

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES : "A", BANGALORE**

**BEFORE SHRI B.R.BASKARAN, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.1480(Bang)/2016
(Assessment Year : 2008-09)**

Shri Ayub Khan M Pathan,
Prop: Sagar Traders,
APMC Yard, Amargol,
Hubli
PAN No.AODPP1065M

Appellant

Vs

The Income tax Officer,,
Ward-1(1),
Hubli

Respondent

And

**ITA No.1493(Bang)/2016
(Assessment year : 2008-9)
(By Revenue)**

**Appellant by : Shri C. Ramesh, CA
Revenue by : Smt. Swapna Das, JCIT**

Date of hearing : 07-05-2019

Date of pronouncement : 21-06-2019

ORDER

PER SHRI B.R.BASKARAN, ACCOUNTANT MEMBER

These are cross appeals which are directed against the order dated 31-03-2016 passed by the ld. CIT(A). Hubli and they relate to assessment year 2008-09.

2. The assessee is aggrieved by the decision of the ld. CIT(A) on the following issues.

- i. Partial confirmation of addition made u/s 68 of the IT Act, 1961
- ii. Partial confirmation of addition made towards gross profit.

Besides the above, the assessee has also raised legal ground stating that the reasons for re-opening of the assessment was not supplied to the assessee and further, the details of approval taken for issuing the notice u/s 148 of the IT Act, was not mentioned in the assessment order.

3. The revenue is in appeal challenging the decision of the Id.CIT(A) in deleting the disallowance made by the AO u/s 40A(3) of the IT Act and also not admitting the additional evidence.

4. The facts relating to the case are stated in brief. The assessee is a dealer and commission agent in onions. The return of income filed by the assessee for the year under consideration was processed u/s 143(1). Subsequently, the AO received information from DDIT(Inv.), Hubli that the assessee has made payments in cash to certain parties to the tune of Rs.143.60 lakhs, which was in violation of provisions of sec.40A(3) of the IT Act, 1961 calling for disallowance u/s 40A(3) of the Act. Accordingly, the AO re-opened the assessment and made addition towards unproved creditors, disallowance u/s 40A(3) and addition to gross profits. Before us, both the parties are in appeal on the points decided by Ld CIT(A) against each of them.

5. We shall first take up the appeal filed by the assessee. The first issue relates to addition of unproved creditors during the course of assessment proceedings. The AO noticed that the assessee was showing outstanding balance in the name of various persons to the tune of Rs.31.07 lakhs, which included amounts outstanding were in the name of 52 farmers to the tune of Rs.23.44 lakhs. The AO asked the assessee

to produce confirmation letters from the farmers. However, the assessee did not furnish the same and hence, the AO took the view that the assessee has failed to prove the genuineness of credits outstanding in the name of farmers. Accordingly, he added the aggregate amount of Rs.23.44 lakhs to the total income of the assessee.

6. Before the Id.CIT(A) the assessee furnished certain information and hence, the Id.CIT(A) called for a remand report from the AO. In the remand proceedings the AO issued summons to all the 52 farmers, but only 16 persons responded. Based on this report, the Id. CIT(A) granted relief to the tune of Rs.7.12 lakhs, being the amount outstanding in the name of farmers who have responded to the notices issued by the AO. The Id. CIT(A) confirmed the balance amount of addition.

7. We have heard the parties on this issue and perused the record. We notice that the AO has made this addition only for the reason that the assessee has failed to prove the genuineness of credits outstanding in the name of farmers, since credit sales by farmers is not an existing trade practice. Even though, an opportunity was provided to the assessee during the appellate proceedings and remand proceedings to prove the credit balances, yet the assessee could not produce any documents or confirmation from the creditors. Since some of the creditors have responded to the notices issued by the AO during the remand proceedings, the Id.CIT(A) has granted relief to the extent of 7.12 lakhs meaning thereby, the assessee could not prove the genuineness of the remaining creditors. Under these set of facts, we are

of the view, that the ld. CIT(A) was justified in partially sustaining the addition made by the AO on this issue.

8. The next issue contested by the assessee relates to the addition made on account of low gross profit. The AO noticed that the assessee has shown a gross profit margin of 0.24% only. Before the AO the assessee could not justify the low profit margin declared by him. Hence, the AO estimated the gross profit of the assessee at the rate of 5% of the sales and added a sum of Rs.15.59 lakhs. In the appellate proceedings, the ld.CIT(A) reduced the estimate to 1% and accordingly granted partial relief to the assessee.

9. We have heard the parties on this issue and perused the record. We notice that the ld.CIT(A) has reduced the gross profit estimate made by the AO from 5% to 1% with the following observations;

“ The next ground of appeal is about gross profit addition. During the course of hearing in assessment proceedings the AO had noticed that the assessee has shown gross profit Rs.81,987/- on turnover of Rs.3,28,29,099/- which wok out to 0.24%. The AO stated in his order that the margin of profit in such trade is around 5%. . Therefore, he estimated the gross profit at 5% of Rs.3,28,29,099/- and made a resultant addition of Rs.15,59,468/- is made by the AO. I have examined the position. The AO while estimating 5% GP has not cited any comparable cases which also have more than Rs.3 Crores turnover. Onions are perishable goods unless the assessee has cold storage facility. Nothing is mentioned about this. The assessee is basically a purchase

agent (commission agent) Therefore, his margin of commission being fixed, he can't draw more commission from the actual buyers. Since the assessee has done own trading also, I find that being perishable goods the margin of profit ranges between 0.5% to 1% and not more than that. Only a retailer will earn more profit keeping all these factors in view and estimate the gross profit earned by the assessee at 1% and doing so the gross profit will amount to Rs.3,28,290/-. Since the assessee has declared a gross profit of Rs.81,987/- the difference of Rs.2,46,303/- will be taken as gross profit addition as against Rs.15,59,468/- added by the AO. In the result, the assessee gets a reduction of Rs.13,13,165/-."

10. We notice that the ld. CIT(A) was very much reasonable in reducing the gross profit estimate to 1%. Before us no material was placed by the assessee which would compel us to interfere with the order passed by the ld. CIT(A) on this issue. Accordingly, we confirm the order passed by the ld. CIT(A) on this issue.

11. The assessee also raised two legal issues namely, the AO has not supplied the reasons recorded for re-opening of the assessment and the AO has not mentioned in the assessment order that the approval from the competent authority was obtained.

12. We notice that the above said legal issues are vague and nothing was brought on record to show that the reason for reopening was not proper and the AO did not obtain requisite approval. In the

absence of any material to support the legal issues raised by the assessee we have no other option but to dismiss them.

13. We shall now take up the appeal filed by the revenue wherein the decision of ld.CIT(A) in deleting the addition made u/s 40A(3) is being challenged.

14. We have heard the parties and perused the record. We notice that the ld. CIT(A) has followed the Circular No.220 dated 31-05-1977 issued by the CBDT wherein the scope of than existing Rule-6DD(j) of the IT Rules was discussed. The case laws relied on by the Ld. CIT(A) in page-16 of his order also relate to Rule-6DD(j) than existing. It is pertinent to note that then existing Rule-6DD(j) provided relief in respect of payments made under exceptional circumstances. The said rule has been deleted long back and the same is no longer applicable to the assessment year under consideration. Accordingly, we notice that the ld. CIT(A) has misdirected himself in placing reliance on the rule, which was not applicable to the year under consideration. Hence, the order passed by the led. CIT(A) on this issue gets vitiated for the above said reason. Accordingly, we are of the view, that this issue requires fresh examination at the end of the ld.CIT(A). Accordingly, we set aside the order passed by the ld.CIT(A) in respect of addition made u/s 40A(3) of the IT Act, 1961 and restore the same to his file for fresh examination.

15. In the result, the appeal filed by the assessee is dismissed and the appeal of the revenue is treated as allowed for statistical purposes.

Pronounced on 21-06-2019

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 21-06-019

***am**

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
5. DR
6. ITO (TDS)
- 7.Guard File

By Order
Asst.Registrar