

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ B ” BENCH: BANGALORE

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.884/Bang/2019
(Assessment Year: 2011-12)

M/s.Megacity (Bangalore) Developers & Builders Ltd.,
No.120, Mega Towers, KH Road,
Bangalore-560 027
PAN AABCM2013K

....Appellant

Vs.

Dy. Commissioner of Income Tax,
Circle 4(1)(2), Bangalore.

.....Respondent.

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|--------------|------------------------------------|
| Assessee By: | Shri K. Mallaha Rao, Advocate. |
| Revenue By: | Shri Priyadarshi Misra, JCIT (D.R) |

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| Date of Hearing : | 27.07.2020. |
| Date of Pronouncement : | 13.08.2020. |

ORDER

PER SHRI PAVAN KUMAR GADALE, JM :

The assessee has filed an appeal against the order of Commissioner of Income Tax (Appeals)-4, Bangalore passed u/s 144 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. On the facts and circumstances of the case, order of the learned Commissioner of Income Tax (Appeals)-4 dated 22/03/2019, for the AY-2011-12 is not maintainable in law.
2. On the facts and the circumstances of the case the learned Commissioner of Income Tax (Appeals) failed to appreciate that, with regard to the cash investment by the appellant for purchase of the land, with regard to the source of income investment was furnished, but without considering the same order passed by the Assessing Authority the same was upheld by the CIT(A) is against the principle of natural justice.
3. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) erred in confirming the made additions under section 144 of the Income Tax Act, wherein the learned assessing authority without rejecting books of accounts and statement of computation of income, which were produced before the concerned authority at the time assessment proceedings on 18.12.2018, which is not correct, the same was upheld by the CIT(A) is against the principle of natural justice, thus the order of the Assessing Authority & CIT(A) are liable to be quashed.
4. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals), has erred by making addition of Rs.89,86,000/- under section 68 of the Income Tax, 1961 as unexplained Cash credit which comprises Rs.74,00,000/- from land advance returned from the farmers, Rs.62,1000/- deposited out of opening balance in hand and Rs.9,65,000/- redeposit out of self-drawn cash. Such details are furnished as an additional

evidence of the appellant claim, and the same was not considered by the CIT(A), hence the order of the CIT(A) is liable to be set aside.

5. Without considering the fact and merit of the case the learned CIT(A) confirming the disallowances made by the assessing authority and confirming interest etc, the same is upheld by the CIT(A) is excessive, arbitrary and liable to be deleted.
6. For such other grounds that may be urged at the time of hearing and it is prays that kindly may allow the appeal in the interest of justice and equity.

3. The Brief facts of the case are that, the assessee company is engaged in the business of acquisition of land, conversion, formation of approved layout and sale of lands. During the financial year as per CIB information, the assessee company has made cash deposits in the bank account maintained with Royal Bank of Scotland, Residency Road, Bangalore. The assessee company has not filed the return of income for the Asst. Year 2011-12, therefore the assessing officer has initiated reassessment proceedings under Section 147 of the Act and issued notice under section 148 on 31.3.2018. Since there was no response to notice u/sec148 of the act, the assessing officer has issued summons under Section 131 of the Act to the director of the assessee Company and the statement was recorded. Subsequently, showcase notice was issued to the assessee company to explain cash deposits aggregating to Rs.42,61,000/- deposited in the Royal Bank of Scotland on

various dates. In response the LdAr of the assessee company appeared and furnished the copy of computation of income, audited financial statements and bank statement of Royal Bank of Scotland and sought time for submitting the return of income and reply to show cause notice. However Assessing officer found that no return of Income was filed by the assessee or reply was furnished. The Ao on perusal of bank statement, found that the total cash deposits in the bank account in the financial year 2010-2011 aggregated to Rs.89,86,000/- and observed that in spite of providing several opportunities to the assessee, no explanations were furnished and hence made an addition of deposits as unexplained cash credits under Section 68 of the Act and assessed the total income of Rs.1,23,55,792/- and passed order under Section 144 r.w.s.147 of the Act dt.26.12.2018.

Aggrieved by the order, the assessee has filed an appeal with the CIT (Appeals), whereas the CIT (Appeals) considered the grounds of appeal, statement of facts, findings of the assessing officer and written submissions of the assessee found that adequate opportunities of hearing were provided by the assessing officer but the assessee company has not filed the return of income nor explanations were furnished with regard to deposits in bank account. Further assessee failed to substantiate with evidence, that the amounts deposited in the bank account represents the advances returned back from builders. Finally the LdCIT(A) confirmed the action of the Assessing Officer and dismissed the assessee's appeal.

Aggrieved by the order of CIT (Appeals), the assessee has filed appeal before the Tribunal.

4. At the time of hearing, the learned Authorized Representative submitted that the CIT (Appeals) has erred in ignoring the facts, that the cash deposits made in Royal Bank of Scotland are supported with sources, which includes Rs.74,00,000/- pertaining to Land advances returned by the farmers and Rs.6,21,000/- was deposited out of the opening balance on hand and Rs.9,65,000/- are the deposits out of self withdrawals of cash made by the assessee. Further the LdAR filed an application under Rule 29 of ITAT Rules for admission of additional evidence which were not produced before the assessing officer or CIT(A) and prayed for admission of additional evidence and opportunity to substantiate the case before lower authorities. Contra, the LdDR supported the orders of CIT (Appeals) and objected for the admission of additional evidence.

5. We heard the rival submissions and perused the material on record. The learned authorized representative submitted that the assessee company is in the business of acquisition of land, conversion and formation of layout. The assessee company receives advances from the customers for land purchases and further advances returned by the farmers are also deposited in the Royal Bank of Scotland and the assessee company has sources supporting the deposits. The LdAr emphasized that

the assessee has filed an application under Rule 29 of ITAT Rules for admission of additional evidence which were not produced before the assessing officer or CIT(A) and such evidences plays a vital role in decision making and goes to roots of the case and prayed for opportunity of hearing. We found, the A O has made best judgment assessment under Section 144 r.w.s 147 of the Act as the assessee has failed to furnish the details for various reasons. The LdDR has objected for admission of evidences as the assessing officer was denied the opportunity of examining the evidences. We are of the opinion that, the Assessing Officer should be provided an opportunity to verify and examine the evidences filed in the course of hearing. Accordingly, in the interest of justice, we set aside the order of CIT(A) and admit the additional evidences and remit the entire disputed issues along with evidences to the file of assessing officer to verify and examine the claim of the assessee and allow the grounds of appeal of the assessee for statistical purposes.

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

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

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 13.08.2020.

*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