

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC-A” BENCH : BANGALORE**

BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT

ITA Nos.186 to 188/Bang/2019
Assessment years : 2013-14, 2014-15 and 2015-16

M/s. Sparsh Dimensions, No.17, Janani, Kalyannagar, Vidyanagar, Hubballi-580 031. PAN : ACAFS 5226 J	Vs.	Income Tax Officer, Ward 1(4), Hubballi.
APPELLANT		RESPONDENT

Assessee by	:	Shri. K. Y. Ningoji Rao, CA
Revenue by	:	Shri. Ganesh R. Ghali, Advocate Standing Counsel to Department

Date of hearing	:	13.11.2019
Date of Pronouncement	:	20.11.2019

ORDER

Per N. V. Vasudevan, Vice President:

These are appeals by Assessee against 3 orders all dated 03.12.2018 of CIT(A), Hubballi, relating to Assessment Years 2013-14, 2014-15 and 2015-16.

2. In all these appeals, the Assessee has challenged the validity of initiation of proceedings under section 147 of the Income Tax Act, 1961 (Act). These grounds were however not pressed for adjudication at the time of hearing.

3. The next issue that arise for consideration in these 3 appeals is addition of Rs.5 lakhs, Rs.12 lakhs and Rs. 1 lakh for Assessment Years 2013-14, 2014-15 and 2015-16 respectively made by the AO under section 68 of the Act. The assessee is a partnership firm and is engaged in real estate business as builders and developers. As far as Assessment Year 2013-14 is concerned,

the assessee had shown unsecured loans in the Balance Sheet of the sum of Rs.5 lakhs in the name of the following persons:

SI No	AY	2013-14
1	G C Hiremath	1,00,000
2	Kavita Kotresh	1,00,000
3	Kotresh	1,00,000
4	R N Chandanvar	1,00,000
5	Savitri G Kolli	1,00,000
	Total	5,00,000

4. The assessee had filed confirmation letters from the creditors. The AO noticed that the address and PAN number of the creditors were not available in the confirmation so filed. The AO, in the absence of the aforesaid details, treated the credits as unexplained under section 68 of the Act and added a sum of Rs.5 lakhs to the total income of the assessee. Even during the appellate proceedings, the assessee did not file the PAN number and correct address of the creditors. In the circumstances, the CIT(A) confirmed the action of the AO.

5. Before the Tribunal, the assessee has filed an application seeking to file certain loan confirmations as additional evidence. As far as Assessment Year 2013-14 is concerned, the confirmation of 4 out of 5 creditors in respect of which addition has been made by the AO have been filed in all the 4 confirmations so filed, the PAN numbers are available. The learned DR has filed a report from the AO on the additional evidence filed before the Tribunal in which it has been pointed out that the notice sent to the 4 creditors at the address given in the fresh confirmation has also been returned unserved.

6. Having considered the rival contentions, I am of the view that there is no plausible explanation by the assessee as to why the loan confirmation with correct address and PAN numbers were not filed before the AO. I am of the view that the no case has been made out for admitting the confirmations sought to be filed before the Tribunal as additional evidence under Rule 29 of the ITAT Rules, 1963. Accordingly, the action of the AO in making an addition of Rs.5 lakhs in Assessment Year 2013-14 is upheld.

7. As far as Assessment Year 2014-15 is concerned, the addition made under section 68 of the Act was a sum of Rs.12 lakhs and the creditors in respect of which the addition has been made are as follows:

1	A H Desai	Rs.	1,00,000
2	Dr. Shrinivashullu	Rs.	1,00,000
3	Kavita Kotresh	Rs.	1,00,000
4	Kotresh	Rs.	1,00,000
5	Madan Baradwad	Rs.	1,00,000
6	R N chandanvar	Rs.	1,00,000
7	Savitri G Kolli	Rs.	1,00,000
8	S S Joshi	Rs.	1,00,000
9	R G Salimath	Rs.	1,00,000
10	V V Joshi	Rs.	2,00,000
11	Yuvraj Kanavi	Rs.	1,00,000
Total		Rs.	12,00,000

8. The assessee did not file confirmation with proper address and PAN before the AO and therefore, the AO made addition of Rs.12 lakhs under section 68 of the Act as unexplained cash credit. The CIT(A) confirmed the order of the AO.

9. Before the Tribunal, the assessee sought to file confirmation of the creditors with details of PAN number and address as additional evidence with a request for admission for additional evidence. The same is not accepted for the reasons given while rejecting a similar request in Assessment Year 2013-14. The learned Counsel however pointed out that out of the addition of Rs.12 lakhs, the addition

of Rs.4 lakhs should be deleted i.e., cash credit in the name of Ms.Kavita Kotresh (Rs.1 lakh), Mr. Kotresh (Rs.1 lakh), Mr. R. N. Savitri G Kolli (Rs.1 lakh). In this regard, the learned Counsel for the assessee pointed out that the unsecured loans ledger account, a copy of which is at page 70 of the assessee's paper book, filed in support of admission of additional evidence under Rule 29 of the ITAT Rules. The learned Counsel pointed out that a sum of Rs.4 lakh was not a credit that was availed from the aforesaid 4 parties during the previous year relevant to Assessment Year 2014-15 and are opening balances of the previous year relevant to AY 2013-14 and therefore, the credits in the name of aforesaid 4 parties cannot be added under section 68 of the Act in Assessment Year 2014-15.

10. We have perused page No. 70 of the Paper Book and find the contention of the assessee to be prima facie correct but since this evidence was not filed before the lower authorities and since this requires fresh consideration by the AO, we deem it fit and proper to set aside the order of the CIT(A) in so far as cash credit in respect of the aforesaid 4 persons are concerned. The AO is directed to verify the claim of the assessee in this regard and if found true, the addition to the extent of Rs.4 lakhs cannot be sustained. We, however, make it clear that addition in respect of the remaining sum of Rs.8 lakhs should be confirmed for the reason that the assessee has failed to satisfactorily explain the credits to the extent of Rs.8 lakhs as contemplated under section 68 of the Act.

11. As far as Assessment Year 2015-16 is concerned, a sum of Rs.1 lakh was added as unexplained cash credit and this sum was a credit which stood in the name of Dr. Srinivasulu. The learned Counsel for the assessee brought to our notice page 71 of the assessee's Paper Book filed along with application for admission of additional evidence under Rule 29 of the ITAT Rules. The aforesaid document is ledger account of unsecured loans for the period 01.04.2014 to 31.03.2015. Perusal of the same shows that as on 01.04.2015, the

credit in the name of Dr. Srinivasulu of Rs.1 lakh is an opening balance. This shows that the cash credit of Rs.1 lakh is not cash credit pertaining to Assessment Year 2015-16 and therefore addition could not have been made in Assessment Year 2015-16. This aspect however requires verification as the assessee did not take up such a plea in the proceedings before the Revenue authorities. We therefore set aside the order of the CIT(A) on this issue and remand the issue to the AO for fresh consideration in the light of the observations made above after affording assessee opportunity of being heard.

12. Thus, the relevant grounds of appeal in all the 3 Assessment Years challenging additions under section 68 of the Act are partly allowed in Assessment Year 2014-15 and 2015-16 and dismissed in Assessment Year 2013-14.

13. The next issue raised in Assessment Year 2013-14 in ground No. 4 challenging an addition of Rs.1,03,000/- as unproved liability was not pressed for adjudication and hence dismissed as not pressed.

14. The next addition that is challenged by the assessee in all these appeals is addition of Rs.28,15,352/- and Rs.24,43,444/- made in Assessment Year 2014-15 and 2015-16 respectively made by the AO on account of unexplained investments in construction under section 69 of the Act. As far as the aforesaid issue is concerned, the issue can be appreciated by looking at the following chart. The chart is at page No.5 of the Paper Book filed by the assessee seeking to file certain additional evidence under Rule 29 of the ITAT Rules. The said chart is given as 'Annexure A' to the order.

15. As we have already seen the assessee is in the business of real estate including construction. In the course of assessment proceedings, the AO referred the question of cost of construction of property by the assessee to the departmental valuation cell under section 142A of the Act. It is not in dispute that the assessee carried out a single project and thus the investment in construction in the said project was a subject matter of reference to the DVO by the AO. The DVO considered direct expenses, construction expenses and arrived at the amount recorded in the books of accounts by the assessee. The DVO also estimated the cost of construction that would have been actually incurred in Assessment Years 2013-14 to 2015-16 which can be seen from Annexure A to this order. The AO considered expenses recorded in the books of account by the assessee towards cost of construction by considering only direct expenses of Rs.52,65,758/-, Rs.1,76,80,200/- and Rs.81,01,859/- for the Assessment Year 2013-14 to 2015-16 respectively. The AO compared the estimated cost of construction from the DVO's report which was a sum of Rs.34,34,728/-, Rs.2,04,95,552/- and 1,05,44,304/- and for Assessment Years 2013-14 to 2015-16 respectively. It can be seen from Annexure A that the expenditure as recorded in the books of accounts of the assessee for Assessment Year 2013-14 is much more than the cost as estimated by the DVO by Rs.98,559/-. In Assessment Year 2014-15 and 2015-16, the cost of construction as estimated by the DVO was much more than what was recorded in the books of accounts by the assessee by a sum of Rs.28,15,351/-, Rs.24,44,444/- in Assessment Year 2014-15 and 2015-16 respectively. The difference between the figure as shown as investment in construction by the assessee in the books of accounts and the one estimated by the DVO was added to the total income of the assessee for the Assessment Year 2014-15 and 2015-16. The aforesaid addition was confirmed by the CIT(A).

16. Before us, the learned Counsel for the assessee made 3 prayers viz., (1) the excess amount spent by the assessee as recorded in the books of account in Assessment Year 2013-14 should be reduced from the addition made in Assessment Year 2014-15 because the construction was of one building and whatever is spent by the assessee in Assessment Year 2013-14 would have been taken into consideration by the DVO while making the amount spent in Assessment Year 2014-15. (2) The learned Counsel pointed out from the chart given as Annexure B to this order that supervisor's salary, lift installation and other expenses incurred in Assessment Years 2014-15 and 2015-16 have not been considered by the AO while considering the investment in construction by the assessee as recorded in the books of accounts. The learned Counsel made a prayer that these sums recorded in the books of accounts also relates to the project and should be considered as costs incurred by the assessee in putting up construction as recorded in the books of accounts by the assessee. (3) The learned Counsel pointed out that the DVO in making an estimation of the cost of construction has adopted CPWD rates whereas the rates that should be adopted are only state PWD rates. The learned Counsel in this regard filed before us the decision of the ITAT Bangalore Bench in the case of S. Bangarappa, HUF Vs. DCIT (2006) 155 Taxman 0084 (Bang) (Mag.) wherein the Tribunal held that local rates must be preferred over CPWD rates while evaluating cost of construction because the CPWD rates are generally higher and based on rates prevailing in Delhi and in a small place like Shimogga the cost of construction will be much lower than the CPWD rates approved by the Board.

17. The learned Counsel submitted that these issues were not properly projected before the CIT(A) because the Counsel representing the assessee Shri. Siddaramappa Omkari, CA could not attend the proceedings before the CIT(A) due to illness. His affidavit is at pages 8 and 9 of the second application for admitting additional evidence under Rule 29 of the ITAT Rules filed by the

assessee before the Tribunal. The learned DR, while placing reliance upon the order of the CIT(A) on this issue submitted that the points raised by the issue should be directed to be considered by the AO afresh.

18. I have given a careful consideration to the rival submissions and I am of the view that the addition made by the AO and confirmed by the CIT(A) on account of unexplained investment in construction should be set aside to the AO for fresh consideration as the points which have been brought to our notice have not been highlighted before the Revenue authorities and these facts which can be verified from the records already available which require to be considered for proper and complete adjudication of the dispute in the appeal. I therefore set aside the order of the CIT(A) in this issue and remand the issue for fresh consideration in the light of the 3 submissions that were made by the assessee before me. The AO will afford opportunity of being heard to the assessee before deciding issue in the set aside proceedings. The relevant issue in Assessment Years 2014-15 and 2015-16 is treated as allowed for statistical purposes.

19. The next issue that requires consideration is the issue of suppressed sale which was an addition made by the AO in the Assessment Year 2015-16 of a sum of Rs.14,91,398/-. The facts relevant for adjudication of this issue are that one Mr. Shankar S. Koliwad is a partner of the assessee firm. He is also a partner in other firms Koliwad Granites, Koliwad Enterprises and Koliwad Marbles and Granites. All the businesses are carried on by the assessee in Hubballi. There was a survey conducted under section 133 of the Act in the case of Koliwad Granites in which Shankar S. Koliwad was a partner. In the course of survey, a document marked as 1/KG/03-03-2016 was found and impounded. The impounded contained the following details, recorded in writing in a diary.

862 sqft X 28.50	24.56
Serve /VAT 4% +3.09%	1.16
Regis-1800 X 862 8%	1.24
KEB/Corprn (water)	0.04
	27.36

20. The record also contains writing AD. The document has been scanned and placed at page 13 of the order of assessment. According to the AO, the word “AD” refers to one Mr. Anant P Dambal who purchased flat No.FF3 in the project “Sparsh Signature” in Hubballi. According to the AO, as per the notings in the seized paper consideration that was fixed between the parties was of Rs.27,36,000/- for a flat measuring 862 sq.ft. The AO however found that as per the sale deed registered in the name of Anant P Dambal the sale consideration shown was only Rs.17 lakhs. The difference between the same recorded in the impounded seized document viz., Rs.27,36,000/- and the sum of Rs.17 lakhs which was the sale consideration shown from the sale deed was proposed to be added by the AO to the total income of the assessee. The AO also proposed to adopt average sale rate as recorded in the seized document as the rate at which the assessee would have sold the flat that were shown as sales in Assessment Year 2015-16.

21. The assessee objected to the action of the AO and pointed out that even in the statement recorded of Shankar Koliwad at the time of survey, he had not accepted receipt of any money over and above the sum shown in the registered sale deed. The assessee submitted that the figure mentioned in the seized document cannot be generalized and adopted for all sale transaction effected by the assessee during the Assessment Year 2015-16. The AO however rejected all the above additions and made an addition of Rs.14,91,398/- as sales not disclosed in the books of accounts of the assessee with the following observations:

“10. Sale of Flat during the year:

On perusal of the Profit and loss account and the ledgers for the financial year relevant to A.Y.2015-16, it is noticed that the assessee firm has declared the sales as under:

<i>Customer</i>	<i>Financial Year</i>	<i>Asst Year</i>	<i>Flat No</i>	<i>Date of Sale</i>	<i>Per sft Rate</i>	<i>sft</i>	<i>Sale value</i>
Venkatraman	2014-15	2015-16	UGF 10	18.07.201	1,540	963	14,83,020
Ganapati							

The assessee has recorded the above sale at the rate of Rs. 1,540 per sqft in its books. The actual price of the flat is computed as below:

<i>Particulars</i>	<i>Rate per</i>	<i>Area</i>	<i>Amoun</i>
<i>Rate per sqft</i>	2850.00	963.00	27,44,550.00
<i>Service Tax 4% on Rs. 1540/sqft</i>	61.60	963.00	59,320.80
<i>VAT @ 3.5% on Rs. 1540/sqft</i>	53.90	963.00	51,905.70
<i>Registration @ 8% on Rs.</i>	123.20	963.00	1,18,641.60
<i>Sub Total</i>	3088.70	963.00	29,74,418.10
<i>KEB(Water Charges)</i>	0.40		0.40
<i>Total</i>	3089.10		29,74,418.50

If all the above items are taken together, the sale price comes to Rs.3,089/- per sq.ft. However, the assessee has recorded the sale Rs. 1,540 per sq.ft much lesser than Rs.3,089/-and the assessee has received on-money to the extent of **Rs. 14,91,398.50 (Rs. 29,74,814 Rs. 14,83,020)** in these transactions, which was not disclosed in the return of income. Hence, the same is added to the total income of the assessee and brought to tax.”

22. On appeal by the assessee, the CIT(A) confirmed the action of the AO. At the time of hearing, the learned Counsel for the assessee brought to our notice

affidavit of Shri Shankar S Koliwad, copy of which is placed at pages 1 to 4 of the Paper Book filed in support of application for admission of additional evidence under Rule 29 of the ITAT Rules. In this affidavit, he has referred to the statement recorded at the time of survey and has pointed out that even in the said statement, he has taken a stand that the money received on sale of flats from Shri Anant P Dambal was only the money that he has recorded in the registered sale deed and nothing more. He has sought to explain the reason why the impounded document cannot be taken as sacrosanct for the following reasons:

“5. That of late and after going through the books of account of the Appellant Firm I realized that:

(a) the said impounded material marked as 1/KG/3.3.2016 referred to the approximate estimate that I had given to Mr.Ananth P. Dambal, the purchaser of Flat No.FF3 in Sparsh Signature, sometime in April-May, 2015 since he had required me to quote for the total cost of the said Flat with superior class finish with high quality Marble Flooring, Imported Bathroom Fittings, good quality painting etc.,;

(b) the Appellant Firm had, in all, received a sum of Rs.25,70,000/- (Rupees Twenty Five Lakhs) only from him as advance during the year ended on 31.3.2015;

(c) the said Mr.Ananth P. Dambal however subsequently withdrew from his requirement considering the high cost involved;

(d) as such the Flat No.FF3 was sold to him in the year 2015-16 for a sum of Rs.17,00,000/- (Rupees Seventeen Lakhs) only; and

(e) of the balance Rs.4,00,000/- was refunded to him in the year 2016-17 and the balance of Rs.1,70,000/- is still withheld by the firm for final settlement due to revocation of work order.

6. That the Appellant Firm is selling the Flats always for a consolidated price inclusive the VAT and Service Tax. But the cost of stamp duty and registration fee are always paid by the Flat Purchasers only.

7. That in view of the aforesaid factual position the Appellant Firm and partners did not involve in understatement of Sale Values.”

23. He has also invited my attention to the Affidavit of Anant P Dambal which is at pages 10 to 11 of the second application seeking to file additional evidence under Rule 29 of the ITAT Rules. In this affidavit Anant P Dambal has stated that only a sum of Rs.17 lakhs was the amount which was bargained for the sale of the flat FF3 in Sparsh Signature built by the assessee. He has further stated that the sum found recorded in the seized document was based on superior class of finish and high quality marble flooring and imported bath fittings, paintings, etc. He has also stated in the affidavit that a sum of Rs.22,70,000/- was paid to the assessee. Subsequently those requirements were modified and the price between the parties was ultimately fixed at Rs.17 lakhs. Assessee also pointed out that after such change in the value of the flat, the assessee has repaid a sum of Rs.4 lakhs and still a sum of Rs.1,74,000/- has to be paid by the assessee to him. As already stated, these facts were not brought to the notice of the CIT(A) due to the Counsel's non-representation before the CIT(A).

24. The learned DR placed reliance on the order of the CIT(A) and also brought to our notice that the AO issued summons to Anant P Dambal and that could not be served on Anant P Dambal and he therefore submitted that a plea of the assessee is purely an after thought and should be rejected.

25. I have given a very careful consideration to the rival submissions. The first aspect which I notice is that the amount found in the seized documents cannot be generalized and applied to sale of all flats by the assessee and if at all any addition has to be made, it could only be in respect of money in sale of flat No.FF3 to Anant P Dambal. I have also perused the statement of Shri Shankar S. Koliwad recorded at the time of survey. A copy of which is at pages 1410144 of the assessee's Paper Book. Relevant question and answers in so far as it relates

to the seized document regarding flat sold to Shri Anant P Dambal is found in question No.6 to question No.10. The assessee refused to explain the documents at the time of survey and has taken a stand that the sale of various flats has taken place only from the figure shown in the sale deed. In these circumstances, I am of the view that the issue requires fresh consideration by the AO in the light of the affidavit filed by Shri Shankar S Koliwad and Shri Anant P Dambal. The learned Counsel for the assessee should furnish correct address of Shri Anant P Dambal to enable the AO to examine him before coming to a conclusion as whether the plea of the assessee should be accepted or not. The issue is accordingly set aside for fresh consideration after due opportunity of being heard afforded to the assessee.

26. The assessee has also filed an application for seeking to raise additional grounds in Assessment Years 2014-15 and 2015-16. The additional grounds so filed reads as follows:

Additional grounds of appeal (ITA No.187/ BANG/2019)

1. That the Appellate Commissioner erred in not allowing the deduction of the alleged unaccounted cost of Construction of Rs.28,15,352/- as Business Expenditure in computing the Appellant's Income From Business.

Additional grounds of appeal (ITA No.188/ BANG/2019)

1. That the Appellate Commissioner erred in not allowing the deduction of the alleged unaccounted cost of Construction of Rs.24,43,444/- as Business Expenditure in computing the Appellant's Income From Business.

27. I have considered the plea raised by the assessee in the additional grounds and I am of the view that it all depends on the ultimate outcome of the set aside proceedings. If the additions that are sustained are intangible in nature and can be considered as having been available with the assessee, then the assessee should be allowed the benefit of telescoping. Thus I allow the additional ground of appeal subject to what is stated above.

28. In the result, appeals for Assessment Year 2013-14 is dismissed while other appeals for the Assessment Year 2014-15 and 2015-16 are partly allowed for statistical purposes.

Order pronounced in the open court on this 20th day of November, 2019.

Sd/-
(N. V. VASUDEVAN)
Vice President

Bangalore.
Dated: 20th November, 2019.
/NS/*

Copy to:

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|---------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.