

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

**BEFORE SHRI B.R.BASKARAN, ACCOUNTANT MEMBER
AND**

SMT BEENA PILLAI, JUDICIAL MEMBER

**ITA Nos.867 to 870(Bang)/2019
(Assessment Years : 2009-10-2011-12 & 2014-15)**

M/ s Hindustan Marble and Granite,
No.5, Lalbagh Road, Wilson Gardens,
Bangalore 560 027
Pan No. AA AFH8437Q

Appellant

Vs

The Asst. Commissioner of Income tax,
Central Circle-2(1),
Bangalore

Respondent

**Appellant by : Shri. L.Bharath, CA
Revenue by : Miss. Neera Malhotra, CIT**

**Date of hearing : 11-07--2019
Date of pronouncement :**

ORDER

PER SMT BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order dated 21/02/19 passed by Ld. CIT (A)-11, Bangalore on following grounds of appeal:

ITA No.867(B)/2019 (Assessment year : 2009-10)

- 1. The order passed by the LAO and learned Appellate Authority (LAA) is bad in law.*

2. *The LAA erred in not considering the submissions of the Appellant against the addition undertaken by the LAO.*

3. *Under the facts and circumstances of the case, the assessment under section 153A is grossly arbitrary, perverse and not in accordance with the provisions of the Act. The LAA erred in affirming the said order of assessment*

4. *The LAA erred in confirming the additions made by the LAO of sum of Rs.1,16,499/- merely on the basis of entries in Form 26AS.*

3. *The LAA erred in not appreciating the fact that the Appellant has not claimed the credit of tax deducted at source in terms of the provisions of section 199 of the Income-tax Act, 1961 and Rule 37 of the Income-tax Rules, 1962.*

4. *The LAA erred in fact by not considering that the income corresponding to the TDS of Rs. 1,16,499/- is already offered to tax in the original return of income.*

The Appellant craves leave to add or alter, by deletion, substitution or otherwise, any or all the above.

ITA No.868(B)/2019 (Assessment year :2010-11)

1. *The order passed by the LAO and Learned Appellate Authority (TAX) is bad in law.*

2. *The LAA erred in not considering the submissions of the Appellant against the additions undertaken by the LAO.*

3. *Under the facts and circumstances of the case, the assessment under section 153A is grossly arbitrary, perverse and not in accordance with the provisions of the Act. The LAA erred in affirming the said order of assessment.*

4.The LAA erred in confirming the additions made by the LAO of a sum of Rs. 23,02,003/- under section 41(1) of the Act without establishing if the Appellant has in fact received any amount towards cessation or remission of trading liability with respect to purchases from M/s Nitco Tiles Ltd.

5.Without prejudice to the above ground, the LAA erred in not accepting the contention of the Appellant that the transactions during the year were confirmed by the creditor and the difference in the balances pertained to year earlier to FY 2008-09.

6. The LAA erred in directing the LAO to re-compute interest u/s 234B of the Act. The Appellant craves leave to add or alter, by deletion, substitution or otherwise, any or all the above.

ITA No.869(B)/2019 (Assessment year : 2011-12)

1. The order passed by the LAO and Learned Appellate Authority ('LAA') is bad in law.

2. The LAA erred in not considering the submissions of the Appellant against the additions undertaken by the LAO.

3.Under the facts and circumstances of the case, the assessment under section 153A is grossly arbitrary, perverse and not in accordance with the provisions of the Act. The LAA erred in affirming the said order of assessment.

4.The LAA erred in confirming the additions made by the LAO of a sum of Rs. 1,00,001/- under section 41(1) of the Act without establishing if the appellant has in fact received an amount towards cessation or remission of trading liability with respect to purchases from M/s Nitco Tiles Ltd.

5. Without prejudice to the above ground, the LAA erred in not accepting the contention of the appellant that the transactions during the year were confirmed by the creditor and the difference in the balances pertained to year earlier to FY 2008-09.

6. The LAA erred in directing the LAO to re-compute interest u/s 234B of the Act.

The Appellant craves leave to add or alter, by deletion, substitution or otherwise, any or all the above grounds of appeal, at any time before or during the hearing of the appeal.

ITA No.870(B)/2019 (Assessment year : 2011-12)

1. The order passed by the LAO and Learned Appellate Authority ('LAA') is bad in law.

2. The LAA erred in not considering the submissions of the Appellant against the additions undertaken by the LAO.

3. Under the facts and circumstances of the case, the assessment under section 153A is grossly arbitrary, perverse and not in accordance with the provisions of the Act. The LAA erred in affirming the said order of assessment.

4. The LAA erred in confirming the additions made by the LAO of a sum of Rs.2,65,600/- on the basis of entries appearing in Form 26AS of the appellant without appreciating the fact that the appellant has offered the same to tax.

5. Without prejudice to the above, the LAO and LAA erred in not appreciating the fact that the appellant has not claimed the credit of tax deducted at source in terms of the provisions of section 199 of The Income Tax Act, 1961 read with Rule 37 of the Income Tax Rules, 1962.

6.The LAA erred in directing the LAO to re-compute interest u/s 234B of the Act.

The Appellant craves leave to add or alter, by deletion, substitution or otherwise, any or all the above grounds of appeal, at any time before or during the hearing of the appeal.

2. It has been submitted by both sides that for assessment year 2009-10 and 2014-15, issues involved are identical, wherein addition was made on account of mismatching 26AS and alleged unclaimed tax credit.

2.1 For assessment year 2010-11 and 2011-12, issues involved are regarding addition made by Ld.AO due to difference in sundry creditor. In all the years under consideration, assessee raised ground regarding validity of assessment under section 153A of the Act. On perusal of grounds of appeal for all years under consideration, it is observed that validity of assessment under section 153A of the Act has been raised in Ground No.3. Assessee at this juncture instructed Ld.AR to withdraw the ground, for all years under consideration before us. Accordingly, Ld.AR has withdrawn the said ground.

Thus, Ground No.3 for all the years under consideration stands dismissed as not pressed.

3. We shall 1st take up appeals for assessment year 2009-10 and 2014-15 being ITA No. 867, 870/Bang/2019

For sake of convenience, we shall consider facts for assessment year 2009-10 and decide issues raised by assessee which shall be applied *mutatis mutandis* for assessment year 2014-15.

4. Brief facts of the case are as under:

Assessee is engaged in the business of manufacturing and trading of polished marble and granite slabs. Search action under section 132 of the Act, was carried out at business premises of firm and residential premises of Mr MG Anand Reddy, Managing Partner of the Firm. During the year 2009-10, assessee filed return of income on 29/09/09 declaring total income of Rs.1,14,20,180/-. Ld.AO observed that assessee claimed TDS credit of Rs.66,364/-which was deducted and remitted by the deducted at the time of filing the original return. Ld.AO accordingly adjusted the total income by adding TDS amount reflecting in 26 AS alleging that the same was not offered to tax.

Similarly for assessment year 2014-15 Ld. AO made an addition of Rs.2,65,600/- as income reflecting in 26AS alleging that the same has not been offered to tax.

5. Aggrieved by additions made by Ld.AO, assessee preferred appeal before Ld.CIT(A), who confirmed addition made by Ld.AO.

6. Aggrieved by order passed by Ld.CIT (A) assessee is in appeal before us now.

7. **Ground No. 4** of the appeal refers to issue wherein addition has been confirmed by Ld.CIT (A) amounting to Rs.1,16,499/- alleging that the same has not been offered to tax.

8. The Ld.AR submitted that Form 26AS has been placed at page 22-32 of paper book he submits that the sum of

Rs.1,16,499/- do not reflect anywhere in 26AS and that it is unclear how Ld.AO arrived at the same.

9. Ld.CIT DR though supported order passed by authorities below, however could not show how Ld.AO has computed a sum of Rs.1,16,499/-.

10. We have perused submissions advanced by both sides in the light of the records placed before us. On perusal of Form 26 AS placed in paper book, we are also not able to figure out sum of Rs.1,16,499/- either as single entry or cumulatively, considering entries mentioned therein. Ld.AO in his order has also not substantiated how said amount has been determined by him. We are therefore inclined to set aside this issue back to Ld.AO for due verification of the same. We direct that, in the event, said sum cannot be established by Ld.AO, the addition should be deleted. On the contrary in the event said sum is demonstrated by Ld.AO, assessee shall produce all requisite details in support of its claim, which shall be verified by Ld.AO and then decide the issue as per law.

Needless to say that proper opportunity shall be granted to assessee.

Accordingly ground No. 4-6 raised by assessee stands allowed for statistical purposes.

Ground No. 1, 2, 5 are general in nature and therefore do not require any adjudication.

In the result appeal filed by assessee for assessment year 2009-10 stands partly allowed for statistical purposes.

11. Assessment Year : 2014-15

For assessment year 2014-15 relevant issue has been raised in **Ground 4**, which is similar to the issue decided hereinabove.

The arguments advanced by both sides have been similar and identical to what has been recorded herein above. It is observed that Ld.AO made identical addition of Rs.2,65,600/- alleging that the same has not been offered to tax. Assessee filed form 26AS at page 28 of paper book. As facts and circumstances are similar to that of assessment year 2009-10, view taken hereinabove, are applied to facts herein on *mutatis mutandis* basis.

Accordingly we direct Ld.AO to carry out verification of details filed by assessee and to provide basis for addition. We direct that in the event said sum cannot be established by Ld.AO, the addition should be deleted. On the contrary in the event, said sum is demonstrated by Ld.AO, assessee shall produce all requisite details in support of its claim, which shall be verified by Ld.AO and then decide the issue as per law. Needless to say that proper opportunity shall be granted to assessee.

Accordingly ground No. 4 raised by assessee for stands allowed for statistical purposes.

12. **Ground No.6** is in respect of interest under section 234B of the Act which is consequential in nature and therefore do not require any adjudication.

13. **Ground No. 1, 2, 5** are general in nature and therefore do not require any adjudication.

14. In the result appeal filed by assessee for assessment year 2014-15 stands partly allowed for statistical purposes.

15. Assessment year 10-11

As submitted by Ld.AR **Ground No. 2** raised in the appeal stands not pressed and accordingly dismissed.

16. Ground No.4-5

The only issue that remains for consideration is in respect of addition of sum of Rs.23,02,003/-under section 41 (1) of the Act. Ld.AO at the time of assessment proceedings observed that excess sundry creditor has been shown by assessee in the books of account and therefore added back to total income of assessee to that extent. It has been submitted by Ld.AR that difference in closing balance of creditors 1st arose in financial year 2006-07 amounting to Rs.11,31,086/- and in subsequent financial year it was Rs.9,92,198/-. Year wise details have been placed at page 1 of synopsis filed by assessee before us. He submitted that difference is in closing balance of creditor being Nitco Tiles Ltd., which is carried forwarded from year to year basis, and is not arising due to transaction entered into in current year. As assessee maintains running account with Nitco Tiles, payments are squared up on year to year basis. Ld.AR submitted that assessee has obtained reconciliation statement which clarifies the position.

17. On the contrary Ld.CIT DR submitted that addition has been made merely because assessee did not file reconciliation statement before Ld.AO. However she did not object for issue to be set-aside for due verification by Ld.AO.

18. We have perused submissions advanced by both sides in the light of records placed before us. It is observed that issue needs verification by Ld.AO in the light of the reconciliation statement and other evidences like bills raised by the creditor to assessee. We accordingly set aside this issue to Ld.AO to carry out proper verification of details and to allow claim of assessee as per law.

Accordingly, ground 4-5 raised by assessee stands allowed for statistical purposes.

Is observed that Ground No.1 and 2 are general in nature and therefore do not require any adjudication.

19. **Ground No. 6** is in respect of interest under section 234B of the Act, which is consequential in nature and therefore do not require adjudication.

In the result appeal filed by assessee stands allowed partly for statistical purposes.

20. **Assessment year 2011-12**

As submitted by Ld.AR **Ground No. 2** raised in the appeal stands not pressed and accordingly dismissed.

21. **Ground No.4-5**

The only issue that remains for consideration is in respect of addition of a sum of Rs.1,00,001/- under section 41 (1) of the Act. Ld.AO at the time of assessment proceedings observed that excess sundry creditor has been shown by assessee in the books of account and therefore added back to the total income of assessee to that extent. As facts and circumstances are similar to that of assessment year 2009-10, view taken

hereinabove, are applied to facts herein on *mutatis mutandis* basis. Accordingly we direct Ld.AO to carry out verification of the details filed by assessee and to provide basis for the addition.

Needless to say that proper opportunity shall be granted to assessee.

Accordingly ground No.4-5 raised by assessee for stands allowed for statistical purposes.

22. **Ground No.6** is in respect of interest under section 234B of the act which is consequential in nature and therefore do not require any adjudication.

23. **Ground No. 1 and 2** are general in nature and therefore do not require any adjudication.

In the result appeal filed by assessee for assessment year 2011-12 stands partly allowed for statistical purposes.

Order pronounced in the open court on

(B.R.BASKARAN)
ACCOUNTANT MEMBER

(BEENA PILLAI)
JUDICIAL MEMBER

Dated:

***am**

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