

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “SMC-A”, BANGALORE**

Before Shri George George K, Judicial Member

ITA No.364/Bang/2019 : Asst.Year 2013-2014

M/s.Srushti Management Consultancy Private Limited No.305-27, Shristi Residency 3 rd Cross, Jaladarshini Layout Bangalore – 560 094. PAN : AAHCS7978P.	v.	The Income Tax Officer Ward 6(1)(3) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Sankoth S.Nayak, CA
Respondent by : Sri.Ganesh R.Ghale, Standing Counsel

Date of Hearing : 20.01.2021	Date of Pronouncement : 20.01.2021
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ORDER

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 12.12.2018. The relevant assessment year is 2013-2014.

2. The grounds raised read as follows:-

“1. The learned AO has erred in facts and law by passing an order which is opposed to the facts of the case.

2. The learned AO has erred in facts and law by invoking the provisions of section 44AD of the Act, while concluding the Appellant's case.

3. The learned AO has erred in facts and law by estimating the income of the Appellant at 8% of the gross receipts and adding amount of Rs.28,33,760 to the income of the Appellant.

4. The learned AO has erred in facts and law by adding back Rs.13,92,000 under the head of business income as unexplained credits in respect of receipt reported in unsecured loans.

5. *The learned Commissioner of Income-tax (Appeals)-6 has not given an opportunity to the appellant to reply on the report submitted by the learned AO and the hearing was concluded before giving an opportunity to the appellant to respond.*

6. *Such other grounds as may be urged at the time of hearing.”*

3. The brief facts of the case are as follow:

The assessee is a company, engaged in the business of civil construction contracts. For the assessment year 2013-2014, the return of income was filed declaring total loss of Rs.27,06,980. The assessment was taken up for scrutiny by issuance of notice u/s 143(2) of the I.T.Act. The Assessing Officer, during the course of assessment proceedings, had called for the books of account. The assessee produced the profit and loss account, copy of balance sheet along with necessary ledger accounts. The AR was asked to furnish project-wise expenses and receipts. The AR submitted that the revenue recognition was done on the basis of management certificate and the assessee could not furnish the details of project cost. In view of the submissions made by the AR, the A.O. held that the provisions of section 44AD of the I.T.Act is to be applied and estimated the income from civil contract at 8% of the gross receipt of Rs.3,54,21,996, which worked out to Rs.28,33,760. Further, the A.O. made an addition of Rs.13,92,000 u/s 68 of the I.T.Act being unsecured loan creditors on account of non-furnishing of confirmation letters along with the mode of receipt from the creditor.

4. Aggrieved, the assessee preferred an appeal to the first appellate authority. The CIT(A) confirmed both additions made

by the Assessing Officer. As regards the confirmation of addition of Rs.28,33,760, being estimated business income, the relevant finding of the CIT(A) reads as follow:-

“5.3.2 The appellant has till date not furnished any details of project costs and other expenses that would enable determination of its business income. Several opportunities were given by the AO to the appellant to produce the books of account during the assessment proceedings, however the same were not available of by the appellant. The appellant cannot now seek to undo the assessment by submitting a copy of the audit report, which would have been available with it during assessment proceedings. The appellant has not shown any sufficient cause as to why the same was not produced before the AO. In view of the same, the addition made by the AO is sustained.”

5. As regards the addition of unsecured loan of Rs.13,92,000, the CIT(A) held that the assessee till date has not produced any confirmation from the party and hence the A.O. has correctly added back this amount as unexplained cash credit.

6. Aggrieved by the order of the CIT(A), the assessee has preferred this appeal before the Tribunal. The learned Counsel for the assessee submitted that the Authorised Representative before the A.O. has erred in not furnishing the requisite details sought by the AO. Non furnishing of requisite details was a defect on the part of the Authorised Representative and the assessee was not aware of the same till the assessment order was passed by the Assessing Officer. It was stated that defect on the part of AR, who represented the case before the A.O., was highlighted before the CIT(A) vide submissions dated 21st November, 2018. The submissions made by the assessee has

been mentioned in the impugned order of the CIT(A). Further, the learned Counsel submitted that the audit report were filed online and were available with the Tax Authorities at the time of the assessment proceedings itself. Copy of the acknowledgement for filing of the audit report online is placed on record at page 15 of the paper book filed by the assessee. It was contended by referring to the audit report that the assessee has not made any fresh submission of audit report before the CIT(A). Lastly, it was contended that the assessee was not provided with an opportunity to rebut the remand report submitted by the Assessing Officer before the CIT(A). Therefore, it was contended that there was denial of principles of natural justice and the matter needs to be examined afresh by the CIT(A).

7. The learned Standing Counsel supported the orders of the Income Tax Authorities.

8. I have heard rival submissions and perused the material on record. As regards the addition of Rs.28,33,760 being estimated business income, I noticed that the assessee has filed the audit report on 02.09.2019 and the same is available with the Revenue from the stage of assessment itself. The assessee has not filed a fresh audit report before the CIT(A). The requisite details called for during the course of assessment proceedings were available with the assessee and the Authorised Representative, who represented the case before the A.O. has erred in not submitting the same. This fact of non-submission of requisite details has been mentioned in the written submission submitted before the CIT(A). Further, it is

clear from the records that no opportunity was provided to the assessee to rebut the points made in the remand report submitted by the A.O. before the CIT(A). This is evident from the impugned order of the CIT(A), where the date of final hearing is mentioned as 22.11.2018 (first page), whereas the date of remand report received from the Assessing Officer is 07.12.2018 [see second page of CIT(A)]. Therefore, it can be clearly seen that since there was no hearing after the date of receipt of the remand report, there was no opportunity given to the assessee to rebut as regards the points in the remand report submitted by the A.O. before the CIT(A). Therefore, there is a violation of principles of natural justice. I am of the view that one more opportunity should be granted to the assessee as regards the issue of estimated business income of Rs.28,33,760, hence, this issue is restored to the files of the A.O. The A.O. shall look into the audit report submitted online on 02.09.2013. The assessee shall be entitled to furnish the necessary documents as regards his claim of loss of Rs.27,06,918. The assessee shall not seek any unnecessary adjournment and shall co-operate with the Department. The A.O. shall take a decision in accordance with law after affording a reasonable opportunity of hearing to the assessee.

9. As regards the addition of Rs.13,92,000 being the unexplained credits, I am of the view that the same needs to be confirmed since the assessee has not furnished any confirmation till date from the creditors Shri Patel. Therefore, this addition made by the A.O. and confirmed by the CIT(A) is upheld. It is ordered accordingly.

10. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 20th day of January, 2021.

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 20th January, 2021.
Devadas G*

Copy to :

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

Asst.Registrar/ITAT, Bangalore