

IN THE INCOME TAX APPELLATE TRIBUNAL

“C” BENCH : BANGALORE

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

ITA Nos. 605 to 610/Bang/2012
Assessment Years : 2001 – 02 to 2006 – 07

DCIT, Central Circle – 2 (3), Bangalore.	vs.	M/s Shyamaraju & Co. (India) Pvt. Ltd., Divyashree Chambers, No. 11, 'O'Shaugnessy Road, Bangalore – 560025. PAN: AACCS6562L
APPELLANT		RESPONDENT
Assessee by	:	Shri Narendra Sharma, Advocate
Revenue by	:	Shri K. V. Aravind, Standing Counsel
Date of Hearing	:	12.09.2019
Date of Pronouncement	:	11.10.2019

ORDER

Per Bench:

These six appeals are filed by the revenue and these are directed against a combined order of learned CIT (A) VI, Bangalore dated 23.02.2012. All these appeals were heard together and are being disposed of by this common order for the sake of convenience.

2. At the very outset, it was submitted by the learned AR of the assessee that as per the impugned order, learned CIT (A) has annulled the assessment by following some tribunal orders and a judgment of Hon'ble Karnataka High court because the search was conducted on the basis of warrant in joint names but subsequently, there was retrospective amendment in the Act and thereafter, the AO moved an application before learned CIT (A) for rectification u/s 154 and the rectification order was passed by CIT (A) in which, he followed a judgment of Hon'ble Karnataka High Court rendered in the case of M. Srinivasulu vs. U. O. I., 239 ITR 282 and he rectified the impugned order of CIT (A) dated 23.02.2012. He further submitted that aggrieved by that order passed by CIT (A) u/s 154, the assessee filed appeal before the tribunal and in ITA Nos. 86 to 91/Bang/2013

dated 16.11.2018, the tribunal dismissed these six appeals of the assessee. He submitted a copy of this tribunal order. He submitted that in view of these facts, these appeals of the revenue do not survive because the impugned order of CIT (A) is already rectified by CIT (A) u/s 154 and that order u/s 154 is already confirmed by the tribunal. At this juncture, it was submitted by the learned DR of the revenue that these appeals may be dismissed but liberty should be granted to the revenue to approach the tribunal for revival of these appeals if any appeal is filed by the assessee against the tribunal order in proceedings u/s 154 and if the assessee succeeds in these appeals. In reply, learned AR of the assessee submitted that the revenue can file appeal before Hon'ble High Court against the tribunal order to be passed for dismissing the appeals of the revenue. Learned DR of the revenue submitted that liberty should be granted because no appeal can be filed before Hon'ble High Court against the tribunal order dismissing the appeals of the revenue because of rectification order passed by CIT (A) u/s 154 because there cannot be a substantial question of law.

3. We have considered the rival submissions and in view of this fact that the impugned order of CIT (A) is already rectified by CIT (A) and the relief allowed by him as per the impugned order stands withdrawn as per that rectification order already approved by the tribunal, the present appeals of the revenue have to be dismissed because there remains no grievance of the revenue. We order accordingly.

4. Now we deal with this contention of learned DR of the revenue that liberty should be granted to the revenue to approach the tribunal for revival of these appeals if any appeal is filed by the assessee against the tribunal order in proceedings u/s 154 and if the assessee succeeds in these appeals. Appeals are in fact filed by the assessee and copy is submitted before us. In this regard, we would like to observe that as per the grounds raised by the revenue in the present appeals, this is the only grievance of the revenue that learned CIT (A) has erred in law in annulling the assessment because of search on the basis of joint warrant. There is no decision in the order of CIT (A) on merit and there is no ground on merit in these appeals of the revenue. Only issue in these appeals is about the validity of the assessment u/s 153A in consequence to search on the basis of joint warrant. In the appeals filed by the assessee before Hon'ble

Karnataka High Court in proceedings u/s 154 also, the request is only about this that whether the assessment order passed by the AO u/s 153A in these six years is valid even after insertion of section 292CC in the Act with retrospective effect as per copy filed before us and if the assessee succeeds on this issue before Hon'ble Karnataka High Court or Hon'ble Apex court, there will be no issue left which may be required to be decided by the tribunal and in case, any such issue remains, request can be made before Hon'ble High Court or Hon'ble apex court for suitable direction but at the present stage, no such liberty is required to be granted from our side on hypothetical basis.

5. In the result, all these six appeals of the revenue are 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 11th October, 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.