

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC – C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT

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| ITA No.930/Bang/2019 |
| Assessment year : 2014-15 |

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| Gurudev Constructions, C/o. Mr. Manoj Bafna, Mahaveer Colony, Gadag – 582 101. PAN: AAMFG 0612Q | Vs. | The Assistant Commissioner of Income Tax, Circle 2(1), Hubli. |
| APPELLANT | | RESPONDENT |

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|---------------|---|------------------------------------|
| Appellant by | : | Shri R. Chandrasekhar, Advocate |
| Respondent by | : | Shri Ganesh R.G., Standing Counsel |

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| Date of hearing | : | 04.09.2019 |
| Date of Pronouncement | : | 06.09.2019 |

ORDER

This appeal by the assessee is against the order dated 26.03.2019 of the CIT(Appeals), Hubballi relating to assessment year 2014-15.

2. The assessee is a partnership firm engaged in the business of builders and developers. There was a survey u/s. 133A of the Income-Tax Act, 1961 [“the Act”] conducted in the business premises of the assessee on 5.8.2013. In the course of survey, the assessee declared a sum of Rs.32,09,942 as expenditure incurred over and above the work-in-progress recorded in the books of account for the AY 2014-15. In the return of income filed for AY 2014-15, the assessee declared in the return of income the sum that he offered to tax in the course of survey. The assessee, however, sought to reduce indirect expenditure of Rs.3,74,871.05 towards

the bank charges, insurance, interest on loans and salary to partners. The assessee, thus, offered the net income of Rs.28,35,070.95 [32,09,942 (-) 3,74,871.05] to tax. The AO did not accept the claim of assessee for reducing the sum of Rs.3,74,871.05 for the reason that the amount declared at the time of survey of Rs.32,09,942 was an unexplained income against which no expenses can be allowed. He also observed that the assessee has not sold any flats during the previous year nor had the assessee earned income from other sources. Accordingly, the AO made an addition of Rs.3,74,871 to the total income declared by the assessee.

3. On appeal by the assessee, the CIT(Appeals) confirmed the order of AO.

4. The Id. counsel for the assessee submitted before us that the opening work-in-progress as on 1.4.2013 was Rs.49,01,071 and the expenses incurred during the previous year was Rs.82,05,899. Since there was no sale of flats, no income was offered to tax and the closing work-in-progress was shown at Rs.1,31,06,970. The indirect expenses which were claimed as deduction against the income surrendered at the time of survey, had nothing to do with work-in-progress and had to be allowed as a deduction. Our attention was drawn to the P&L account of the assessee at page 8 of the PB.

5. The Id. counsel for the assessee also placed reliance on the decision of the ITAT Jaipur Bench in the case of *Bajargan Traders v. ACIT in ITA No.137/Jp/17, order dated 17.03.2017*. In the aforesaid case, the value of investment in stock of rice in the case of assessee, who was a dealer in rice was recorded in the books of account after a survey. The amount offered at the time of survey as unexplained investment in stock of rice was recorded in the books of accounts as business income and declared accordingly. The AO taxed the amount surrendered at the time of

survey under the head income from other sources. The Jaipur Bench of the Tribunal held that the amount offered at the time of survey should be taxed as business income.

6. The Id. DR relied on the order of CIT(Appeals).

7. After considering the rival submissions, I find that even in the Profit & Loss account the amount surrendered has been shown as investments in construction (work-in-progress) of Rs.32,09,942. This sum has not been added to the closing work-in-progress and has been offered to tax by the assessee. The expenses claimed as deduction by the assessee against the aforesaid income were bank charges, insurance, interest of Rs.2,06,000 and salary to partners of Rs.1,50,000. These expenses do not go to increase the work-in-progress shown by the assessee in the books of account. Nevertheless, these expenses relate to the business of assessee and have to be allowed as deduction. The amount offered by the assessee to tax as income is also in the nature of income from business and therefore the assessee is entitled to seek deduction of aforesaid amounts. I am, therefore, of the view that the claim made by the assessee should be accepted. Accordingly, I direct the AO to allow deduction claimed by the assessee.

8. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 6th day of September, 2019.

Sd/-
(N.V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 6th September, 2019.

/ Desai Smurthy /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.