

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD "SMC" BENCH, HYDERABAD**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER**

**ITA No. 552/HYD/2018  
(Asst. Year : 2009-10)**

Kavvadapu Buchi Reddy, vs. ITO, Ward-11(4),  
H.No. 12-142/1, P & T Colony, Hyderabad.  
Kamalanagar Colony,  
Hyderabad

PAN No. AOCPK 6892 G  
(Appellant)

(Respondent)

Assessee by : Shri T. Chaitanya Kumar, Adv.  
Department By : Smt. Niju Gupta- DR

Date of hearing : 14/05/2019.  
Date of pronouncement : 17/05/2019.

**ORDER**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-7, Hyderabad, dated 20/12/2017 for the Assessment Year 2009-10.

**2.** The assessee has raised an additional ground in respect of charging of interest u/s. 234B of the Act and submitted that Assessing Officer is not correct in charging the interest. This being a legal ground, the same is admitted.

**3.** Ground Nos. 1 & 5 are general in nature, no adjudication is required, therefore same are dismissed. Ground No. 2 is not pressed, therefore same is dismissed.

**4.** Ground No.3 relates to disallowance of expenditure of Rs.5,13,144/-.

**5.** Facts of the case in brief are that assessee is engaged in the business of borewell drilling machine, filed his return of income admitting total income of Rs. 1,98,500/-. The return filed by the assessee was processed u/s. 143(1) and after following due procedure assessment was completed u/s. 143(3) of the Act on 30/12/2011. During the course of assessment proceedings, the Assessing Officer has noted that the AR of the assessee was asked to explain about the various entries and transactions appearing in the bank account and after satisfying, assessment was completed. Subsequently, assessment was reopened by issuing a notice u/s.148 on the ground that the assessee has claimed an amount of Rs. 5,13,144/- towards EMI of borewell drilling machine, but not mentioned which is secured or unsecured loan in the balance sheet for the year ended 31/03/2009. As the assessee has not shown the same in the liabilities side towards borewell drilling machine, the expenditure debited is not allowable. Accordingly, addition of Rs.5,13,144/- was made in the hands of the assessee.

**6.** On appeal before the Id.CIT(A), the assessee has submitted that the assessee is not maintaining books of account, therefore as per section 45AD, presumptive tax may be collected from the

assessee. The Id.CIT(A) considered the explanation of the assessee and confirmed the order of the Assessing Officer. For the sake of convenience, the order of the Id.CIT(A) is as under:-

*"5. I have considered the findings of the Assessing Officer in the assessment order and submissions of the appellant carefully. The notice u/s.148 was given only to bring the income of Rs.5,13,144/- escaped from taxation. Income was originally assessed on 30-12-2011 u/s.143(3) determining income of Rs.2,63,140/-, thereafter, notice u/s.148 was issued only to bring the unexplained expenditure of Rs.5,13,144/-. In the scheme of taxation pertaining to reopening of assessment, there is no provision in the I.T.Act to file a revised income below the assessed income. In case of reopening of assessment, the appellant has no option to file a income lower than the income originally assessed. Therefore, the finding of the Assessing Officer that the revised return of income filed by the appellant is non-est is legally correct. On merits also, the appellant failed to furnish any documentary evidence in support of claim of expenses of Rs. 5,13,144/-. The appellant did not opt for presumptive taxation u/s.44AD in the original return of income. Once the appellant chooses to file the return of income under the normal provisions of the I.T.Act, the appellant cannot choose himself to be assessed under presumptive taxation in the reassessment proceedings. Hence, the disallowance made by the Assessing Officer is confirmed."*

**7.** Ld. counsel for the assessee has submitted that the amount of Rs. 5,13,144/- is the principal and interest, therefore the entire addition cannot be made.

**8.** Ld. Departmental Representative has submitted that the assessee has not filed any details, therefore, the action of the Id.CIT(A) in confirming the order of the Assessing Officer is correct.

**9.** I have heard both the parties, perused the material available on record and gone through the orders of the authorities below.

**10.** In this case, the assessee has claimed EMI payment of Rs.5,13,144/-, the same was accepted in the original assessment framed u/s. 143(3) of the Act. Subsequently, assessment was reopened and asked the assessee to explain and to file the details in respect of EMI payment. It was submitted by the assessee that the EMI payment is made in respect of purchase of borewell drilling machine. The assessee has not filed any details when it was purchased, what is the principal amount and what is the interest. Since no such details are filed, the Id.CIT(A) confirmed the order of the Assessing Officer. Even before me, no such details are filed. Under these facts and circumstances of the case, I am of the opinion that no interfere is called for in the order of the Id.CIT(A).

**11.** Insofar as charging of interest u/s. 234B is concerned, it is submitted by the Id. counsel for the assessee that assessment was completed u/s. 143(3) on 30/12/2011 and subsequently, assessment was reopened and assessment order u/s. 143(3) r.w.s. 147 was passed on 07/01/2015 and the Assessing Officer calculated the tax for the period 31/12/2011 to 11/01/2015 which is incorrect. Ld. DR has submitted that what is the basis for calculation of tax by the Assessing Officer u/s. 234B is not available and is not ascertainable from the assessment order, therefore, the issue may be sent back to the Assessing Officer for fresh adjudication. To this,

the Id.AR of the assessee has no objection. By considering the submissions made by both the parties, the interest charged u/s.234B is set aside and remit the issue back to the file of the Assessing Officer to adjudicate the same afresh in accordance with law after giving affordable opportunity of hearing to the assessee. In view of the above, the appeal filed by the assessee is allowed for statistical purpose.

**12.** In the result, appeal filed by the assessee is partly allowed for statistical purpose.

Order Pronounced in open Court on this 17<sup>th</sup> day of May, 2019.

Sd/-  
**(V. DURGA RAO)**  
**Judicial Member**

**Dated: 17<sup>th</sup> May, 2019.**

**vr/-**

*Copy to:*

1. *The Assessee - Kavvadapu Buchi Reddy, H.No. 12-142/1, P & T Colony, Kamalanagar Colony, Hyderabad.*
2. *The Revenue-ITO, Ward-11(4), Hyderabad.*
3. *The Pr.CIT-7, Hyderabad.*
4. *The CIT(A)-7, Hyderabad.*
5. *The D.R., Hyderabad.*
6. *Guard file.*

By order

Sr. Private Secretary,  
ITAT, Hyderabad.