

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

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

<b>ITA No.1371/Bang/2019</b>
<b>Assessment year : 2016-17</b>

Deputy Commissioner of Income Tax, Circle – 5(2)(1), Bengaluru.	Vs.	Shri. Harsha Srinivas Thambi, 141, III Main Road, Chamarajpet, Bengaluru – 560 018. <b>PAN : AACPH 2646 H</b>
APPELLANT		RESPONDENT

Revenue by	:	Shri. A. Ramesh Kumar, JCIT (DR)(ITAT), Bengaluru
Assessee by	:	Shri. Ganesh P. R, CA

Date of hearing	:	03.03.2020
Date of Pronouncement	:	29.05.2020

**ORDER**

***Per A.K. Garodia, Accountant Member***

This appeal is filed by the Revenue and the same is directed against the order of learned CIT(A)-5 Bengaluru, dated 20.03.2019 for Assessment Year 2016-17. The grounds raised by the Revenue are as under:

*“The order of the learned CIT (A) is opposed to the law and facts of the case.*

*Whether on the facts and circumstances of the cases and in law, the Ld. CIT (A) was right n admitting additional evidences without giving any reason for the same.*

*Whether on the facts and circumstances of the cases and in law, the Ld. CIT (A) was justified not giving any opportunity to the Assessee Officer (AO) before deciding the appeal by admitting additional*

*evidences and thus violating the provisions of rule 46A of the Income Tax Rules, 1962.*

*Whether on the facts and circumstances of the cases and in law, the Ld. CIT (A) was justified in setting aside the assessment order for verification to be made by the AO and thus acting beyond the power granted to him under section 251 of the Income-Tax Act, 1961.*

*For these and other grounds that may be urged upon at the time of hearing, it is prayed that the order of CIT (A) in so far as it relates to the above grounds, may be reversed and that Assessing Officer may be restored.*

*The appellant craves leave to alter, amend or delete any of the grounds mentioned above and / or add any new grounds on or before hearing.”*

2. In the course of hearing, it was submitted by learned DR of the Revenue that as per the impugned order, learned CIT(A) has restored the matter back to the file of AO which is beyond the powers of learned CIT(A). Hence, the matter should be restored back to the file of CIT (A). Learned AR of the assessee supported the order of CIT(A).

3. We have considered rival submissions. First of all, we reproduce relevant para from the order of CIT(A) i.e. from pages 9 and 10 only of his order. This reads as under:

*“Having considered the fact & circumstances and explanation placed on records, it is apparent that the impugned disallowances have been made due to the non-consideration of the taxation, already suffered on the share of profits, and the same is available / verifiable from the department system / records. The Assessee has submitted certain documents (including CPC intimations) pertaining to the firms M/s Darshan International and M/s Darshan Pixcel Prints LLP, which are placed on records. In this view of the matter the assessee's submissions cannot be rejected and the grounds of appeals are prima-facie allowable. The AO is accordingly directed to take appropriate rectificatory action, after due verification of the respective firm's statement of income / returns of income filed for the period under consideration, the details of which shall be produced by the Assessee,*

*during the appeal-effect process. The Assessee's grounds of appeal are therefore allowed, subject to above directions and consequent to such verification."*

4. From the above para, it comes out that learned CIT(A) had directed the AO to take appropriate rectificatory action after due verification of the respective funds statement of income / returns of income filed for the period under consideration, the details of which shall be produced by the assessee during the appeal-effect process. In our considered opinion, this amounts to setting aside the matter to the file of AO which is beyond the powers of CIT (A) and hence, we set aside the order of CIT(A) and restore the matter back to his file for a decision at his level instead of remanding the matter back to the file of AO and if considered necessary, the learned CIT(A) can obtain remand report from the AO. Learned CIT(A) should pass fresh speaking and reasoned order after providing adequate opportunity of being heard to both sides.

5. In the result, Revenue's appeal is allowed for statistical purposes.

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

Sd/-

**(PAVAN KUMAR GADALE)**  
**Judicial Member**

Sd/-

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

Bangalore,

Dated: 29<sup>th</sup> May, 2020.

/NS/\*

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

By order

Assistant Registrar,  
ITAT, Bangalore.