

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH 'B' SMC**

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER

ITA No.2371/Bang/2018
(Asst. Year – 2015-16)

Shri Govindarajulu Setty Prasad,
No.579, Sri Lakshmi Nivas,
1st A Main Road, Jaynagar, 8th Block,
Bengaluru.
PAN – AHMPP8276E.

. Appellant

Vs.

The Income-tax Officer,
Ward-7(2)(5),
Bengaluru.

. Respondent

Appellant by : Shri Lokesh Jain, C.A
Respondent by : Shri M.K Biju, Addl. CIT

Date of Hearing : 04-09-2018
Date of Pronouncement : 10-10-2018

ORDER

PER SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER :

This appeal is preferred by the assessee against the order of the Commissioner of Income-tax (Appeals) inter alia on the following grounds:-

- 1. The order of the Ld. Commissioner of Income Tax (Appeals) ("CIT(A)") is opposed to law, facts and circumstances of the case.*
- 2. The order is passed in haste, without providing sufficient and reasonable opportunity of being heard.*
- 3. The order is passed against the principle of natural justice and thus liable to be quashed.*

4. *On the facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition made by the Learned Assessing Officer ["Ld. AO"] of Rs.6,20,407/- on account of difference in turnover declared in service tax return and income tax return.*

5. *The Ld. CIT(A) ought to have considered the additionalnce produced by the Appellant during the Appellate proceedings, although the Appellant has furnished sufficient reasons for not furnishing before lower Authorities*

6. *The Ld. CIT(A) failed to exercise discretion vested in him under sub rule 4 of Rule 46A to admit additional evidence.*

7. *The Ld. CIT(A) failed to note that the Appellant has employed cash system of accounting consistently and regularly as per section 145(1).*

8. *The Ld. CIT(A) failed to appreciate the fact that the Ld. AG has not issued show cause notice providing an opportunity to the Appellant to show cause as to why the difference in turnover declared in service tax return and income tax return be treated as income.*

9. *The Id. AO failed to appreciate the fact that the excess sale declared in the service tax return was due to error in filing service tax return and the Appellant was unable to revise the service tax return as the time to revise the return had elapsed. The Ld. AG has considered the income as per service tax return which is not as per the provisions of unôe section 145(1).*

10. *The Ld. AO has erred in not considering the confirmation from parties which is violation of principle of natural justice and bad in law."*

2. The Id counsel for the assessee has invited our attention that AO has made an addition on account of difference in turnover and declared in service tax return and Income-tax return. It was contended on behalf of the assessee that AO did not afford proper opportunity of being heard to the assessee to explain discrepancies found therein but he however filed the detailed evidence before the CIT(A) but it was not considered by him and he confirmed the addition.

3. It was further submitted that in the interest of natural justice, the additional evidenced filed corresponding to the discrepancies may be admitted and the matter may be restored to the file of the CIT(A) for fresh adjudication.

4. The Id DR placed reliance upon the order of the CIT(A).

5. Having carefully examined the orders of the lower authorities, I find that proper opportunity was not afforded to the assessee to explain discrepancies found in service tax and Income-tax return. I accordingly set aside the order of the CIT(A) and restore the matter to his file to adjudicate the assessment afresh in the light of additional evidence field by him. Accordingly, appeal of the assessee stands allowed for statistical purposes.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 10th OCT, 2018.

Sd/-
(SUNIL KUMAR YADAV)
JUDICIAL MEMBER

Bangalore

Dated : 10/10/2018

Vms

Copy to : 1. The Assessee
2. The Revenue
3. The CIT concerned.
4. The CIT(A) concerned
5. DR
6. GF

By order

Asst. Registrar, ITAT, Bangalore