

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. 2540/Bang/2018
Assessment Year : 2014-15

The Assistant Commissioner of Income- tax, Circle – 2 (1), Davangere.	Vs.	M/s. Sri Ganesh Exime, C/o Sri Lakshmi Industry, Lakshmipura, Bangalore Road, Challakere Taluk Chitradurga District. PAN: ABKFS2964G
APPELLANT		RESPONDENT

Assessee by	:	Shri S. Ramasubramaniam, CA
Revenue by	:	Shri C.H. Sundar Rao, CIT (DR)

Date of hearing	:	30.07.2019
Date of Pronouncement	:	28.08.2019

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 01.06.2018 for Assessment Year 2014-15.

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

“1. The order of the Commissioner of Income Tax (Appeals), Davangere, is opposed to the law and not on 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 allowing the claim of the assessee that Ocean Freight and Terminal Handling charges were paid to non resident shipping companies without appreciating the fact that the assessee did not bring this fact to the notice of the Assessing Officer during the course of assessment.

4. The Ld. CIT(A) erred in allowing the expenditure incurred in respect of Ocean Freight and Terminal Handling charges without deducting TDS, without appreciating the fact that the non resident status of the shipping company was never examined by the Assessing Officer.

5. The Ld. CIT(A) has erred in allowing the claims of the assessee in respect of C & F charges, Container Transport expenses, Fumigation charges and other Misc. expenses on the basis of Form No.26A submitted by the assessee during the appellate state without appreciating the fact that these forms were never submitted before the Assessing Officer during the assessment proceedings.

6. For these and other grounds that may be urged upon at the time of hearing

7. The appellant craves leave to add, alter, amend any of grounds.”

3. It was submitted by Id. DR of revenue that before the AO, this was the claim of the assessee that the amount in dispute is regarding reimbursement of expenses and hence, the same does not partake the nature of income in the hands of the payee and therefore, TDS is not deductible. He further submitted that before Id. CIT(A), the stand of the assessee was changed and before Id. CIT(A), the assessee has filed Form No. 26A in respect of four parties to whom total payment made was of Rs. 46,42,852/- and the relief was allowed by Id. CIT(A) to this extent. Regarding the disallowance out of Ocean Freight and Terminal Handling Charges (THC) of Rs. 8,16,18,270/- made by the AO and deleted by Id. CIT(A), it was submitted by Id. DR of the revenue that Id. CIT(A) has simply reproduced the submissions of the assessee in this regard and held on page no. 13 of his order that both these additions are deleted without any valid reasoning and hence, his order should be reversed and that of AO should be restored. He also submitted that Id. CIT(A) has not obtained any remand report from the AO.
4. As against this, the Id. AR of assessee supported the order of Id. CIT(A). At this juncture, the bench wanted to see the copy of written submissions filed by the assessee before the AO if any and copy of written submissions filed before Id. CIT(A). The Id. AR of assessee was directed to file the same before 07.08.2019. But till date, the Id. AR of assessee has not filed the same.

Hence, we feel it proper to restore the entire matter back to the file of AO for fresh decision and we make no comment on the merit of the case.

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 28th 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.