

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, BENGALURU**

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER
and
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.751/Bang/2018
(Assessment year: 2008-09)

M/s.Suraj Stone Corporation Ltd.
Survey No.29, Behind Plot No.81E/2,
No.8, 1st Phase, Near Anekal Taluk,
Bengaluru-562106. ... Appellant
PAN:AACCS 9674 F

Vs.

Asst. Commissioner of Income-tax,
Circle 6(1)(2),
Bengaluru. ... Respondent

Appellant by : Shri R.K.Ganeriwala, CA.
Respondent by : Shri K.N.Dhandapani, JCIT(DR)

Date of hearing: 10/06/2019
Date of pronouncement: 21/06/2019

O R D E R

Per PAVAN KUMAR GADALE, JM:

The assessee has filed the appeal against the order of the CIT(A), passed u/s 143(3) r.w.s. 147 and 250 of the Income-tax Act,1961 ['the Act' for short].

2. The assessee has raised the following grounds of appeal:

1. The learned Assessing authority has erred in law by adding Rs. 75.00 lakh as income to the declared income based merely on information provided by Investigation wing of Kolkata of the I T Department, without applying his independent mind.

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2. It is submitted that information provided was based on conjectures and surmises and not based on investigation of facts which otherwise would show that the funds were received and repaid independently and were in no way connected to alleged trail of funds from third party being investigated by DDIT (Inv) -2 (1), Kolkata.
 3. The Learned Assessing authority has made the impugned addition based on absence of confirmation from the lender, whereas copies of bank statement produced at the time of assessment and copy of Ledger Account amply prove that transactions of receipt and repayment, both during the same financial year were, made through bank and were properly explained with sufficient evidence.
 4. It is submitted that it is merely an allegation that the assessee is the 'final beneficiary of funds", which is contrary to the facts of the case, and is merely a conjecture, hence assessment based on wrong facts and conjecture is bad in law.
 5. It is submitted that the assessee had not entered into any transactions what so ever with Lanxness Enterprises, hence submission of Confirmation of transactions with this party does not arise; hence addition by the learned assessing authority based on absence of any such documents which does not exist at all is bad in facts of the case.
 6. The order of the learned Commissioner of Income Tax (Appeals) — 6 is arbitrary as the documents submitted before her were brushed aside and non-submission of the loan confirmation at the time of scrutiny was made the sole basis for dismissal of appeal.
 7. Your appellant seeks leave to urge any other ground at the time of hearing.
3. Brief facts of the case are that the assessee is engaged in the business of trading in shares and securities and has interest income on advances filed the Return of income for the assessment year 2008-09 on 29/9/2008. Subsequently, based on the information from DDIT(Inv)2(1) wing, Kolkata, that the assessee has transaction of Rs.75 lakhs and notice u/s 148 of the Act was issued. In compliance, Id. AR appeared from time to time and filed details. Whereas AO, on perusal of the

information submitted in the course of hearing found that there was commercial transaction and the assessee was beneficiary. The assessee filed letter on 29/2/2016 in respect of amount advanced by Lanxess Enterprises and Khushboo Bearing (P) Ltd., but AO found that the assessee has not submitted any confirmation from the lender in spite of repeated reminders since there was no response, AO made addition and assessed total income of Rs.73,07,880/- and passed order u/s 143(3) r.w.s. 147 dated 31/3/2016.

4. Aggrieved by the order, assessee filed appeal with the CIT(A). The CIT(A), having considered the grounds of appeal and written submissions and the findings of the AO observed that the assessee has not filed necessary confirmation from Khushboo Bearing (P) Ltd., whereas the assessee has filed confirmation letter dated 1/4/2008 during the appellate proceedings. The CIT(A) further observed that the assessee was in possession of the confirmation at the time of assessment proceedings and has not filed before the AO for reasons known to the assessee and also no proper cause was explained. Hence, confirmed the addition made by the AO and dismissed the assessee's appeal.

5. Aggrieved by the CIT(A)' order, the assessee has filed appeal with the Tribunal. Ld. AR argued that the CIT(A) has

erred in not accepting confirmation and filed affidavit before the Tribunal for admission of additional evidence of lender Khushboo Bearing (P) Ltd., and prayed for acceptance of the additional evidence under the provisions of rule 46A of the IT Rues. Contra, learned DR objected to the filing of evidence and supported the CIT(A) order.

6 We heard the rival submissions and perused material on record. The sole disputed issue envisaged by the Id. AR is that the CIT(A) erred in not considering confirmation letter which was filed in the appellate proceedings and therefore, the assessee has filed petition for admission of additional evidence with affidavit. Ld. AR demonstrated the contents of affidavit in the course of hearing. We are of the considered view that by delaying process of filing evidence, assessee will not gain any benefit. Accordingly, we admit additional evidence and restore the entire disputed issue to the file of the CIT(A) to adjudicate afresh considering the additional evidence and call for remand report from the AO on this transaction. Accordingly, the order the CIT(A) is set aside and restore the disputed issue along with additional evidence to the file of the CIT(A) for fresh adjudication as discussed and the grounds of appeal of the assessee are allowed for statistical purposes.

7 In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on 21st June, 2019.

Sd/-

(A.K.GARODIA)
ACCOUNTANT MEMBER

Place : Bengaluru
Dated : 21/06/2019
srinivasulu, sps

Copy to :

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

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore