

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.2899/Bang/2017
AssessmentYear: 2012-13

M/s. Tirupathi Enterprises No.315, 8 th Cross, Lakshmi Road Shanthi Nagar Bangalore 560 027. PAN NO :AADFT9556H	Vs.	ITO Ward-5(2)(4) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Suresh Muthukrishnan, A.R.
Respondent by	:	Shri Sankar Ganesh K., D.R.

Date of Hearing	:	22.11.2021
Date of Pronouncement	:	22.11.2021

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 2.11.2017 passed by Ld. CIT(A)-3, Bangalore and it relates to assessment year 2012-13.

2. Ground No.1 and 7 raised by the assessee are general in nature. Ground No.6 relating to charging of interest is consequential. At the time of hearing, the Ld. A.R. did not press ground Nos.2 & 4. Accordingly, both ground nos. 2 & 4 are dismissed as not pressed. The remaining ground Nos.3 & 5 read as under:-

“3. Without prejudice to the above, the learned CIT(A) is not justified in upholding the assessment of Rs.79,15,174/- as income from house property instead of accepting the income reported by the appellant under the head “Business” under the facts and circumstances of the appellant’s case.

5. The learned CIT(A) is not justified in upholding the addition of Rs.26,28,000/- as unexplained expenditure under the facts and circumstances of the appellant’s case.”

3. The facts relating to the above said issues are stated in brief. The assessee is a partnership firm. It filed its return of income declaring taxable income of Rs.12,96,310/-. The assessee did not respond to the notices issued by the A.O. and hence the A.O. completed the assessment to the best of his judgement u/s 144 of the Income-tax Act,1961 [‘the Act’ for short]. The A.O. noticed from the form 26AS/AIR information that the assessee has received rental income of Rs.1,13,07,393/- and the interest income of Rs.22,83,085/-. The A.O. assessed rental income under the head “Income from House Property” after allowing deduction @ 30% towards repairs and maintenance. He also assessed the interest income referred above under the head “Income from other sources”. The A.O. also noticed form CIB information that the assessee has purchased demand drafts exceeding Rs.50,000/- by paying cash and the aggregate amount of demand draft purchased was Rs.26,28,000/-. The A.O. treated the same as unexplained expenditure.

4. Before Ld. CIT(A), the assessee challenged all the additions made by A.O. The assessee contended that letting out house property is business activity of the assessee. The Ld. CIT(A) did not agree with the submissions of the

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assessee. He placed reliance on the decision rendered by Hon'ble Supreme Court in the case of Raj Dadarkar & Associates Vs. ACIT (2017) 394 ITR 592 and held that the assessee has not brought anything on record to establish the fact of carrying on business activities. With regard to assessment of interest income of Rs.22,83,085/-, the Ld. CIT(A) granted relief of Rs.12,96,309/-, since it was submitted that the above said amount has already been offered by the assessee in its total income and the addition made by the AO results in double assessment. The Ld. CIT(A) upheld the assessment of unexplained expenditure of Rs.26,28,000/-.

5. We heard the parties and perused the record. The Ld. A.R. submitted that the assessee could not appear before the A.O. for the reasons beyond its control and hence the assessment order came to be passed u/s 144 of the Act. He submitted that the assessee firm was constituted to carry on the business of running a guest house. However, since the permission for the same could not be obtained, the property was let out. He submitted that the partnership firm itself was constituted to carry on the activity of letting out the properties. He submitted that the decision rendered by Hon'ble Supreme Court in the case of Chennai Properties & Investments Ltd. 373 ITR 673 and Rayala Corporation Pvt. Ltd. 386 ITR 500 would support the case of the assessee. He submitted that the decision rendered by Hon'ble Supreme Court in the case of Raj Dadarkar & Associates (supra) is distinguishable on facts.

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6. The Ld. A.R. submitted that the DDs have been taken for incurring the expenses relating to business activities of the assessee. The Ld. A.R. submitted that the assessee did not get proper opportunity to present all facts before the tax authorities. Accordingly, he prayed that these matters may be restored to the file of the A.O. for examining it afresh.

7. On the contrary, the Ld. D.R. submitted that the Ld. CIT(A) has taken a conscious view after considering the facts available on record and hence his order does not call for any interference. He relied on the decision rendered by the coordinate bench in the case of Rao Computers Consultants P Ltd (ITA No. 303 & 304/Bang/2017 dated 13-04-2017).

8. Having heard the rival submissions, we are of the view that there is merit in the contentions of the Ld. A.R. We notice that the impugned assessment order has been passed to the best of his judgment u/s 144 of the Act, meaning thereby, the facts relating to various issues were not brought to the notice of the A.O. We notice that the assessee has furnished Profit and loss account and Balance Sheet along with the return of income, but the AO has proceeded to compute total income on the basis of Form 26AS, AIR information and CIB information. Thus, we notice that the AO has not referred to the return of income filed by the assessee. We notice that the Ld. CIT(A) has dismissed the plea of carrying on the business by the assessee on the basis of submissions made before him. It is the plea of the Ld. A.R. that the demand drafts were purchased for incurring expenses in connection with the business carried on by the assessee and these expenses have been duly accounted for

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in the books of accounts. This contention of the assessee could be appreciated only if the books of accounts are examined. It is also the plea of the Ld. A.R. that the decision of the Hon'ble Supreme Court relied on by Ld. CIT(A) is distinguishable on facts.

9. From these discussions, we are of the view that the entire additions have been made without examining the facts relating to the issues properly. Accordingly, in the interest of natural justice, we are of the view that the assessee should be provided with an opportunity to present all facts before the A.O. Accordingly, we set aside the order passed by Ld. CIT(A) with regard to the above said two issues and restore them to the file of the A.O. for examining them afresh.

10. The A.O. shall provide adequate opportunity of being heard to the assessee and may take appropriate decision in accordance with law. The assessee is also directed to extend cooperation to the A.O. by furnishing all the information and explanations relating to the issues.

11. In the result, the appeal filed by the assessee is treated as partly allowed for statistical purposes.

Order pronounced in the open court on 22nd Nov, 2021.

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 22nd Nov, 2021.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.