

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-C” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.1641/Bang/2018
Assessment Year : 2012-13

Shri Babulal K Kothari (HUF), Prop: Sanghavi Madura Centre, Dajibanpet, Hubli – 580 028. PAN: AACHB3768E	Vs.	The Assistant Commissioner of Income Tax, Circle – 3 (1), Hubli.
APPELLANT		RESPONDENT

Assessee by	:	Shri Sudheendra B.R., Advocate
Revenue by	:	Shri Tshering Ongda, JCIT (DR)
Date of hearing	:	15.05.2019
Date of Pronouncement	:	31.05.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT(A), Hubballi dated 15.03.2018 for Assessment Year 2012-13.

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

“General Ground

1. The Assessing officer, Circle- 3(1), Hubli ('AO') has erred in passing the assessment order under section 143(3) of the Income Tax Act ('the Act'), in the manner so passed and the learned CIT(Appels), Hubballi ('CIT(A)') has erred in confirming with the action of the AO.

Grounds relating to disallowance of interest on loans

2. The learned AO has erred in treating interest paid on loans amounting to Rs. 12.14,177/- as bogus and disallowing the same.

3. The learned AO has failed to appreciate that the appellant has produced all relevant documents as discharged the onus to prove the genuineness of the loan depositors.

4. The learned AO has in disturbing the settled position of law that the appellant was under no obligation to prove the source of source.

5. The learned AO erred in holding that the loans received are bogus merely for the reason that the summons issued to depositors remained unanswered.

Grounds relating to discount and sales returns

6. *The learned AO has erred in making addition of discount and sales returns of Rs. 16,44,561 and Rs. 3,69,097 respectively as bogus expenditures.*

7. *The learned AO has erred in making the above addition even though the appellant had submitted all required documents.*

8. *The learned AO has erred in not providing any cogent reasons for holding that the expenditure incurred on discount and sales returns are bogus.*

9. *The learned CIT(A) erred in confirming the action of the AO in making the addition merely on the ground that information required was not presented in a specific manner.*

10. *The learned AO has failed in making an observation that the above stated expenditures are unexplained/unsubstantiated.*

Grounds on Ad-Hoc disallowance of expenses

11. *The learned AO has erred in disallowing a sum of Rs.7,28,204 being 20% of the total expenses amounting to Rs. 36,41,021/-*

12. *The learned AO has erred in disallowing 20% of the expenditure on an Ad-Hoc basis without providing any cogent reasons.*

13. *On facts and circumstances of the case, the total impugned addition of Rs. 39,56,039/-is bad in law and liable to be quashed.*

Grounds relating to levy of Interest under 234A, 234B and 234C

14. *The learned AO has erred in levying interest under section234A, 234B and 234C. The addition of such interest is bad in law and liable to be deleted. The assessee prays accordingly.”*

3. It was submitted by Id. AR of assessee that the assessee has submitted before CIT (A) books of accounts with bills and vouchers and the same were submitted by assessee before the AO in course of assessment proceedings also but it is observed that AO has asked for specific details from the books of accounts which could not be submitted by assessee. It is also noted by CIT(A) in para 4 that assessee has submitted before him that the books of accounts along with supporting bills and vouchers may be examined in the course of appellate proceedings to verify the genuineness of the expenditure. But Id. CIT(A) did not accept this request and he held in para 6 of the order that he finds no reason to admit the books of accounts of the assessee with supporting bills and vouchers in the course of appellate

proceedings because the assessee did not furnish the required details before the AO in spite of adequate opportunities. He submitted that in the interest of justice, the assessee's request should be admitted and assessee may be directed to file the required details before the CIT(A) and the matter may be restored back to the file of CIT(A) for fresh decision after examining the required details to be submitted by assessee. The Id. DR of revenue supported the orders of authorities below.

4. I have considered the rival submissions. I find that in the assessment order, the AO has stated that Id. AR of assessee was asked to produce bills and vouchers and other documents in respect of the expenditure of Rs. 36,41,021/- which has been debited in the P&L account. But the same was not produced by Id. AR of assessee and the AO has made disallowance to the extent of 20% of such expenses i.e. Rs. 7,28,204/-. Before CIT(A), the assessee wanted to produce the bills and vouchers. But Id. CIT(A) did not allow the assessee to produce the bills and vouchers in appellate proceedings. In my considered opinion, in the interest of justice, the assessee should be allowed to produce the evidences which the assessee wants to rely upon in support of his claim. Hence I set aside the order of CIT(A) and restore the matter back to the file of CIT(A) for fresh decision with the direction that he should allow the assessee to produce the additional evidence and if assessee does so, the CIT(A) should obtain remand report from the AO and thereafter, decide the issue and pass necessary order as per law after providing adequate opportunity of being heard to both sides. I order accordingly. 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 is 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 31st May, 2019.
/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.