

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

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER**

ITA No.1065/Bang/2019
Assessment year : 2015-16

Shri. H. N. Ravindra, Prop : Akshaya Bar and Restaurant, Thaneeruhalla, Hassan – 573 201. <b>PAN : AHIPR 4093 F</b>	Vs.	The Income Tax Officer, Ward – 2, Hassan.
APPELLANT		RESPONDENT
Assessee by	:	Shri. V. Srinivasan, Advocate
Revenue by	:	Shri. Ganesh R. Ghale, Advocate Standing Counsel to Department
Date of hearing	:	26.11.2019
Date of Pronouncement	:	10.01.2020

**ORDER**

This appeal is filed by the assessee and the same is directed against the order of the learned CIT(A), Mysuru, dated 29.03.2019 for Assessment Year 2015-16.

2. The grounds raised by the assessee are as under:-

1. *The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
2. *The learned CIT[A] is not justified in sustaining the addition of Rs.11,58,407/- made in respect of VAT payable shown as a liability in the Balance Sheet invoking the provisions of section 43B of the Act, under the facts and in the circumstances of the appellant's case.*
3. *The learned CIT[A] failed to appreciate the fact that the VAT payable added back to the total income was not debited as an expenditure in the Profit & Loss account and consequently, there could not be any disallowance of the expenses in terms of section*

*43B of the Act under the facts and in the circumstances of the appellant's case.*

- 4. The learned CIT[A] ought not to have upheld the disallowance made u/s. 43B of the Act that was made in course of the limited scrutiny assessment by travelling outside the scope of the limited scrutiny proceedings without obtaining the permission of the Commissioner of Income tax and consequently the addition so made deserves to be deleted.*
- 5. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s.234-A and 234B of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.*
- 6. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.*

3. In the course of hearing before the Tribunal, it was submitted by the learned AR of the assessee that learned CIT(A) should not have upheld the disallowance made under section 43B of the IT Act, 1961 because the scrutiny done by the AO was in course of limited scrutiny assessment and the AO has travelled outside the scope of limited scrutiny assessment without obtaining the permission of the learned CIT and consequently, the additions so made deserves to be deleted. In support of this contention, reliance was placed by him on the Tribunal order rendered in the case of M/s. Srinidhi Mines Vs. ITO in ITA No.3084/Bang/2018 dated 25.04.2019. He submitted a copy of this Tribunal order and drew my attention to para Nos.7 and 8 of this Tribunal order. He also submitted that in para No.8 of the Assessment Order, the AO has stated that the assessee, during the course of assessment proceedings submitted a letter dated 22.12.2017 in which the assessee voluntarily offered an amount of Rs.11,58,407/- which was VAT liability not discharged during Assessment Year 2015-16. He submitted that even if the assessee has offered this amount in the

course of assessment proceedings voluntarily, addition cannot be made by the AO in a limited scrutiny case by travelling outside the scope of limited scrutiny which is noted by the AO in para No.2 of Assessment Order and without obtaining the approval of concerned CIT. Learned DR of the Revenue supported the orders of authorities below

4. I have considered the rival submissions. First of all, I produce para No.2 of the Assessment Order in which the AO has noted the reasons for selecting the case of the assessee for limited scrutiny. This para reads as under:

2. *Present case was selected for limited scrutiny with respect to the following reasons-*
  1. ***Whether the cash deposit has been made from disclosed sources***
  2. ***Whether cash in hand shown in the return of Income is correct (Cash deposit for demonetization period (9<sup>th</sup> November to 30<sup>th</sup> December) reported as per SFT reporting.***

5. From the above para reproduced from the Assessment Order, it comes out that the only point on which the assessee's case was selected for limited scrutiny was regarding cash deposit in bank and cash in hand shown in the return of income and hence, the disallowance under section 43B of the IT Act, 1961 for non-payment of VAT is not within the scope of limited scrutiny. Under these facts, now I examine the applicability of the Tribunal order cited by the learned AR of the assessee. I reproduce para Nos.7 and 8 of this Tribunal order. These paras are as under:

- “7. *From the above Para reproduced from the order of CIT (A), it is seen that Id. CIT (A) has, also stated in this Para that technically in the limited scrutiny, other issues not supposed to be examined unless there is an approval from CIT/Pr. CIT and after the approval only, it can be wide open to examine issues other than issues raised for the limited scrutiny purpose. But thereafter, the Id. CIT(A) has gone back and she says that AO has examined the entire expenses claimed / debited to profit and loss account as per the requirement of limited scrutiny and proved that the appellant wrongly claimed depreciation @ 30%. We have already seen that as per the limited scrutiny notice*

*appearing on page no. 47 of paper book, only two issues have been identified for examination and these are as under:-*

- i) Payment to related persons mismatch*
- ii) Other expenses claimed in the Profit & Loss a/c*

8. *It is also seen that as per the details of other expenses, available on page no. 105 of the paper book, there are 18 items of expenses but it does not include depreciation. In fact, depreciation is covered under item no. 45 on page no 106 of paper book and not in item no. 39 available on page no.105 of paper book. Hence, in my considered opinion, in the present case, examination of depreciation is not covered in the two issues selected for examination for limited scrutiny. This is not the case of the revenue that the approval was taken by the AO from CIT/Pr. CIT for converting the scrutiny from limited scrutiny case to total scrutiny case. Hence, in my considered opinion, the AO is not justified in taking up the examination of depreciation claimed which is beyond the issues selected for limited 'scrutiny without obtaining prior approval from CIT/Pr. CIT. I. therefore. hold that AO was not justified in making disallowance out of the depreciation claim of the assessee and therefore, the same is deleted."*

6. As per para 7 of this Tribunal order, this finding is given by the Tribunal in that case that in the limited scrutiny case, the other issues are not supposed to be examined unless there is an approval from CIT/Pr. CIT and after the approval only, it can be wide open to examine issues other than issues raised for the limited scrutiny purpose. As per the assessment order, this is not the case of the AO that he has obtained the approval from the concerned CIT/Pr. CIT. It is also seen that disallowance under section 43B was not the issue for which the assessee's case was selected for limited scrutiny. Under these facts, in my considered opinion, even if some other issue comes to the notice of the AO, he cannot make any other addition / disallowance without obtaining prior approval from concerned CIT/Pr. CIT. I also feel that in the absence of such approval from the CIT/PCIT, even the voluntary offer of the assessee also cannot give the AO jurisdiction to make any other addition although such offer by the assessee can be a basis for the AO to seek approval of CIT/PCIT . On this aspect, argument was made before the learned CIT(A) also but in para 5 of his order, he has not decided this aspect. He has simply stated in this para

that submission was made before him on the technical issue and the case was selected for scrutiny assessment under the CASS system of selection “limited type” and no prior approval was taken from the higher authorities, have been considered and found that the AO has rightly examined as to whether the cash deposit has been made from disclosed sources and whether cash in hand shown in the return of income is correct for which purpose the case was selected for scrutiny. But after observing so, he has not given any finding as to how the other addition made by the AO under section 43B of the IT Act, 1961 is justified under these facts. Respectfully following this Tribunal order cited by the learned AR of the assessee, I delete the disallowance made by the AO.

7. In the result, the assessee’s appeal is allowed.

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-

**(A. K. GARODIA)**  
**Accountant Member**

Bangalore.

Dated: 10<sup>th</sup> January, 2020.

/NS/\*

Copy to:

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

By order

Assistant Registrar,  
ITAT, Bangalore.