

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

Before Shri George George K, JM & Ms.Padmavathy S, AM

ITA No.560/Bang/2022 : Asst.Year 2017-2018

Sri.Ranganathagiri Contractor, Baballi Village & Post Bhadravathi – 577 301 Shimoga District, Karnataka PAN : AFHPR8426D.	v.	The Assistant Director of Income-tax, Circle-, Shimoga.
(Appellant)		(Respondent)

Appellant by : Ms.Sunaina Bhatia, Advocate
Respondent by : Smt.Priyadarshini Baseganni, Addl.CIT-DR

Date of Hearing : 25.08.2022	Date of Pronouncement : 25.08.2022
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 30.06.2022. The relevant assessment year is 2017-2018.

2. The grounds raised read as follows:-

“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT[A] is not justified in disposing off the appeal filed without giving sufficient and effective opportunity to the appellant and therefore, the order passed by the learned CIT[A] deserves to be vacated.

3. Without prejudice to the above, the learned CIT[A] is not justified in upholding the addition made of Rs.44,61,544/- based on Form 26AS under the facts and in the circumstances of the appellant's case.

4. Without prejudice to the above, the learned CIT[A] is not justified in upholding the disallowance of Rs.1,91,31,614/- being. the operation expenses under various heads without any cogent evidence on records under the facts and in the circumstances of the appellant's case.

5. Without prejudice to the above, the learned CIT[A] is not justified in upholding the disallowance u/s.43B to the extent of Rs.1,27,136/- under the facts and in the circumstances of the appellant's case. He failed to appreciate that the appellant had made the payment thereof within the time u/s.43B of the Act and consequently, no disallowance is called for.

6. Without prejudice to the above, the learned CIT[A] is not justified in upholding the addition of Rs.63,46,000/- as Bogus Credits under the facts and in the circumstances of the appellant's case. He failed to appreciate that the appellant was regularly borrowing- and repaying the same with the lenders and no addition or disallowance was made in the earlier years and consequently, the addition made for the year under appeal requires to be deleted.

7. Without prejudice to the above, the learned CIT[A] is not justified in upholding the addition of Rs.25,03,000/- being the advance shown in the name of Executive Engineer-Project Division, Chlk-16 under the facts and in the circumstances of the appellant's case. He failed to appreciate that the aforesaid sum formed part of the total contract receipt and represented as receivable under the head sundry debtors and as such taxing it again would amount to double taxing the same income.

8. The learned CIT[A] is not justified in upholding the addition of Rs.18,24,484/- made u/s.68 of the Act, in as much as the same constituted agricultural income of the appellant and is outside the scope of the total income under the facts and in the circumstances of the appellant's case.

9. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234-B and 234-D of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

10. For the above and other- grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the

appeal and also order for the refund of the institution fees as part of the costs.

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

The assessee an individual is a civil contractor. The assessee is also partner in Bhavani Constructions. For the assessment year 2017-2018, the return of income was filed on 07.11.2017 declaring total income of Rs.1,53,04,930. The assessment was completed u/s 143(3) of the I.T.Act vide order dated 09.10.2018. The Assessing Officer made an addition of Rs.3,44,01,780 on account of undisclosed contract receipts as per 26AS, bogus credits and bogus advances. Further, the addition was also made on the ground of disallowance of expenses in the absence of bill and vouchers and disallowance on account of statutory liability.

4. Aggrieved by the assessment completed u/s 143(1) of the I.T.Act, the assessee preferred appeal before the first appellate authority. The CIT(A) rejected the appeal of the assessee primarily for the reason that the assessee was not complying with the notices issued for filing written submissions. The CIT(A) further noticed that the assessee was not complying with the notices issued u/s 142(1) of the I.T.Act, by the A.O.

5. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The learned AR submitted that the CIT(A) is not correct in stating that there is no response to the notices issued dated 02.06.2022. It was submitted that the assessee had filed an adjournment application seeking time to upload the written submissions

electronically (seeking time by 4 weeks). However, the same was not noticed and the CIT(A) passed the impugned order on 30.06.2022. Copy of the acknowledgement and the letter seeking the adjournment, is placed on record.

6. The learned Departmental Representative submitted that the assessee has been habitually not complying with the various notices issued by the AO and also by the CIT(A), and therefore, the additions made by the AO may be sustained by the Tribunal.

7. We have heard rival submissions and perused the material on record. We notice that the assessee was not complying with various notices u/s 142(1) of the I.T.Act, issued by the A.O. Only for the notice issued during the course assessment proceedings on 10.09.2019, the assessee had electronically uploaded part of the details called for. Further, during the course of appellate proceedings also, there was no response nor written submissions filed. The assessee had produced the adjournment application dated 09.06.2022 (seeking time by four weeks for electronically uploading the written submissions). However, the same was not noted by the CIT(A) and the impugned order was passed on 30.06.2022. We strongly deprecated the practice of the assessee for not cooperating with the Revenue and furnishing the necessary evidences / written submissions. However, in the interest of justice and equity, we are of the view that one more opportunity should be granted to the assessee to

furnish the relevant documents / written submission in support of his case. For the aforesaid purpose, the matter is restored to the files of the A.O. The assessee shall cooperate with the Revenue and shall furnish the necessary details / written submission in support of his case. The A.O. shall afford a reasonable opportunity to the assessee to furnish the necessary evidence and the written submissions. It is ordered accordingly.

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

Order pronounced on this 25th day of August, 2022.

Sd/-
(Padmavathy S)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 25th August, 2022.
Devadas G*

Copy to :

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

Asst.Registrar/ITAT, Bangalore