

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ A ” BENCH: BANGALORE
**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.992/Bang/2017
(Assessment Year: 2009-10)

Shri Golayya Hiremath,
Contractor,
Hulloor Nivas, Vidya Nagar, Jewargi,
Dist. Kalaburagi.
PAN AATPH 1475K

...Appellant.

Vs.

Asst. Commissioner of Income Tax,
Circle 1, Sedam Road,
Kalaburagi.

.....Respondent.

Assessee By:	Shri B.S. Balachandran, Advocate.
Revenue By:	Shri Sunil Kumar Agarwal, Addl. CIT (D.R)

Date of Hearing :	28.11.2019
Date of Pronouncement :	03.01.2020

ORDER

PER SHRI PAVAN KUMAR GADALE, JM :

The assessee has filed an appeal against the order of Commissioner of Income Tax, Gulbarga passed under Section 143(3) r.w.s. 147 and 250 of the Income Tax Act, 1961 ('the Act').

2. The assessee has raised the following grounds of appeal :

1. The order of CIT (A) insofar as it is prejudicial to the interest of the appellant, is bad and unsustainable in the eye of law as the same is passed contrary to the settled position of law & without application of mind.
2. The CIT(A) ought to have appreciated that it is the Right of the appellant to be provided with reasons recorded and the denial to provide the same goes to the root of the issue which renders the assessment null and void.
3. The action of the CIT(A) in upholding the denial of reasons recorded is highly prejudicial and not in accordance with spirits of Income-Tax Act and the judicial interpretations of various courts & hence the order of CIT(A) as well as AO are required to be quashed.
4. Without prejudice, the CIT(A) ought to have appreciated that scrutiny assessment order under S.143(3) was passed originally by the AO after considering the books, etc., and hence the addition of Rs.88,09,980/- under S.40(a)(ia) on account of non-deduction of TAS, was unsustainable for the reason of change of opinion.
5. Without prejudice, the CIT(A) ought to have appreciated that scrutiny assessment order under S.143(3) was passed originally by the AO after considering the books, etc., and hence the disallowance of Rs.37,880/- on account of vehicle maintenance was unsustainable.
6. Without prejudice, the CIT(A) ought to have appreciated that scrutiny assessment order under S.143(3) was passed originally by the AO after considering the books, etc., and hence the addition of Rs.30,725/- on allegation of penalty was unsustainable.
7. For these and such other grounds that may be urged at the time of hearing, the Appellant prays that the appeal may be allowed.

3. The Brief facts of the case are that the assessee is engaged in the business of execution of civil contract works and filed the Return of Income for the

Assessment Year 2009-10 on 31.08.2009 with total income of Rs.36,67,130 and assessment order under Section 143(3) of the Act dt.29.11.2011 was completed with the total income of Rs.42,30,430. Subsequently, the Assessing Officer issued Notice under Section 148 of the Act and in response the assessee filed a letter on 5.2.2015 to treat the Return of Income filed on 31.08.2009 as due compliance. In the reassessment proceedings, the learned Authorised Representative appeared from time to time. The Assessing Officer found that the assessee has claimed the expenditure of hire charges, transport charges and Audit fees without deduction of TDS on payments and made disallowance of claims for non-deduction of TDS and assessed the total income of Rs.1,31,09,020 and passed order under Section 143(3) r.w. Section 147 of the Act dt.7.1.2016. Aggrieved by the order, the assessee has filed appeal with the CIT(Appeals). The assessee has challenged the validity of issue of Notice under Section 148 of the Act and other grounds of appeal. Whereas the CIT(Appeals) concurred with action of Assessing Officer and dismissed the assessee's appeal. Aggrieved by the order of CIT(Appeals), the assessee has filed an appeal with the Tribunal.

4. At the time of hearing, the learned Authorised Representative has restricted his arguments on the legal issue of Notice under Section 148 of the Act which is bad in law further the CIT(Appeals) has not given any findings on the disputed issues where the assessee has challenged as illegal and prayed for allowing the

appeal. Contra, the learned Departmental Representative supported the orders of the CIT(Appeals).

5. We heard the rival contentions and perused the material on record. The learned Authorised Representative argued that the CIT(Appeals) has not considered the facts. The Assessing Officer has not recorded reasons for issue of Notice under Section 148 of the Act and are also not provided to the assessee. The contentions of the learned Authorised Representative are that the reasons recorded for reassessment proceedings are not clear and the CIT(Appeals) has not given any findings on challenged legal issue of notice. We found the assessee has raised grounds of appeal challenging the issue of Notice under Section 148 of the Act where the Notice was issued without recording the valid reasons. Whereas the CIT(Appeals) has considered these facts but there are no findings by the CIT (Appeals) and also Assessing Officer has not provided reasons for reassessment to the assessee. Whereas the CIT (Appeals) contended that the reasons were provided subsequently. But there is no finding by the CIT (Appeals) on the Reassessment Notice issued by the Assessing Officer without recording valid reasons. We are of the opinion that CIT (Appeals) has not adjudicated the disputed issue of validity of Notice under Section 148 of the Act. Accordingly we set aside the order of CIT (Appeals) and remit the disputed issue to the file of CIT (Appeals) for proper finding and pas a speaking order and assessee should be provided adequate

opportunity of hearing and shall co-operate in submitting the information for early disposal of appeal and allow the grounds of appeal of assessee for statistical purposes.

6. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on 3rd Jan., 2020.

Sd/-

(A.K. GARODIA)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 03.01.2020.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore