

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. 2131/Bang/2017
Assessment Year : 2013-14

Shri Sarfraz Ahmed S Umachagi, Coen Road, Hubli. <b>PAN: AAFPU3970N</b>	Vs.	The Assistant Commissioner of Income Tax, Circle 3 (1), Hubli.
APPELLANT		RESPONDENT
Assessee by	:	Smt. Pratibha .R, Advocate
Revenue by	:	Dr. S. Palani Kumar, Addl. CIT (DR)
Date of hearing	:	23.07.2019
Date of Pronouncement	:	28.08.2019

**ORDER**

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

This appeal is filed by the assessee which is directed against the order of Id.  
CIT(A), Hubli dated 03.07.2017 for Assessment Year 2013-14.

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

*“1. The learned CIT (A) erred in passing the order in the manner he did.*

*2. The learned CIT(A) ought to given a finding on the submission made with regard to the expenditure incurred towards materials suppliers.*

*3. The learned CIT (A) ought to have appreciated fact that the payments were made by cheques to material suppliers aggregating to Rs. 40,82,982/- towards construction works etc. and debited the expenditure in the books of accounts in the subsequent years on receipt of bills from those parties. Thus, the addition made in the hands of the appellant is liable to be deleted.*

*4. The learned CIT(A) failed to accept the facts which were provided by the appellant in respect of cash payments made to petrol bunks for purchase of diesel as the payments were made by the drivers in exceptional circumstances and should have refrained from making the impugned additions of Rs. 2,16,445/- which is unwarranted since section 40A (3) has no application*

*5. The learned CIT (A) erred in upholding the charging of interest u/ s. 234B of the Act.*

*6. Without prejudice, the additions made are excessive, arbitrary and unreasonable.*

*7. For these and other grounds that may be urged at the time of hearing of the appeal, the appellant prays that the appeal may be allowed.”*

3. In course of hearing, it was submitted by Id. AR of assessee that ground nos. 1 and 2 are general. In course of hearing, various arguments were made by Id. AR of assessee. At this juncture, it was pointed out by the bench that it is noted by Id. CIT(A) in para no. 14 of his order that similar issue was there in Assessment Years 2010-11 and 2011-12 and Id. CIT(A) has disposed of the appeals on this basis that 10% of the cost of property should be allowed and directed the AO to re-compute the income for both the Assessment Years i.e. 2010-11 and 2011-12. It is also noted by Id. CIT(A) in para 15 of his order that Id. CIT(A) in earlier years has followed the Tribunal order in case of Neelkamal Talkies Vs. ITO in ITA No. 574/Bang/1992 and of Hon'ble Karnataka High Court rendered in the case of ITO Vs. Pushpa M. Hegde in ITA No. 37 of 1997 dated 22.03.2000 (Kar). In the present year, Id. CIT(A) has followed the earlier order of Id. CIT(A) only. The bench directed the Id. AR of assessee to furnish the Tribunal order for earlier years if any further relief is allowed by Tribunal in those years. But copy of earlier years' Tribunal order has not been submitted by Id. AR of assessee and since in the earlier years i.e. Assessment Years 2010-11 and 2011-12, Id. CIT(A) has decided the issue by following several judicial pronouncements, we hold that no interference is called for in this issue. Accordingly, ground no. 3 is rejected.
4. Regarding ground no. 4, it was submitted by Id. AR of assessee that this issue was raised by assessee before Id. CIT(A) as per ground no. 5 raised before Id. CIT(A). She submitted that this ground was not decided by Id. CIT(A) and hence, it may be restored back to the file of Id. CIT(A) for decision. No other argument was advanced. The Id. DR of revenue supported the order of Id. CIT(A) on this issue.
5. We have considered the rival submissions. We find that in para no. 6 of his order, it is noted by Id. CIT(A) that this argument was made before him that the payment in question were made by the drivers directly to petrol pumps in

connection with purchase of diesel. It is also noted by Id. CIT(A) that it was also submitted before him that the assessee has no control over the drivers and it was also submitted that the payments were covered under Rule 6DD. This issue was decided by Id. CIT(A) as per para nos. 9 to 11 of his order which are reproduced hereinbelow for ready reference.

*“9. I have carefully gone through the arguments placed before the AO and also before me. The explanation is totally unacceptable for the reason that, all the cash payments were made by the assessee to one M/s. Mahaveer Oil agencies Hubli, only and not to a person who is doing business in a far off place or in any remote locality. Since the payments are made only in Hubli and nowhere else, the assessee’s explanation as stated above is far from reality and not only that it is very much contradictory to what has been stated by him earlier that the drivers/agents of the Trucks who were given freight amounts by the consignees were in a position to purchase diesel at odd times and the appellant is not supposed to go wherever his trucks go plying.*

*10. Thus, it is very much clear that cash payments exceeding Rs.20,000/- have been made in contravention of the provisions of section 40A(3) of the IT Act and as such the Assessing Officer has rightly disallowed the said sum of Rs.2,16,445/- or rather disallowed this sum as not allowable expenditure and brought the same to tax.*

*11. Therefore, I find that, no interference is warranted against the action of the Assessing Officer. in the result, this ground fails and the addition of Rs. 2,16,445/- is confirmed, and the decision on this ground of appeal is decided against the assessee.”*

6. As per these paras reproduced from the order of Id. CIT(A), it is seen that this issue was raised by assessee before us as per ground no. 4 regarding disallowance of Rs. 2,16,445/- was very much decided by Id. CIT(A) as per para nos. 9 to 11 reproduced above and no argument was made by Id. AR of assessee pointing out any mistake in this decision of Id. CIT(A) on this issue and hence, on this issue, we find no reason to interfere in the order of Id. CIT(A). This ground is also rejected.
7. In the result, the appeal filed by the assessee is dismissed.

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 28<sup>th</sup> August, 2019.  
/MS/

Copy to:

1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Bangalore.