

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

BEFORE SHRI N.V VASUDEVAN, VICE PRESIDNET AND
SHRI B.R BASKARAN, ACCOUNTANT MEMBER

ITA No.1104/Bang/2016
Assessment year : 2005-06

The Dy. Commissioner of Income-tax, Circle-6(1)(2), Bangalore.	Vs.	M/s Sri Sivapriya Shelters Pvt. Ltd., No.71, II Floor, 2 nd Cross, R.J Garden, Outer Ring Road, Marathalli, Bengaluru. PAN – AAICS 3835 L
APPELLANT		RESPONDENT

Appellant by	:	Dr. Shankar Prasad, Addl. CIT
Respondent by	:	Shri K Aravindanath Reddy, C.A

Date of hearing	:	10.06.2019
Date of Pronouncement	:	10.06.2019

ORDER

Per B.R Baskaran, Accountant Member

The appeal filed by the Revenue is directed against the order dated 12/2/2016 passed by Id CIT(A)-6 Bangalore and it relates to asst. year 2005-06.

2. The Revenue is aggrieved by the decision of Id CIT(A) in granting relief in respect of disallowance of Probable development expenditure of 115.77 lakhs.

3. We heard the parties and perused the record. This is second round of proceedings. The AO has passed the impugned order in pursuance of order passed by the ITAT setting aside the matter to his file. In the first round, the coordinate bench of the Tribunal had remitted the matter relating to disallowance of claim of Probable development expenses of Rs.115.77 lakhs to the file of the AO vide its order dated 29/6/2012. We notice that the Tribunal had directed that the disallowance has to be made after examining the question as to whether the liability is ascertained one and further it is quantified on a reasonable basis, since the AO or CIT(A) had not examined this aspect. Accordingly the matter was remanded to the file of the AO.

4. Consequent thereto, the AO has passed the impugned order again confirming the additions by observing that the assessee has claimed the expenditure only in the return filed u/s 153A of the Act and not in the original return. Thus we noticed that the AO has not examined the question as to whether the liability is ascertained one and further it is quantified on a reasonable basis, as observed by the Tribunal in the first round of proceedings. The 1d CIT(A) however allowed the claim with the observations that the above said expenditure was allowed in the succeeding year i.e asst. year 2006-07.

5. The assessee has filed written submissions. On a perusal of the same, we noticed that the assessee is creating provision for "Probable development expenditure" every year and the same is

reversed in the succeeding year. The following table explains the same.

Asst year	Proportionate Claim	Dev. Exp. Reversed	Income offered	Paper Book 2 ref. No.	ALLOWED by Assessing Officer
	Rs.	Rs.			
Original return:					
2005-06	1,82,03,784	Nil			
Return filed u/s 153A:					
2005-06	1,15,77,840	1,82,03,784	66,25,944		Disallowed *
Accepted returns:					
2006-07	25,06,154	1,15,77,840	90,71,686	51	YES 50
2007-08	1,77,805	25,06,154	23,28,349	63	YES 65
2008-09	17,86,617	1,77,805	(16,08,812)	70	YES 70

6. However, the question that is required to be considered, as per the observation made by the co-ordinate bench of Tribunal in the first round of proceedings, is whether the liability for expenses claimed by the assessee is an ascertained liability and further estimation of the same is being made on a reasonable basis. We noticed that neither the AO nor the 1d CIT(A) has examined this aspect. Under these set of facts, we are of the view that this issue requires fresh examination at the end of the 1d CIT(A). Accordingly we set aside the order passed by the CIT(A) on this issue and restore the same to his file for adjudicating this issue afresh in the light of observations made by the Tribunal in the first round of proceedings, after affording adequate opportunity of being heard to the assessee.

7. In the result, the appeal filed by the Revenue is treated as allowed for statistical purposes.

Order pronounced in the Open Court on **10th June, 2019.**

Sd/-
(N.V Vasudevan)
Vice President
Bangalore,
Dated, 10th June, 2019.
/ vms /

Sd/-
(B.R Baskaran)
Accountant Member

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.