

IN THE INCOME TAX APPELLATE TRIBUNAL

“C” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 1645/Bang/2017
Assessment Year : 2010-11

The Deputy Commissioner of Income Tax, Circle – 2 (1), Davangere.	Vs.	Shri Thipperudrappa Ramesh, Holalkere Road, Chitradurga (D) <b>PAN: AEJPR4375N</b>
APPELLANT		RESPONDENT

Assessee by	:	None
Revenue by	:	Dr. P.V. Pradeep Kumar, Addl. CIT (DR)

Date of hearing	:	10.07.2019
Date of Pronouncement	:	25.07.2019

**ORDER**

*Per Shri A.K. Garodia, Accountant Member*

This appeal is filed by the revenue and the same is directed against the order of Id. CIT(A), Davangere dated 24.02.2017 for Assessment Year 2010-11.

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

*“1. The order of the Ld. Commissioner of Income Tax (Appeals), Davangere, is against the law and the facts and circumstances of the case.*

*2. On the facts and circumstances of the case, Ld. CIT(A) erred in accepting additional evidence without observing the procedure laid down in Rule 46A of the Income-tax Rules, 1962.*

*3. The Ld. CIT(A) erred in upholding the contention of the assessee that as none of the payments exceeded Rs. 20,000/- section 194C was not applicable. Ld. CIT(A) committed an error in ignoring the proviso to section 194C (5) while examining the issue which also required examination whether the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year exceeded fifty thousand rupees for holding the person responsible for paying such sums as liable to deduct income-tax under section*

194C.

4. *On the facts and circumstances of the case, Ld. CIT(A) erred in deleting the disallowance of Freight charges U/s 40(a)(ia) amounting to Rs.6,93,73,530/-.*

5. *On the facts and circumstances of the case, Ld. CIT(A) erred in accepting the additional evidence without examining whether the appellant was entitled to produce additional evidence in terms of Rule 46A (1) at the appellate stage.*

6. *On the facts and circumstances of the case, Ld. CIT(A) erred in accepting the additional evidence without recording the reasons for admission of the same as required under Rule 46A (2) of the I.T. Rules.*

7. *On the facts and circumstances of the case, Ld. CIT(A) erred in accepting assessee's submission that none of the payments attracted the provisions of Section 194C on the basis of ledger account of details of freight charges paid without considering the observations of assessing officer in remand report and thus effectively denying the opportunity to the assessing officer for examining the additional evidence as required under Rule 46A(3) .*

8. *The appellant craves leave to add, alter, amend or delete any other grounds on or before hearing of the appeal.”*

3. None appeared on behalf of the assessee on the appointed date of hearing and therefore, the appeal was heard ex-parte qua the assessee. The Id. DR of revenue submitted that as per ground nos. 2,5,6 and 7 of the revenue's appeal, this is the grievance of the revenue that there is violations of Rule 46A by Id. CIT(A). In this regard, he drawn our attention to para no. 5(a) of the order of Id. CIT(A) on page no. 4 of his order and it was pointed out that in support of this contention that payments made to parties did not exceed the threshold limit of Rs. 20,000/-, the assessee filed ledger account of details of freight charges paid. He submitted that this is the fresh evidence filed before Id. CIT(A) because the assessment order was passed by the AO u/s. 144 and no such detail was filed by assessee before the AO and Id. CIT(A) has not obtained remand report and therefore, there is violation of Rule 46A and hence, the matter may be restored back to the file of Id. CIT(A) for fresh decision after obtaining remand report from the AO.

4. We have considered the submissions of Id. DR of revenue. We find that although two additions were made by the AO of Rs. 6,93,73,530/- u/s. 40(a)(ia) of the IT Act and Rs. 30,11,800/- on account of bogus creditors but Id. CIT(A) has decided the second issue against the assessee and confirmed this addition of Rs. 30,11,800/- but he has deleted the first addition made by the AO of Rs. 6,93,73,530/- and decided this issue in favour of the assessee mainly on the basis of new evidence filed before him without obtaining remand report from the AO and hence, we feel it proper to restore this matter back to the file of Id. CIT(A) for fresh decision after obtaining remand report from the AO. We order accordingly.
5. In the result, the appeal filed by the revenue stands allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-  
(PAVAN KUMAR GADALE)  
Judicial Member

Sd/-  
(ARUN KUMAR GARODIA)  
Accountant Member

Bangalore,  
Dated, the 25<sup>th</sup> July, 2019.  
/MS/

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

By order

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Bangalore.