

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

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANTMEMBER AND
SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA Nos. 570 to 572/Bang/2011 & 1023/Bang/2012
Assessment Years : 2001 – 02, 2003 – 04, 2004 – 05 & 2005 – 06

M/s. Aditya Enterprises, Lakshmi Towers, Near Forest Check Post, N. H. 48, Uppinangdi, Puttur, D. K. PAN: AAHFA2010R	vs.	The ACIT, Central Circle, Mangalore.
APPELLANT		RESPONDENT

&

ITA No.1119/Bang/2012
Assessment Years : 2005 – 06

The ACIT, Central Circle, Mangalore.	vs.	M/s. Aditya Enterprises, Lakshmi Towers, Near Forest Check Post, N. H. 48, Uppinangdi, Puttur, D. K. PAN: AAHFA2010R
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Srinivasan, Advocate
Respondent by	:	Ms. Neera Malhotra, CIT (DR)

Date of hearing	:	19.12.2018
Date of Pronouncement	:	21.12.2018

ORDER

Per Bench

Out of these five appeals, four appeals are filed by the assessee and one appeal is filed by the revenue. All these appeals were heard together and are being disposed of by this common order for the sake of convenience.

2. Regarding the appeal of the revenue, learned AR of the assessee submitted that the tax effect in this appeal is only Rs. 19,15,564/- and he submitted a copy of working of this tax effect. He submitted that in view of recent CBDT Circular No. 3/2018 dated 11.07.2018, this appeal of the revenue is not maintainable because of low tax effect. Learned DR of the revenue could not point out any defect in this working of tax effect. Hence, we dismiss this appeal of the revenue because of low tax effect.

3. Regarding four appeals of the assessee, learned AR of the assessee submitted that Ground No. 1 in each year except A. Y. 2005 – 06 is general and Ground No. 2 & 3 are not pressed. Accordingly, these grounds are rejected as not pressed.

4. Thereafter he submitted that in A. Y. 2001 – 02, there is only one issue on merit regarding addition of Rs. 37,059/- by estimating the G. P. at 6.35% on the basis of average G. P. of next two years. He submitted that this is the first year of business and that too only for 6 months because business was started in October 2000 as noted by the AO in Para 3 of the assessment order. He submitted that because of this, it is not justified to adopt G. P. percentage of succeeding years where there was working for whole year. At this juncture, the bench pointed out that in Para 8 of the assessment order on page 3, it is noted by the AO that books were not produced. The bench pointed out that because of this, the AO had no option but to estimate the income. The bench also observed that if succeeding years' G. P. rate is not to be adopted than the estimation has to be made on the basis of some other comparable case. The bench observed that whether the assessee can bring some comparable case on record if the matter is restored back. In reply, he submitted that the assessee cannot do it. Learned DR of the revenue supported the orders of the lower authorities.

5. We have considered the rival submissions and in view of the facts discussed above, we find no reason to interfere in the order of CIT (A) on this issue because the assessee has not produced the books of account. No comparable case is brought on record and the assessee is showing its inability to bring comparable case on record if the matter is restored back. In this situation, adopting of average G. P. rate of succeeding two years of the same assessee is not improper and hence, we decline to interfere in the order of CIT (A) on this issue.

6. Regarding the remaining three years, he submitted that there is one common issue in these all three years about disallowance u/s 40A (3) of Rs. 22,045/- in A. Y. 2003 – 04, Rs. 163,069/- in A. Y. 2004 – 05 and Rs. 44,701/- in A. Y. 2005 - 06. He also submitted that in A. Y. 2004 – 05, there is one more issue being addition u/s 69c of Rs. 52,842/- being alleged payment made to M/s Supreme Motors. Regarding these two issues, he reiterated the submissions made before CIT (A). Learned DR of the revenue supported the orders of the lower authorities.

7. We have considered the rival submissions. Regarding disallowance u/s 40A (3), a categorical finding is given by CIT (A) in all three years that the case of the assessee does not fall under any of the clauses (a) to (m) of Rule 6DD. Only contention raised before the AO and CIT (A) was this that the payment to the suppliers were not made as a single payment in a day but no evidence has been produced in this regard. Hence, on this issue also, we decline to interfere in the order of CIT (A) in all three years.

8. Regarding the addition of Rs. 52,842/- in A. Y. 2004 – 05, a categorical finding is given by CIT (A) in Para 2.5.3 of his order that the assessee did not produce any evidence in support of this claim that no such payment was made by the assessee to that party. At least a confirmation from Supreme Motors could have been brought on record by the assessee. Hence, on this issue also, we decline to interfere in the order of CIT (A).

9. In the result, all these four appeals filed by the assessee and one appeal filed by the revenue are dismissed.

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

Sd/-
(LALIET KUMAR)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 21st December, 2018.
/MS/

Copy to:

1. Appellant
2. Respondent
3. CIT

4. CIT (A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.