

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri Chandra Poojari, AM & Smt.Beena Pillai, JM

ITA No.1206/Bang/2016 : Asst.Year 2008-2009

Smt.Jyoti Raghuram Desai C/o.Dr.G.V.Sambrani Sambrani Building, Court Road Kalaburagi – 585 101 PAN : AILPD1569J.	v.	The Assistant Commissioner of Income-tax, Circle (1) Kalaburagi.
(Appellant)		(Respondent)

Appellant by : Sri.Shree Hari Kutsa, Advocate
Respondent by : Sri.Priyadarshi Mishra, Addl.CIT-DR

Date of Hearing : 08.02.2022	Date of Pronouncement : 08.02.2022
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ORDER

Per Chandra Poojari, AM :

This appeal by the assessee is directed against the order of the CIT(A), Gulbarga, dated 30.03.2016, and it relates to assessment year 2008-2009.

2. The grounds raised by the assessee read as follows:-

"1. The Order of the learned Commissioner of Income-tax Appeals, passed under section 250 of the Act in so far as it is against the Appellant is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.

2. The Appellant denies himself liable to be assessed at a total income as determined by the learned AO as against the total income declared in the return of income on the facts and circumstances of the case.

The Appellant wishes to raise certain grounds of appeal for the first time before this Hon'ble Tribunal. It is submitted that these grounds of appeal are concerning the claim for certain expenditures made in the return of income by the Appellant, but rejected by the Assessing Officer during the scrutiny assessment, but not challenged during the first appeal before the learned CIT(A). It is submitted that it is absolutely within

the discretion of this Hon'ble Tribunal to admit it and within the rights of the Appellant to raise these grounds for the first time before this Hon'ble Tribunal. Reliance is placed on the decisions of the Hon'ble Supreme Court in the matter of CIT v. Mahalakshmi Textile Mills Limited reported in 66 ITR 710 (SC) and Hukumchand Mills Limited v. CIT reported in 63 ITR 232 (SC). Reliance is also placed on the decision of the Bombay High Court in the matter of Beharilal Ramcharan Cotton Mills Ltd., v. CIT reported in 62 ITR 212.

3. *The learned Assessing Officer is not justified in denying the claim of the Appellant towards the indexed cost of improvement of Rs.10,85,466/- on the facts and circumstances of the case.*

4. *The learned Assessing Officer is not justified in denying the claim of the Appellant towards the renovation works carried out by her to the extent of Rs.11,93,563/-- on the facts and circumstances of the case.*

5. *Without prejudice to the right to seek waiver with the Hon'ble Chief Commissioner of Income Tax, the Appellant Company denies itself liable to be charged to interest under sections 234A, 234B& 234C of the Act which under the facts and circumstances of the case deserves to be cancelled. The calculation of interest under sections 234A, 234B& 234C is not in accordance with law as the rate, amount and method for calculating interest is not discernible from the order of assessment.*

6. *The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.*

7. *In the view of the above and other grounds that may 'be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity."*

3. The assessee has also raised additional grounds, which read as follows:-

"The Appellant wishes to raise certain grounds of appeal for the first time before this Hon'ble Tribunal. It is submitted that these grounds of appeal are concerning the claim for certain expenditures made in the return of income by the Appellant and rejected by the Assessing Officer during the scrutiny assessment, but not challenged during the first appeal before the learned CIT(A). It is submitted that it is absolutely within the discretion of this Hon'ble Tribunal to admit it and within the rights of the Appellant to raise these grounds for the first time before this Hon'ble Tribunal. Reliance is placed on the decisions of the Hon'ble Supreme Court in the matter of CIT v. Mahalakshmi Textile Mills Limited reported in 66 ITR 710 (SC) and Hukumchand Mills Limited v. CIT reported in 63 ITR 232 (SC). Reliance is also placed on the decision of the Bombay

High Court in the matter of Beharilal Ramcharan Cotton Mills Ltd., v. CIT reported in 62 ITR 212.

1. *The learned Assessing Officer is not justified in denying the claim of the Appellant towards the indexed cost of improvement of Rs.10,85,466/- on the facts and circumstances of the case.*

2. *The learned Assessing Officer is not justified in denying the claim of the Appellant towards the renovation works carried out by her to the extent of Rs.11,93,563/- on the facts and circumstances of the case.*

3. *Without prejudice to the right to seek waiver with the Hon'ble Chief Commissioner of Income Tax, the Appellant Company denies itself liable to be charged to interest under sections 234A, 234B & 234C of the Act which under the facts and circumstances of the case deserves to be cancelled. The calculation of interest under sections 234A, 234B & 234C is not in accordance with law as the rate, amount and method for calculating interest is not discernible from the order of assessment.*

4. *The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.*

5. *In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity."*

4. At the time of hearing before us, the learned AR submitted that the main ground and additional ground emanate from the orders of the lower authorities. On the earlier occasion, the assessee raised this ground, however, the Bench directed the assessee to file additional ground as the main ground not emanated from the order of the CIT(A). According to the learned AR, there was no need of investigation of any fresh facts other than on record so as to adjudicate this additional grounds as these grounds are very much arise from the assessment order. Thus, the learned AR prayed for admission of the additional grounds for adjudication in the interest of justice and equity.

5. We have heard rival submissions and perused the material on record. With regard to the additional grounds, in our opinion, the same are emanate from the order of the A.O. wherein it was categorically mentioned in para 7 that the assessee has claimed indexed cost of improvement to the extent of Rs.10,85,466 while calculating the capital gain. However, the A.O. failed to grant any cost of acquisition on this count. Before the CIT(A) the assessee failed to raise this issue, hence, in our opinion, it is necessary to adjudicate this ground. Accordingly, we admit the additional grounds by placing reliance on the judgment of the Hon'ble Supreme Court in the case of *National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383 (SC)* . In our opinion, in all fairness, the additional grounds has to go back to the A.O. to decide the same in the light of the material available on record. With these observations, we remit the main grounds as well as the additional grounds to the files of the A.O. for fresh consideration, after giving a reasonable opportunity of being heard to the assessee.

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

Order pronounced on this 08th day of February, 2022.

Sd/-
(Beena Pillai)
JUDICIAL MEMBER

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Bangalore; Dated : 08th February, 2022.
Devadas G*

Copy to :

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

Asst.Registrar/ITAT, Bangalore