

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ B ” BENCH: BANGALORE
**BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA. No.3361/Bang/2018
(Assessment Year: 2006-07)

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| Dy. Commissioner of Income Tax, Circle 6(1)(2), Bangalore. | Vs. | M/s. Sri Chamundeshwari Sugars Limited, No.76, Ulsoor Road, Bangalore-560 042. PAN AACCS 5004R |
| (Appellant) | | (Respondent) |

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| Assessee By: | Smt. Pooja Maru, C.A. |
| Revenue By: | Ms. Neera Malhotra, CIT (D.R) |

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| Date of Hearing : | 27.06.2019 |
| Date of Pronouncement : | 09.07.2019 |

ORDER

PER SHRI PAVAN KUMAR GADALE, JM :

The revenue has filed an appeal against the order of learned Commissioner of Income Tax (Appeals)-2, Bangalore under Section 143(3) and 250 of the Income Tax Act, 1961.

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

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| 1. | The order of the CIT (Appeals) is opposed to law and the facts and circumstances of the case. |
| 2. | On the facts and circumstances of the case, whether the Ld CIT(A) is justified in directing the Assessing Officer to delete the addition of Rs. 91,00,000, based on the additional evidences furnished by the assessee during appellate proceedings without giving an opportunity to the Assessing Officer to verify the genuineness of the same as per the Rule 46A? |
| 3. | On the facts and circumstances of the case, whether the Ld CIT(A) is justified in directing the Assessing Officer to delete the addition of Rs. 10,00,000/- without taking into account the fact that the disallowance was made based on the overall interest free advances given and was not restricted to the accounts which were mentioned by the Assessing Officer as example? The Assessee had paid interest of Rs. 3,56,00,000/- during the relevant financial year on loan of Rs. 137,42,00,000/- and on the other hand it had show Rs. 2,96,00,000/- as other advances. |
| 4. | For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A), in so far as it relates to the above grounds may be reversed and that of the Assessing Officer be restored. |
| 5. | The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of the appeal. |

3. The Brief facts of the case are that the assessee is in the business of manufacture of sugar, distillery products and bio compost and filed Return of Income for Assessment Year 2006-07 declaring NIL income. Subsequently, the case was selected for scrutiny and notice under Section 143(2) & 142(1) of the Act are issued. The learned Authorised Representative appeared from time to time and the case was discussed. The Assessing Officer considered the financial statements and after discussions and verification made a disallowance of Rs.1,30,37,519 in respect of various expenses and allowed the set off of the

Brought forward losses and passed the order under Section 143(3) dt.22.12.2008 and calculated the tax under Section 115JB of the Act. Aggrieved by the order, the assessee has filed an appeal with the learned CIT(Appeals). The CIT(Appeals) having considered the information filed in the course of appellate proceedings observed that the assessee has complied with the directions of appellate authority in respect of claims and directed the Assessing Officer to allow the claim and partly allowed the appeal. Aggrieved by the CIT (Appeals) order, the revenue has filed an appeal before the Tribunal.

4. The learned Departmental Representative submitted that the CIT(Appeals) has erred in directing the Assessing Officer to delete the addition of Rs.91 lakhs as the assessee has filed additional evidence which was not provided to the Assessing Officer and also Gross violation of Rule 46A of the IT Rules and on the second disputed issue the learned Departmental Representative emphasized that the learned CIT(Appeals) has restricted the addition made by the Assessing Officer to the extent of Rs.10 lakhs where the assessee has filed the information in ledger account and also the Assessing Officer was deprived to verify the claim and prayed for setting aside the order of the CIT(Appeals) and allow the grounds of appeal of revenue. Contra, the learned Authorised Representative supported the orders of the learned CIT(Appeals) and made submissions that the required information was also submitted in the assessment proceedings.

5. We heard the rival contentions and perused the material on record. On the first disputed issue with respect to deletion of business promotion expenses amounting to Rs.91 lakhs. We, on perusal of the CIT (Appeals) order at page 3 of the order found that the assessee has filed the agreement entered by the company with John Distilleries Limited in respect of lease operations as Annexure 2 & 3. Whereas the assessee could not produce the same as they were misplaced by the staff members. Since the agreements are found now, they are filed in appellate proceedings. The CIT (Appeals) has granted relief based on details filed by the assessee but when the assessee has filed additional evidence in the appellate proceedings, the CIT (Appeals) should have call for the remand report or comments on these documents from the A.O. Whereas the learned CIT (Appeals) has not allowed the Assessing Officer to verify these agreements as they were not available during the assessment proceedings. Therefore we found strength in the submissions of learned Departmental Representative on gross violation of provisions of Rule 46A of IT Rules as the Assessing Officer was deprived to check the genuineness of the agreement. Accordingly, we restore this disputed issue to the file of CIT (Appeals) to readjudicate afresh and call for a remand report from the Assessing Officer and further the assessee should be provided with adequate opportunity of hearing and shall co-operate in submitting the information called for

on this disputed issue, and the ground of appeal of the revenue is allowed for statistical purposes.

6. On the second disputed issue, the learned Departmental Representative argued that the CIT (Appeals) has erred in directing the Assessing Officer to restrict the addition to Rs.10 lakhs, whereas the Assessing Officer has made an addition of Rs.20 lakhs in the assessment proceedings. The learned Departmental Representative further submitted that the assessee has filed the information in the course of appellate proceedings referred at the paragraph 5.3.1 of the CIT (Appeals) order and whereas the CIT (Appeals) considered the ledger accounts and granted the relief. Contra the learned Authorised Representative submitted that the information was filed in the assessment proceedings and referred to finding of the Assessing Officer at page 3 of the order “where various details with reference to the financial statements and Books of Accounts were perused and issues were identified.” We find the ledger account, forms part of the Balance Sheet filed by the assessee. Hence no new information is filed before the CIT (Appeals). We find the learned CIT (Appeals) after considering the ledger account copies and findings of the Assessing Officer, granted relief and took a reasonable view of restricting the addition. Accordingly we are not inclined to interfere with the order of CIT (Appeals) on this disputed issue and uphold the same and dismiss this ground of appeal of the revenue.

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

Order pronounced in the open court on 9th July, 2019.

Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: .07.2019.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore