

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH : BANGALORE

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

ITA No. 1774/Bang/2018
Assessment Year : 2013-14

M/s. Karle Properties, No. 151, Industrial Suburb, Yeshwanthpur, Bangalore – 560 022. <b>PAN: AABFK1537B</b>	Vs.	The Assistant Commissioner of Income Tax, Circle – 6 (2) (1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Suman Lunkar, CA
Revenue by	:	Shri Ujjwal Kumar, JCIT (DR)

Date of hearing	:	13.08.2019
Date of Pronouncement	:	28.08.2019

**ORDER**

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

This appeal is filed by the assessee and the same is directed against the order of Id. CIT(A)-6, Bangalore dated 13.03.2018 for Assessment Year 2013-14.

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

*“1. The learned Assessing Officer had erred in passing the order in the manner passed by him and the learned CIT(A) has erred in confirming the same. The orders passed are bad in law and is liable to be quashed.*

*2. The learned CIT(A) has erred in dismissing the appeal filed by the appellant against the order passed u/s 143(3) of the Act holding that:*

*i) The disallowance made in the Order appealed against is only Rs. 3,357/- which was not challenged by the appellant.*

*ii) the disputed disallowance of Rs.1,69,29,875/- was not made in the assessment order while computing the assessed income.*

*iii) Such disallowance is made in the order passed u/s 154 of the Act*

*iv) The order passed U/s. 154 of the I.T. Act, is a separate order by itself and separate appeal would lie against such order.*

*The findings/conclusions drawn by the learned CIT(A) being erroneous both on facts and law are to be disregarded.*

3. *The learned CIT(A) ought to have appreciated the fact that there is a clear finding in the assessment order regarding the disallowance of Rs. 1,69,29,875/- u/s 36(1)(iii) of the Act (though omitted to be added while computing the assessed income) and the appellant had rightly challenged such finding of disallowance in the appeal filed by him.*

4. *In any case, the assessing officer had erred in making various observations/finding in the course of passing the assessment order. The observations/findings made are totally erroneous both on facts and law are to be disregarded.*

5. *The learned assessing officer had erred in holding that interest of Rs. 1,69,29,875/-debited to Profit and loss account is not allowable u/s 36(1)(iii) of the Act on the ground that the appellant has given interest free advances to sister concerns and others. On the facts and circumstances of the case and the law applicable the conclusions drawn being totally erroneous are to be disregarded.*

6. *The appellant had rightly claimed the interest as business expenditure as all the borrowed funds were utilized for the purpose of business only. The finding of disallowance as made being erroneous is to be deleted and interest as claimed is to be allowed as deduction.*

7. *In any case, the advances given to sister concerns and other are out of business expediency and further there are sufficient free funds to support such advance and therefore also the finding as given by the Assessing Officer in Assessment order was erroneous.*

8. *The learned Assessing Officer had also erred in holding that alternatively as per the recast profit and loss account, the interest needs to be capitalized. The Assessing Officer has & not made out of any recasted profit and loss account at all. The observation/findings of Assessing Officer being without basis, totally erroneous on facts are to be rejected.*

7. *The appellant denies liability to pay Interest U/s. 234A, 234B and 234C of the I.T. Act, 1961. The interest having been levied erroneously is to be deleted.*

8. *In view of the above and on other grounds to be adduced at the time of hearing, it is requested that impugned order passed be quashed or at least the finding of disallowance u/s 36(1)(iii) of the Act be deleted and interest levied under various sections be also deleted.”*

3. It was submitted by Id. AR of assessee before us that it is stated by Id. CIT(A) in para 8 of his order that the order passed by the AO u/s. 154 is separate order and hence, if the addition made in this order is to be challenged, separate appeal has to be filed by the assessee and for the addition made in

the order u/s. 154 by the AO, ground cannot be raised in the appeal filed by the assessee against the order passed by the AO u/s. 143(3) of the IT Act. He submitted that the appeal of the assessee against the order passed by the AO u/s. 154 is pending before Id. CIT(A) and hence, the issue involved in this appeal may also be restored back to the file of Id. CIT(A) for simultaneous decision. The Id. DR of revenue supported the order of Id. CIT(A).

4. We have considered the rival submissions. First of all, we reproduce para no. 8 from the order of Id. CIT(A). This reads as under.

*“8. It is seen that AO in the assessment order u/s 143(3), dated 09/03/2016, made an addition of Rs.3,357/-.The appellant has not challenged the addition of Rs.3357/-. The appellant has stated that the AO has passed an order u/s 154, suo motto, rectifying the impugned order u/s 143(3) where he has made an addition of Rs.1,69,29,875/- and challenged the same in this appeal. This order u/s 154 is not brought on record. The order u/s 154 is a separate order by itself and additions therein, if challenged, has to be done so by a separate appeal. The appellant has not done this. The order u/s 143(3) stands confirmed.”*

5. We have also gone through the assessment order passed by the AO u/s. 143(3) on 09.03.2016 and we find that in this order, the AO has made addition of only Rs. 3,357/- and no ground is raised by the assessee against this addition of Rs. 3,357/- before Id. CIT(A) or before us. The issue in dispute before us in this appeal is regarding addition of Rs. 1,69,29,875/- and we find that on page no. 2 of the assessment order, the AO has discussed about this claim of the assessee for deduction of Rs. 1,69,29,875/- as interest expenditure and the AO has observed on this page of the assessment order that even if the entire debit were to be considered under the above recast profit and loss account for business conducted, the entire interest will have to be capitalized along with the closing work in progress shown. Even after making such observations, no addition has been actually made by the AO in the computation of the income on this page of the assessment order. It has been stated by assessee before Id. CIT(A) and before us that subsequently, the AO passed the order u/s. 154 suo moto and in that order, this addition was actually made by the AO and the assessee has also filed an appeal against the order passed by the AO u/s. 154 and this appeal is pending before the Id. CIT(A). Considering all the facts as discussed above and particularly

in view of this fact that the AO has discussed in the assessment order passed by him u/s 143 (3) against which the present appeal is filed, there is discussion about this issue in respect of disallowance of Rs. 1,69,29,875/- although actual addition was not made in this order but made in the order passed by the AO u/s 154, we feel it proper to restore this matter back to the file of Id. CIT(A) for a simultaneous decision along with the appeal filed by the assessee against the order passed by the AO u/s. 154 of the IT Act. We order accordingly and we do not make any comment about the merit of the case.

6. In the result, the appeal filed by the assessee is 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 28<sup>th</sup> August, 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.