

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.662/Bang/2020
(Assessment Year: 2016-17)

Dy. Commissioner of Income Tax,
Circle 6(1)(1), Bangalore.

....Appellant.

Vs.

M/s. Garuda Builders,
No.10, Opp. KNS College,
Lenkappa Building, Girumenuhalli Vill.,
Yelahanka, Bangalore-560 064

.....Respondent.

C.O.No.19/Bang/2020
(In ITA No.662/Bang/2020)
(Assessment Year: 2016-17)
(By Assessee)

Assessee/C.O. By:	Shri Rajeev Nulvi, Advocate.
Revenue By:	Shri Muzaffar Hussain, CIT (D.R)

Date of Hearing :	01.02.2021.
Date of Pronouncement :	02.02.2021.

ORDER

PER SHRI CHANDRA POOJARI, A.M. :

The appeal by Revenue and Cross Objection by the assessee filed against the order of Commissioner of Income Tax (Appeals), Bangalore-6 dt.27.01.2020 for the Assessment Year 2016-17.

2. The Revenue has raised the following grounds :

1.	The order of the CIT (Appeals) is opposed to law and the facts and circumstances of the case.
2.	On the facts and circumstances of the case, Whether the Ld. Commissioner of the Income Tax (Appeal) justified in not impressing upon the assessee to submit documentary evidence to support the claim of the closing work-in-progress for the AY 2016-17?
3.	On the facts and circumstances of the case, Whether the Ld. CIT(A) justified in accepting assessee's plea that the relevant documents were impounded during a survey on the assessee's sister concern, without proof of support of claim.?
4.	On the facts and circumstances of the case, whether the Ld CIT(A) is justified in deleting the additions without giving an opportunity to the Assessing Officer to verify the genuineness of the additional evidences submitted by the assessee as per the provisions of Rule 46A?
5.	For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A), in so far as it relates to the above grounds may be reversed and that of the Assessing Officer be restored.
6.	The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of the appeal.

3. In C.O., the assessee has raised the following grounds :

1. The Appeal filed by the Appellant Deputy Commissioner of Income Tax, Circle-6(1)(1), Bangalore has no jurisdiction over the Respondent to file the said appeal. The order passed u/s 144 of the Income Tax Act, 1961 in case of the Respondent was passed by the Assistant Commissioner of Income Tax, Circle-6(3)(1), Bangalore. Hence, the appeal filed by Deputy Commissioner of Income Tax, Circle-6(1)(1), Bangalore is bad in law. Therefore, not admissible.

2. The Respondents case was selected for Limited Scrutiny by serving a notice u/s 143(2) to verify the issue – "*Whether income from real estate business has been correctly offered to tax*". But whereas the Assessing Officer made the addition of closing work in progress which is tax neutral and other than the issue for which the Respondents case was selected for Limited Scrutiny. Therefore, the order passed by the Assessing Officer u/s 144 of the Income Tax Act, 1961 is bad in law.
3. The Honourable Commissioner of Income Tax (Appeals) rightly deleted the addition of Rs. 10,44,04,228/- on account of closing work in progress which is tax neutral and the same has been considered as opening work in progress in the next financial year. The Respondent's case was not the case of finding a difference in inventory of closing stock and closing stock declared in the Income Tax Return as the Respondents case was not subject to survey u/s 133A of the Income Tax Act, 1961.
4. In the Respondents case, there were no documents related/pertains to the Respondents, impounded during the survey on the Respondents sister concern.
5. The Respondents have not submitted any additional evidences u/r 46A of the Income Tax Rules, 1962 before Commissioner of Income Tax (Appeals) but provided the financial statements and the copy of the Returns filed for A.Y 2015-16, 2016-17 and 2017-18 and assessment order passed u/s 143(3) of the Income Tax Act, 1961 for the preceding A.Y 2015-16 which were available with the Assessing Officer during the assessment proceedings. The Respondent relied on the Supreme Court judgment in case of PCIT Vs B G Shirke Construction Technology (Pvt.) Ltd. [265 Taxman 543]
6. For these and other reasons which may be urged at the time of the hearing, it's prayed before this Honourable Bench that the order of the Honourable Commissioner of Income Tax (Appeals) may be upheld for substantial cause of justice.

4. The facts of the case are that the assessee is engaged in the business of real estate filed Return of Income electronically on 28.10.2016 and the case was selected for scrutiny by issuing a notice u/s. 143(2) of the Income Tax Act, 1961 ('the Act') dt.18.07.2017 by the Assessing Officer. No Representation from the assessee before the Assessing Officer. The Assessing Officer passed order u/s. 144 of the Act by adding closing work-in-progress amounting to Rs.10,44,04,228 to the returned income. Aggrieved the assessee, appealed before the CIT (Appeals). Before the CIT (Appeals) the assessee submitted that there was a survey conducted in Sept., 2016 in sister concern in the case of SLV Developers Pvt. Ltd. u/s. 133A of the Act and impounded Books of Accounts. During the course of assessment, in spite of repeated requests, the assessee could not get the Xerox copies of impounded documents/material. After hearing, the CIT (Appeals) deleted the addition made by the Assessing Officer of Rs.10,44,04,228 on the reason that the Assessing Officer has not made any enquiry regarding work in progress nor she was in possession of any discriminating material. The only reason given by the Assessing Officer that the assessee has not responded to the notice given. According to the CIT (Appeals), the addition towards work in progress was arbitrary and cannot be sustained. Against the action of the CIT (Appeals), the Revenue is in appeal before us.

5. The learned Departmental Representative submitted that the CIT (Appeals) ought not have accepted the plea of the assessee that relevant documents were

impounded during the survey on assessee's sister concern without proof of support of claim and he has deleted the addition without giving an opportunity of hearing to the Assessing Officer. The learned Departmental Representative sought for an opportunity to Assessing Officer to consider the plea of the assessee that the addition is wrong as the assessee has not responded to the notice of the Assessing Officer for the assessment year under consideration. On the other hand, the learned Authorised Representative for the assessee submitted that there was a survey in the case of assessee's sister concern, the SLV Developers Pvt. Ltd. The Department authorities impounded all the books of accounts of SLV Developers Pvt. Ltd. and other sister concern, the assessee is also one among them. Such is the fact to provide the information sought by the Assessing Officer u/s. 142(1) or show cause, the assessee requested the Assessing Officer to get Xerox copies of impounded documents. The Assessing Officer failed to provide the same and also after the survey was conducted, books of accounts were impounded, The impounding order u/s. 133A(3) of the Act has not been served on the assessee till date. The Assessing Officer also has acted against the assessee in a non-co-operative or a rude manner for the reason that even up to the date of passing of order, the Assessing Officer has not provided any Xerox copies of impounded material to the assessee to represent its case. The Id. AR submitted that such being the fact, the Assessing Officer's statement that the assessee has not responded during the course of assessment is completely false. Further it was submitted that

the addition made towards unexplained work in progress is nothing but closing stock. Such closing stock should be treated as opening stock for the next assessment year. The Id. AR argued that this being a tax neutral and such addition made by the Assessing Officer cannot be sustained.

6. We have heard both the parties and perused the material on record. It is an admitted fact that in this case the assessment order was passed *ex parte* u/s. 144 of the Act. Before the CIT (Appeals), the assessee furnished certain financial statements and the CIT (Appeals) without calling Remand Report/comments from the Assessing Officer passed the appellate order which is improper. In our opinion, when the assessment order is passed *ex parte* without any response from the assessee to the notice issued by the Assessing Officer, the CIT (Appeals) shall call for Remand Report before deciding the issue on merit. Since the CIT (Appeals) failed to do so, in our opinion, it is appropriate to remit the entire dispute to the file of Assessing Officer for fresh consideration. The Assessing Officer shall provide all material impounded to the assessee before deciding the issue on merit. The appeal of Revenue is partly allowed for statistical purposes.

C.O. No.19/Bang/2020

7. In the first ground of C.O., the assessee alleges that the assessment order was passed by ACIT, Circle 6(3)(1), Bangalore. However, the appeal was filed by DCIT Circle 6(1)(1), Bangalore. As such, the appeal is not maintainable.

8. We have heard both the parties on this legal issue and we found that there was merge of ACIT, Circle 6(3)(1), Bangalore with DCIT, Circle 6(1)(1), Bangalore by ;an order of competent authority. The department filed a letter dt.6.12.2020 before he Tribunal vide acknowledgement No.194 sating the above facts. Being so, in our opinion, the appeal was filed by the proper authority. In this view of the fact, the Ground No.1 in C.O. is dismissed.

9. Ground Nos.2 & 3 of C.O. are only to support the order of CIT (Appeals) stating that the addition was rightly deleted. Since the issue on merit we have remitted to the file of Assessing Officer in Revenue's appeal, the ground Nos.2 & 3 of C.O. have become infructuous and dismissed accordingly.

10. In the result, the Revenue's appeal is partly allowed for statistical purposes and C.O. by assessee is dismissed.

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

Sd/-

(SMT. BEENA PILLAI)
JUDICIAL MEMBER

Sd/-

(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Dated: 02.02.2021.

*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