

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

**BEFORE SHRI INTURI RAMA RAO ACCOUNTANT MEMBER  
SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA No.1419 & 1420/Bang/2015  
(Asst. Year 2010-11 & 2011-12)

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

Vs.

Sri Vadivelu Arunkumar,  
Contractor, T.K Road,  
Madhavanagar, Bhadravathi. . Respondent

CO No.26 & 27/Bang/2016

Sri Vadivelu Arunkumar,  
Contractor, T.K Road,  
Madhavanagar, Bhadravathi. . Appellant

Vs.

The Asst. Commissioner of Income-tax,  
Circle-1, Shivamogga. . Respondent

Revenue by : Shri G Kamaladar, Standing Counsel

Assessee by : Shri C.R Nulvi, C.A

Date of Hearing : 19-4-2017  
Date of Pronouncement : 26-4-2017

## **ORDER**

### **PER BENCH :**

The present appeals bearing ITA Nos.1419 & 1420/Bang/2015 by the Revenue and Cross-objections bearing CO Nos.26 & 29/Bang/2016 by the assessee are directed against the order passed by the Commissioner of Income-tax (Appeals), Davangere dated 31<sup>st</sup> Aug, 2015 for the assessment year 2010-11 and 2011-12.

2. The Revenue has raised the following grounds of appeal:

### **ITA No.1419/Bang/2015**

1. The order of the Commissioner of Income Tax(Appeals), Davangere, is opposed to the law and not on the facts and circumstances of the case.
2. The CIT(A) erred in allowing Relief on unproved sundry creditors without proving the genuineness of creditors based submissions made by the assessee.

3. The CIT(A) has restricted the addition to Rs.20,00,000 and given relief of Rs.19,23,604/- without any evidence. It is only an estimate.

4. CIT(A) is erred in allowing investment made outside the books amounting to Rs.1,58,915/- during the F.Y.2009-10. The assessee's contention that this investment is recorded during the F.Y.2008-09 has no relevance since amount is paid in cash during the F.Y.2009-10 and same is not reflected in the cash book.

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.

**ITA No.1420/Bang/2015**

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

2. *The CIT(A) erred in allowing Relief on unproved sundry creditors without proving the genuineness of creditors based submissions made by the assessee.*

3. *The CIT(A) has restricted the addition to Rs.13,19,00/- and given relief of Rs.62,86,900/ - without any evidence. It is only an estimate.*

4. *The CIT(A) has erred in allowing vehicle maintenance expenditure of Rs.2,50,000/ - at the end of the F.Y. without proper bills. The expenditure is allowed based on assumption.*

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. The brief facts of the case are that the assessee filed return of income on 30/9/2010 declaring a total income of Rs.47,63,290/- for the asst. year 2010-11 and Rs.45,78,920/- for the asst. year 2011-12. The case of the assessee was selected for scrutiny assessment and thereafter the notice was issued to the assessee. In response thereof, the assessee appeared on various dates. As the details were not forthcoming, the assessee was summoned u/s 131 of the IT Act and the statement of the assessee was recorded. The assessee, a civil contractor has shown a gross receipts of Rs.12,93,11,342/- and a net profit of Rs.50,12,647/- for the asst. year 2010-11 and has shown the gross contract receipt of Rs.13,19,20,367/- and net profit of Rs.48,05,280/- in the return of income filed by the assessee. The assessee has worked as a subcontractor for the following persons:-

1. Shri Prasad Reddy V.B, Bangalore
2. BSRIIL, Bangalore
3. GVPR Engineers Ltd., Hyderabad

4. Swathi Constructions, Bangalore

5. KHB

4. On scrutiny of the books of account, bank account and ledger account the following discrepancies were noticed by the AO:-

Sl. No.	Name	discrepancies	Remarks (difference)
1	Ravi	Amount paid Rs.1,27,000/- on 4.10.2010 by ch No.3264 not accounted in ledger account	Rs.1,27,000/-
2	Yogendrababu	3 payments made Rs.2,00,000/- Rs.3,00,000/- and Rs.1,00,000/- on 11.5.2009, 13.6.2009, and 7.7.2009 respectively were not accounted in ledger account	Rs.6,00,000/-
3	Ramachandraju	Though the assessee claims that he is the supplier of material, from the	-

		account extract the material supplied is very less. But transfer of funds can be seen.	
4	Shivaprasad	Cash payments made 15,000/- each on 05.12.2009, 7.12.2009, 8.12.2009 and 9.12.2009 respectively totaling to Rs.60,000/- could not find place in 2010-11 ledger accounts.	Rs.60,000/-
5	Shivakumar	There is a difference of Rs.39,141/- as verified from the PAN number given (Rs.3,71,646/- less Rs.4,10,787/-)	39,141/-
6	Hanumanthappa	Amount paid by ch. No.564998 Rs.2,50,000/- not accounted in 2010-11 ledger accounts.	2,50,000/-
7	Gangadhar K	In the statements produced during 2009-10 scrutiny proceedings 34 entries of cash payments for the period 14.7.2009 to 30.12.2009 (all below 20,000/-) totaling to Rs.6,31,167/- were seen whereas in the ledger extract produced during the present scrutiny one cheque payment dated 15.02.2010 amounting to Rs.7,50,000/- is seen. Also cheque payment made on 19.3.2010 (N0.7053) amounting to Rs.1,28,450/- is not accounted in present ledger produced.	Rs.7,59,617/-

5. After noticing the above, the show cause letter was sent to the assessee on 19/2/2013 and asked to explain why Rs.1,19,97,482/- should not be disallowed treating the expenses not being incurred by the assessee for the purposes of the business. The assessee submitted his reply and after considering the reply, the AO had disallowed an amount of Rs.57,58,792/- against the sundry creditors and had also disallowed an amount of

Rs.39,23,604/- towards the labour expenses. The AO in paragraph 4.8 and 5.4 has held as under:-

*“4.8 The reply filed by the assessee is considered but not acceptable. On verification of pass book and cash book it is seen that most of the payments are made in self cheques. It is true that without supply of required quantity/quality of materials the work would not have been executed. Further, the assessee has not filed confirmation letters in any one of the cases. Discrepancies observed were not explained properly. Therefore, considering the specific nature of business of the assessee and considering the fact materials are required to execute the contract works, out of total creditors of Rs. 4,79,89,931/-, about 12% of the same is considered as excess and not genuine and hence Rs.57,58,792/- is disallowed and added to the total income.*

*5.4 The reply filed by the assessee is considered. As per KVAT rules 25% of the contract receipts are to be considered as labour expenses when books of account are not maintained. Here, though labour register is*

*maintained , the assessee has not furnished any proof for payments made to labourers. Considering the increase in labour charges, 30% of the contract receipts is considered as adequate for labour expenses. Hence 8% of the total contract receipts amounting to Rs.39,23,604/- is considered as excess and brought to tax.”*

6. The AO has also disallowed an amount of Rs.1,58,915/- on account of property purchased and not shown in the cash book. Similarly the AO has also disallowed the expenses for the asst. year 2011-12 towards sundry creditors Rs.34,33,155/-, labour expenses Rs.76,05,900/- and disallowed Rs.1,44,000/- and vehicle repair of Rs.2,50,000/-. Similar are the facts for subsequent year also.

7. Feeling aggrieved by the order passed by the AO, the assessee filed an appeal before the CIT(A). The CIT(A) has granted substantial relief to the assessee and the Revenue is in appeal against the substantial relief granted to the assessee and the assessee is in Cross-objection for the relief not granted by the CIT(A) for the remaining amount.

8. The Id counsel for the Revenue has submitted as under:-

*The appellant is a sub-contractor for M/s.J.V.P.R. Engineers Limited, Shri Prasad Reddy, BSRIL, Swati Constructions and contractor for Karnataka Housing Board. Return of income was filed on 30.09.2010 declaring total income of Rs.47,63,290/-. Assessed u/s.143(3) on 26.03 .2013 determining total income of Rs. 1,48,07,477/-. Ld. CIT(A) vide order dated 3 1.08.2015 has given part relief against which the Department is in appeal before Hon'ble ITAT. Issues involved under various heads and submission against the same follows for kind consideration:*

**(i) Sundry Creditors**

*Balance Sheet reflects Sundry Creditors amounting to Rs.4,79,89,931 which includes 36 heads. The assessee failed to provide address, PAN or contact number of any of the 36 sundry creditors. Neither was he able to produce any confirmation or documentary evidences before the Assessing Officer in order to substantiate his claim of genuineness. On verification of the ledger extracts along with the bank account and other books of accounts, certain discrepancies were noted which are detailed in para 4.5 of*

*the assessment order. After giving due opportunity to the assessee through show cause letter dated 19.02.2013 and rebutting his objections, an amount of Rs.57,58,792/- was disallowed, being 12% of 4,79,89,931/-.*

*The explanation given by the assessee before Ld.CIT(A) against para 4.5 of the assessment order appears to be a contradicting one against which no remand report had been called for from the Assessing Officer.*

*It is only on the basis of submission made by the assessee, without any supporting documentary evidences that relief of Rs.47,58,792/- has been allowed by the Ld.CIT(A).*

***(ii) Labour Charges***

*An amount of Rs.4,90,45,056/- was found debited in the Profit & Loss account against Labour Charges which is 38% of the total contract receipt during the year. It is observed by the Assessing Officer that though a Labour Register has been maintained, payments are not supported by proper bills and vouchers. Based on assessee's own admission on applicability of KVAT Rules for the previous assessment year a show cause notice dated 19.02.2013 was issued to the assessee proposing to disallow 13% of Labour*

*charges claimed. But taking into consideration the submission made by the assessee an amount of Rs.39,23,604/- only, being 8% of 4,90,45,056/-, had been disallowed by the Assessing Officer.*

*Here again relief of Rs.19,23,604/- has been allowed by the Ld.CIT(A) on estimated basis without any supporting documentary evidences.*

**(iii) Property purchase in cash not reflected in cash book**

*Cash payment during the year under consideration amounting to Rs.1,58,915/-, towards purchase of property, not reflected in the books of accounts (Cash Book) was added back. Assessee's contention that the amount of Rs.1,58,915/- has been paid out of gift received from his mother, do not explain the reason why the transaction has not been routed through books of accounts. His submission made before Ld.CIT(A) that gift of Rs.1,58,915/received from his mother has been duly reflected in the Capital account for A.Y. 2008-09 (A.Y. 2009-10) is also far from truth. A copy of his Balance Sheet for the year ending 31.03.2009 showing the detail of Capital account in Schedule I is enclosed.*

*Therefore, it is prayed that addition made on account*

*of investment which is not routed through the books of accounts be confirmed.*

*In view of the above facts and circumstances, it is humbly prayed that the above deletions made by the Ld.CIT(A) be reversed and that of the Assessing Officer be restored.*

9. Our attention was drawn to following paragraphs of CIT(A) order at page No.9 and also Page No.11:-

**Page 9:** *“From the above, explanation, I find that none of the discrepancies as noticed by the AO is valid. The AR has also brought to my notice, the ledger extract of sundry Creditors bears the confirmation from the Sundry Creditors on the ledger extract. Considering the totality of fact and also of the fact that, the payments have been made in the subsequent year partly by cash, I am of the view that it would meet the end of justice if the addition is sustained to the extent of Rs. 10 lakhs on account of unproved credits. In other words, addition to the*

*extent of Rs.47,58,792/- is directed to be deleted. The assessee gets relief to this extent. The ground therefore stands partly allowed.”*

**Page 11** *“I have gone through the contents of the assessment order and the written submission made before me. I find that the assessee has maintained self made vouchers which are duly signed by the recipients of the payments. It is true that the KVAT Rules 3(2) (m) are applicable only to cases where books of accounts are not maintained. In the appellant's case, books of accounts are maintained and the same are duly audited u/s 44AB of Income Tax Act, 1961. During the course of appellate proceedings, the AIR of the appellant submitted a few labour payment vouchers which are self made ones and in each voucher, number of man days employed in respect of skilled and unskilled labour and rate per day for each category of labour are mentioned. After verifying the sample vouchers submitted before me, I come to the conclusion that the labour charges amounting to Rs.20,00,000/- can reasonably be held as excessive and unreasonable, and accordingly addition to the extent of Rs.20,00,000/- is sustained.*

*Hence, the addition to the extent of Rs. 19,23,604/- is directed to be deleted. Hence, this ground of appeal is partly allowed.”*

10. It is submitted that the Id CIT(A) has allowed the claim of the assessee on the basis of the new material submitted before the CIT(A) and the CIT(A) has not granted any opportunity to the AO by way of submitting the remand report and, therefore, the proceedings before the CIT(A) are bad in law.

11. On the other hand, the Id AR for the assessee has submitted that the CIT(A) has passed the order on the material available with him and on the basis of written submissions filed by the assessee during the course of hearing. He has also submitted that the order passed by the CIT(A) is in accordance with law.

12. We have heard the rival contentions and perused the documents filed by the assessee during the course of hearing. The order reproduced herein above clearly shows that the CIT(A) allowing the claim of the

assessee in respect of the sundry creditors and also in respect of labour charges relied upon the confirmation from the sundry creditors and also relying upon the fact that the payments have been made in the subsequent year partly by cash. In respect of the labour charges CIT(A) has relied upon the self made vouchers and thereafter the CIT(A) has granted substantial relief to the assessee. In our view Rule 46A of the Rules framed under Income-tax Act provides that the assessee was not entitled to produce before the CIT(A) any evidence i.e oral or documentary other than the evidence produced by him during the course of proceedings before the AO except under the circumstances mentioned in clause 1 of Rule 46A. Further Rule 46A provides that no evidence shall be admitted by the CIT(A) unless an order in writing is passed giving the reasons for admission of new material/ evidence and further clause 3 provides that the evidence filed and to be taken on record shall not be taken into account as evidence unless reasonable opportunity is given to the AO to examine the evidence or document or cross examination of the witness.

13. In the present case, the CIT(A), while adjudicating the appeals have taken on record the evidence produced by the assessee during the course of appellate proceedings and the CIT(A) without affording an opportunity to the AO to examine the evidence and documents have passed the order granting the relief to the assessee. In our view, the procedure followed by the CIT(A) is not correct and, therefore, the order passed by the CIT(A) relying upon the evidence and the document filed by the assessee at the appellate stage, is required to be set aside and accordingly we allow the appeals of the Revenue for statistical purposes.

14. The Id CIT(A) is directed to comply with the provision of Rule 46A by passing the speaking order in ITA No.1419/Bang/2015 giving reasons for admitting the additional document/material/evidence. The Id CIT(A), is also directed to seek the remand report from the AO and grant an opportunity to rebut the document/materials/evidence and pass a reasoned order on the appeal of the Revenue.

**ITA No.1420/Bang/2015**

15. Since we have set aside the appeal bearing No.1419/Bang/2015 whereby we have directed the CIT(A) to pass reasoned order (Supra). Since the facts of the present case are similar to that of the appeal in ITA No.1419/Bang/2015, therefore, we direct the CIT(A) to pass order in the present appeal in terms of direction issued in ITA No.1419/Bang/2015. Accordingly this appeal is also allowed for statistical purpose in favour of the Revenue.

16. The assessee has filed Cross-objections against the appeals filed by the Revenue on the following grounds:-

**CO No.26/Bang/2016**

1. *The order of CIT (A) is against the facts and circumstances of the case.*
2. *On the facts and circumstances of the case and the observation made by the CIT (A) in the order u/s 250, the CIT (A) erred in sustaining the addition of Rs.7,46,370/- on the ground, over statement of credit balance in the name of the supplier, whereas, the*

*purchases and trading results having been accepted by the Assessing Officer.*

3. *On the facts and circumstances of the case, the Hon'ble CIT (A) erred in sustaining the addition of Rs. 13,19,000/- made on an account of excessive labor charges claimed by the respondent without bringing out any defects in the vouchers, even though the CIT (A) verified the sample vouchers in detail, found correct.*
4. *For these and other reasons which may be adduced at the time of hearing, the respondent prays the Hon'ble Bench to delete the addition sustained by the CIT (A) for substantial cause of justice.*
5. *Respondent craves, leaves, to add, to alter, to amend and to delete any other grounds at the time of hearing.*

**CO No.27/Bang/2016**

1. *The order of CIT (A) is against the facts and circumstances of the case.*
2. *The Hon'ble CIT (A) erred in sustaining the addition on accounts of sundry creditors to the extent of Rs.10,00,000/- as an account of unproved sundry creditors whereas, trading results and purchases having been accepted by the Assessing Officer.*

3. *The Hon'ble CIT (A) erred in sustaining the addition of Rs.20,00,000/- on accounts of excess labor expenses on an estimation basis, without bringing out any defects in the vouchers maintained by the respondent, even though the CIT (A) verified the vouchers in detail.*
4. *For these and other reasons which may be adduced at the time of hearing, the respondent prays the Hon'ble Bench to delete the addition sustained by the CIT (A) for substantial cause of justice.*
3. *Respondent craves, leaves, to add, to alter, to amend and to delete any other grounds at the time of hearing.*

17. Since, we have allowed the appeal filed by the Revenue and has set aside the order passed by the CIT(A), therefore, we do not deem it appropriate to pass any order.

18. On the other hand, on the cross-objection filed by the assessee, we are not even expressing any opinion on the maintainability of the CO though it was submitted during the course of hearing that CO seeking independent relief is not maintainable and the assessee should have filed the cross appeal instead of filing the Cross-objections. In view thereof, we

also dismiss the cross-objection filed by the assessee for statistical purposes.

19. In the result, the appeal filed by the Revenue is allowed for statistical purposes and the appeal filed by the assessee dismissed for statistical purposes.

Order pronounced in the open court on **26th April, 2017.**

**Sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(LALIET KUMAR)**  
**JUDICIAL MEMBER**

Bangalore  
Dated : 26/04/2017

Vms

Copy to :1. The Assessee  
2. The Revenue  
3.The CIT concerned.  
4.The CIT(A) concerned.  
5.DR  
6.GF

By order

Asst. Registrar, ITAT, Bangalore.