opposed to the facts of the case.

2. The learned CIT Appeals, has erred in not deleting addition of Rs. 40,38,208 towards cost of construction of the Shopping complex even though the valuation reports of the District Valuation Officer, Approved Valued and the expenses debited in the books of accounts

almost match.

3. The assessee prays leave to add any more grounds of appeal before or at the time of hearing.”

5. The grounds raised by the assessee in ITA No. 2917/Bang/2017 are as under.

“1. The order passed by the learned CIT Appeals is illegal, baseless and opposed to the facts of the case.

2. The learned CIT Appeals has erred in not deleting entire addition on account of cost of construction of Rs. 40,38,208. The valuation made by the District Valuation Officer and the expenses debited by the Assessee match each other. The valuation made by the Approved Valuer is also in line with the expenses debited by the assessee.

3. The assessee prays leave to add any more grounds of appeal before or at the time of hearing.”

6. The grounds raised by the assessee in ITA No. 2918/Bang/2017 are as under.

“1. The order passed by the learned CIT Appeals is illegal, baseless and opposed to the facts of the case.

2. The learned CIT Appeals has erred in not deleting entire addition on account of cost of construction of Rs. 40,38,208. The valuation made by the District Valuation Officer and the Expenses debited by the assessee for the Construction of the complex match and there is no room any addition on this account. The valuation report of the Approved Valuer is also matching with the expenses debited.

3. The learned CIT Appeals has erred sustaining addition of Rs. 3,00,000 being loan obtained from Father Shri. Totappa Yelamali. The father owns agricultural lands and has substantial interest income on his deposits in banks.

4. The assessee prays leave to add any more grounds of appeal before or at the time of hearing.”

7. At the very outset, it was submitted by Id. AR of assessee that the AO has passed the assessment order in all these cases on 29.12.2016 but at that point of time, report of DVO was not received by the AO. The report of DVO was received by the AO on 05.10.2017 and the impugned orders of CIT(A) is dated 25.10.2017 and hence, it is seen that such report of DVO was available when the order was passed by CIT(A). He drawn my attention to para 20 of the order of CIT(A) and pointed out that in this para, the CIT(A) has noted that the DVO vide its order dated 05.10.2017 has estimated the cost of construction at Rs.

4,80,19,300/- but since the cost of construction estimated by the DVO is less than admitted by the assessee, the valuation report is not taken cognizance of in disposal of the assessee's appeal. He submitted that it is not fair on the part of the assessee to ignore the report of the DVO and hence, the matter may be restored back to the file of CIT (A) for fresh decision after taking into account this report of DVO. He also submitted that apart from this issue in respect of addition made by the AO on account of cost of construction, other grounds raised in ITA Nos. 2914, 2915 & 2918/Bang/2017 are not pressed and accordingly these grounds are rejected as not pressed.

8. The remaining issue to be decided is one only i.e. addition of Rs. 40,38,208/- in the hands of each of these five assesseees, on the basis of declaration in course of survey conducted in the assesseees' premises on 22.11.2013 in which there was combined declaration of Rs. 2,01,91,040/- in respect of valuation for the commercial complex jointly owned by these five persons. This is the case of the assessee that out of such declaration of Rs. 201.91 Lakhs, the assessee has already declared Rs. 137.20 Lakhs in the books of accounts but in para 9.20 of the assessment order, the AO has given this finding that this contention of the assessee is not factually correct. Before me, the assessee has made a submission that the assessee has declared in course of survey that the estimated cost of construction is Rs.1460/- per sq.ft. and the area of construction was stated to be 33,624sq.ft. and therefore, the total estimated cost of construction was Rs. 4,90,91,040/-. He also submitted that cost debited as per books of accounts maintained by the assessee is Rs. 2,83,33,221/- and amount of Rs. 137.20 Lakhs was further declared and total cost as per books of account and this declared amount comes to Rs. 4,20,53,221/- and the amount spent after survey is Rs. 76.61 Lakhs and in this manner, the total amount as per books of account and as per declaration and amount incurred after survey comes to Rs. 4,97,14,221/- as against estimated cost at the rate of Rs. 1460/- per sq.ft. of Rs. 4,90,91,040/- and therefore, no addition is called for and the DVO has estimated the cost of construction at Rs. 4,80,19,300/- but the CIT(A) has not considered the report of DVO and he has not given a finding on this aspect also that Rs. 137.20 lakhs was accounted for in the books of accounts

as per the assessee but as per the AO, it is stated by him in para 9.20 of assessment order, that this claim is not factually correct and hence, I feel it proper to restore the matter back to the file of CIT(A) for fresh decision with the direction that he should consider report of DVO also and he should also examine and give the finding as to whether the assessee has accounted for extra investment of Rs. 137.20 Lakhs by declaring the same as extra income and then pass necessary order as per law after providing adequate opportunity of being heard to both sides. I hold so because even if as per the report of DVO, the value is less than the amount shown by the assessee, the report of DVO and the cost shown by the assessee should be compared to find out as to whether, any item of cost actually incurred by the assessee and accounted for is missing in the report of DVO. If it is so, such cost from actual cost accounted by the assessee should be excluded and the remaining cost should be compared with the cost as per DVO's report to find out as to whether the cost as per DVO's report is in excess. If so, how much is the excess and what is the explanation of the assessee in that regard. If there is no excess or if the excess, if any, is properly explained by the assessee, no addition is justified. Hence, I set aside the order of CIT (A) in all these cases and restore the matter back to the file of CIT(A) for fresh decision with the direction that he should consider report of DVO also and decide the issue afresh as per above discussion after providing adequate opportunity of being heard to both sides.

9. In the result, three appeals of the assessee in ITA Nos. 2914, 2915 & 2918/Bang/2017 are partly allowed whereas the remaining two appeals in ITA No. 2916 & 2917/Bang/2017 are 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 20th March, 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.