

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BANGALORE**

**BEFORE SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER
and
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA No.954/Bang/2015
(Assessment year: 2008-09)

Asst. Commissioner of Income-tax,
Circle 1,
Shivamogga. ... Appellant

Vs.

H .Omkarappa,
Prop. M/s. N.R.Halagappa & Sons
No.3, 'A' Block, APMC Yard,
Shivamogga. ... Respondent
PA No.AABHH 1124 B

Appellant by : Shri Sunil Kumar Agarwala,JCIT(DR)
Respondent by : Shri V.Srinivasan, Advocate.

Date of hearing : 21/06/2016
Date of pronouncement : 30/06/2016

ORDER

Per INTURI RAMA RAO, AM :

This is an appeal filed by the revenue directed against the order of the CIT(A) Davangere, dated 21/4/2015.

2. The revenue raised the following common grounds:

1. *"The order of the learned Commissioner of Income Tax(Appeals), Davangere, is opposed to the law and not on the facts and circumstances of the case.*

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2. *The Commissioner of Income Tax(Appeals), Davangere, erred in directing re-computation of the income by applying gross profit at 8% on the said quantum of suppression of sales to the extent of Rs.2,23,48,550/- determined, when the assessee has not produced any evidence to show that expenses were incurred for suppressed production.*
3. *The Commissioner of Income Tax(Appeals), Davangere, erred in deleting the disallowances made u/s.40(a)(ia) of the I T Act,1961 by ignoring the fact that the TDS has been deducted and remitted in the government account only after the end of the relevant financial year.*
4. *For these reasons the order of the CIT(A) may be reversed and that of the AO may be restored.*
5. *For these and other grounds that may be urged upon, the order of the CIT(A) may be reversed and that assessment order be restored.*
6. *The appellant craves leave to add, alter, amend or delete any other grounds on or before hearing of the appeal."*

3. Briefly, facts of the case are that the respondent-assessee is a HUF and is engaged in the business of trading in arecanut in the name and style of M/s.N.R.Halagappa & Sons, Shivamogga. Return of income for the assessment year 2008-09 was filed disclosing loss of Rs.6,65,534/-. After processing the return of income under the provisions of sec.143(1) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short], the case was selected for scrutiny and the assessment was completed us 143(3) vide order dated 31/12/2010 at a total income of Rs.3,15,59,735/- after making the following disallowances:

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- i) Disallowance of commission u/s 40(a)(ia) ... Rs.35,19,920/-
- ii) Disallowance of interest u/s 40(a)(ia) ... Rs.56,59,536/-

4. Being aggrieved, an appeal was preferred before the CIT(A) who, vide impugned order, held that unexplained deposits are relatable to unaccounted sales and directed that only GP addition of 8% of the total turnover of Rs.2,23,40,550/- should be made following the following decision:

- i. *CIT vs. President Industries* (258 ITR 654)(Guj.
- ii. *CIT vs. S.M.Omar* (201 ITR 608)
- iii. *Anis Ahmed & Sons vs. CIT(A)* (297 ITR 441)(SC) and
- iv. *ITO vs. Gurubachan Singh Juneja* (216 ITR 99)(ITAT, Ahm.) (216 ITR 99)

As regards the disallowance of commission and interest u/s 40(a)(ia) of the Act, the additions were deleted by the CIT(A) by observing that tax deducted or remitted to the Government of India before due date for filing return of income.

5. Being aggrieved by this order, revenue has filed the present appeal before us.

6. After hearing the rival submissions and perusing material on record, we observed that the CIT(A) had not referred to any material to come to conclusion that deposits were made out of sale proceeds outside books of account. The CIT(A) also not referred to any material came to conclusion that TDS on commission was remitted to Government of India within due date for filing of return of income. Hence, in our considered opinion, it is a fit case to remit the case back to the file of the AO for fresh

adjudication in accordance with law after giving due opportunity to the assessee.

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

Order pronounced in the open court on 30th June, 2016

sd/-
(ASHA VIJAYARAGHAVAN)
JUDICIAL MEMBER

Place : Bangalore
D a t e d : 30/06/2016

sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

srinivasulu, sps

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore