

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

BEFORE SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER
AND SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

ITA No.755/Bang/2015
Assessment year : 2009-10

Shri C. Raju Gowda, Deepam Constructions, # 18/A, Kantoor Road, Alanahalli Extn., Mysore. PAN: AEJPG 8163P	Vs.	The Assistant Commissioner of Income Tax, Circle 1(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri S. Venkatesan, CA
Respondent by	:	Shri Sunil Kumar Agarwala, Jt. CIT(DR)

Date of hearing	:	15.10.2015
Date of Pronouncement	:	28.10.2015

ORDER

Per Asha Vijayaraghavan, Judicial Member

This appeal by the assessee is directed against the order dated 10.02.2015 of the CIT(Appeals), Mysuru for the assessment year 2009-10.

2. As against the returned Income of Rs. 51,88,757/- for the assessment year under appeal, the assessee has been assessed on a total

income of Rs.70,00,870 by the order passed u/s 143[3] of the Act dated 28/12/2011.

3. Aggrieved by the order of assessment as aforesaid, the assessee preferred appeal before the CIT(Appeals).

4. The assessee submitted before the CIT(A) that the assessee maintains regular books of accounts and these books of accounts are audited u/s.44AB of the Act and the Auditor has certified the accounts without any qualifications. It was further submitted that the case was taken up for scrutiny and the Assessing Officer disallowed a sum of Rs.17,66,500 debited in the books of accounts as incentives for effective sales and these are all supported by vouchers and the expenses incurred in making payments to the employees of the customers, who purchase goods from the assessee. It was submitted that the genuineness of the payments are not in dispute and the vouchers as in the line of this business are obtained in support of these expenses. Further, these are not prohibited by law, as none of the customers are Government organizations and they are all individuals and firms and the payments are made to the employees so that the assessee gets the orders for purchase and timely payments, which are essential for the business. It was once again stated that the books of accounts have not been rejected and there is no justification in holding that these payments are hit by the explanation to section 37[1] of the Act. It was

submitted that these expenses are incurred wholly and exclusively for the business and it was prayed that the same may be allowed.

5. The Id. CIT(Appeals) sustained 25% of the disallowance with respect to a sum of Rs.17,66,500 made by the AO towards incentive on sales. Aggrieved, the assessee has raised ground Nos. 2 & 2.1 before us as follows:-

“2. The Learned CIT[A] is not justified in sustaining 25% of the disallowance of a sum of Rs.17,66,500/- made by the Learned A.O. instead of deleting the same in entirety being the incentives paid to the employees of the customers for securing the orders and timely payment and is incurred wholly and exclusively for the purposes of the business of the appellant and the same therefore required to be allowed in full.

2.1 The learned CIT[A] failed to appreciate that the payments are supported by vouchers as are in vogue in the Line of business and the genuineness of the books of accounts are not doubted and are audited and the learned A.O. disallowed them mainly on the ground that they were hit by the explanation of section 37[1] of the Act, which was not upheld by the Learned CIT[A].”

6. Before us, the Id. counsel for the assessee argued that the entire amount of Rs.17,66,500 is towards incentives paid towards employees of customers for securing orders and for timely payment and since it is incurred wholly and exclusively for the purpose of business of the assessee, it has to be allowed in full. The Id. counsel also argued that the payments were supported by vouchers and since the assessee was audited u/s. 44AB and genuineness of the books of accounts were not

doubted, expenses are not hit by Explanation to section 37 of the Act since none of the customers are Government organizations and are merely private individuals carrying on business. The Id. counsel for the assessee also stated that no disallowance was made in the earlier years.

7. The Id. DR supported the order of the CIT(Appeals).

8. We have heard both the parties. The CIT(Appeals) has, however, held that the assessee could not establish the payee's details and restricted the addition to 25% of the disallowance made by the AO. Since while making adhoc disallowance in the absence of vouchers, as held in the case of *M/s. Transport Corporation of India Ltd. in ITA No.19/Hyd/2009 dated 25.01.2012*, disallowance to the extent of 15% is reasonable. We therefore restrict the disallowance to 15% instead of 25% sustained by the CIT(Appeals).

9. With respect to the next issue regarding disallowance of interest paid to the bank in respect of the loan borrowed for construction of the existing house, before the CIT(Appeals), the Id. AR further contended that the assessee owned a house and has constructed the first floor for his own use. His capital at the beginning of the year is Rs.48,69,503 and the capital at the end of the year viz., 31/03/2009 is Rs.86,08,779. It was submitted that the assessee could not withdraw funds for his own constructions as that would affect his business, therefore, he borrowed monies for the construction of the house. Further, the assessee mortgaged the existing property and obtained the funds inasmuch as, by withdrawing the funds

from his own business for construction, his capital will be eroded and will not be sufficient for carrying on the business smoothly. It was submitted that the assessee has not overdrawn the capital and the capital still continues to be to the credit of the assessee in his personal books and the interest payable to bank, was claimed as a deduction under the head 'House Property' and the A.O. disallowed it on the ground that the construction was not completed during the previous year 31/03/2009. It was submitted so long as the construction is completed within 3 years, there is no justification for making the disallowance of the interest paid during the year and it is not necessary that the construction should be completed in the very year in which loan is availed. It was submitted that the assessee completed construction within 3 years and therefore, he argued that the interest paid requires to be allowed.

10. The Id. CIT(Appeals) agreed with the AO on this issue that interest is not allowable since the construction is not completed and further held that the same is to be capitalised, confirming the addition made by the AO.

11. Aggrieved, the assessee is in appeal before us raising ground Nos. 3 and 3.1 reads as follows:-

“3. The Learned CIT[A] is not justified in sustaining the disallowance of the interest paid to the bank in respect of the Loan borrowed for making construction of the first floor of the existing house used for residence in respect of which even the construction was constructed within 3 years from availing the loan under the facts and circumstances of the appellant's case.

3.1 The Learned CIT[A] has failed to appreciate that to avoid the withdrawal of funds from business the appellant had mortgaged the property to secure the Loans so borrowed and therefore, the same is allowable as a deduction against the total income, as it has nothing to do with the completion of the first floor of the residential house within 3 years and therefore, the interest required to be allowed in full in the year of incurrence.”

12. The assessee submitted before us that the assessee owned a house and has constructed the first floor for his own use. He could not withdraw funds for his construction since that would affect his business and hence, borrowed monies. Hence, it is like withdrawing the funds from his own business. If the construction is completed within three years, there is no justification for making disallowance of interest. It was submitted that it is not necessary that construction should be completed in the very year in which the loan is availed.

13. On the other hand, the Id. DR supported the order of CIT(Appeals).

14. We have heard both the parties. There is some merit in the argument of the assessee that if the construction is completed within 3 years, there is no justification for making the disallowance of interest paid during the year and also it is not necessary that the construction should be completed in the very year in which the loan is availed. The assessee has completed the construction within 3 years and hence section 24(b) becomes relevant, which is reproduced below:-

“Deductions from income from house property.

24. Income chargeable under the head "Income from house property" shall be computed after making the following deductions, namely:—

(a) a sum equal to thirty per cent of the annual value;

(b) where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital:

Provided that in respect of property referred to in sub-section (2) of section 23, the amount of deduction shall not exceed thirty thousand rupees :

Provided further that where the property referred to in the first proviso is acquired or constructed with capital borrowed on or after the 1st day of April, 1999 and such acquisition or construction is completed within three years from the end of the financial year in which capital was borrowed, the amount of deduction under this clause shall not exceed *one lakh fifty thousand rupees..*

Explanation.—Where the property has been acquired or constructed with borrowed capital, the interest, if any, payable on such capital borrowed for the period prior to the previous year in which the property has been acquired or constructed, as reduced by any part thereof allowed as deduction under any other provision of this Act, shall be deducted under this clause in equal instalments for the said previous year and for each of the four immediately succeeding previous years:”

15. We therefore direct the Assessing Officer to examine the issue in accordance with the provisions of Explanation to section 24(b) of the Act and allow appropriate interest eligible to the assessee and redo the assessment *de novo* in accordance with the law.

16. In the result, the appeal is partly allowed for statistical purposes.

Pronounced in the open court on this 28th day of October, 2015.

Sd/-

(ABRAHAM P. GEORGE)
Accountant Member

Sd/-

(ASHA VIJAYARAGHAVAN)
Judicial Member

Bangalore,
Dated, the 28th October, 2015.
/D S/

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.