

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
and
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER**

**ITA No.1214/Bang/2013
(Assessment year: 2009-10)**

Mr. Mohammed Rafique,
Contractor, Mutt Road,
Balehonnur. ... Appellant
PAN:ADHPR9411J

Vs.

Income-tax Officer,
Ward-1,
Chikmagalur. ... Respondent

Appellant by: Shri H.Guruswamy, ITP.
Respondent by: Shri P.Dhivahar, JCIT(DR).

Date of hearing : 22/06/2015
Date of pronouncement: 10/07/2015

O R D E R

Per Smt. P. MADHAVI DEVI, JM:

This appeal is by the assessee against the order of the
CIT(A), Mysore, dated 19/03/2013 for the assessment year 2009-

10. The assessee has raised the following grounds of appeal.

"1. *The appellate order dated 19/03/2013 is
opposed to law, facts and circumstances of the
case.*

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2. *The Ld.CIT(A) has erred in confirming the addition of Rs.11,90,468/- being the ad hoc addition made by disallowance of 10% of labour without appreciating the fact that the addition liable to be made was only Rs.1,30,468/- as per the findings of the Ld.AO.*
3. *The learned Commissioner of Income-tax(Appeals), Mysore has erred in upholding the assessment order completed under section 144 of the Act which is opposed to the accepted principles of judicial decisions.*
4. *The learned Commissioner of Income-tax(Appeals), Mysore, has erred in confirming the addition of Rs.21,55,292/- held by the ITO as income for unproved liability claimed to be payable to the creditors without appreciating the fact that the liability was not an unexplained cash credit found in the books of account of the appellant.*
5. *The Ld.CIT(A), Mysore was not justified to hold that the appellant has not discharged his onus in respect of the identity of the creditors, genuineness of the transaction and creditworthiness of the creditor without appreciating the fact that the said conditions are applicable only in respect of cash found credited in the books of account of appellant and not applicable to the part of expenditure shown as liability payable.*
6. *The appellant craves leave to add, alter, amend and delete any of the grounds at the time of hearing."*

2. Grounds No.1 and 6 are general in nature and need no adjudication. As regards ground Nos. 2 to 5 are concerned, brief facts of the case are that the assessee is a PWD contractor and filed his return of income on 13/09/2009 declaring an income of Rs.6,43,840/-. The return was initially processed u/s 143(1) on 20/09/2010 and subsequently taken up for scrutiny. During the

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scrutiny proceedings u/s 143(3) of the Act, the Assessing Officer (AO) issued various notices to the assessee but there was no compliance from the assessee and therefore the AO completed the assessment u/s 144 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' in short]. During the 144 assessment, the AO observed that a sum of Rs.21,55,292/- was shown as sundry creditors and the assessee has only furnished a list of sundry creditors but no confirmations from them were filed. He, therefore, treated it as unproved liability and brought it to tax. Further, the AO noticed that the assessee had claimed labour charges of Rs.1,19,04,689/- but no evidence with regard to the same was filed. He, therefore, disallowed 10% of the labour charges which worked out to Rs.11,90,468/- and since he had disallowed a sum of Rs.10,60,000/- on account of unproved creditors of labour payment, he brought the difference of Rs.1,30,468/- to tax. However, in the computation of income, the AO added the sum of Rs.11,90,468/- as well as Rs.1,30,468/-

3. Aggrieved by the order of the AO, assessee filed an appeal before the CIT(A) who confirmed the same and the assessee is in second appeal before us.

4. As regards ground No.2 with regard to the addition of Rs.11,90,468/- is concerned, learned counsel for the assessee submitted that the assessee has filed an application u/s 154 before the AO against the double addition and that the same is

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pending consideration by the AO and therefore the assessee does not wish to press ground No.2 at this stage. As regards ground Nos.3 to 5 are concerned, learned counsel for the assessee submitted that the assessee could not furnish necessary details before the AO or the CIT(A) but has now filed all the details before us in the form of paper book along with an application under rule 29 of the ITAT Rules for admission of the said evidence. The learned counsel for the assessee submitted that confirmations of the respective creditors clearly show that the liabilities were repaid by cheques on various dates in 2009. Therefore they go to the root of the matter and need to be considered.

The learned Departmental Representative, however, opposed admission of the additional evidence and placed reliance upon the orders of the authorities below as regards the confirmation of the addition.

5. Having regard to the rival contentions and the material on record, we find that the assessee had claimed various parties as sundry creditors but had not filed their confirmations either before the AO or the CIT(A). However, before us, confirmations from the said sundry creditors are filed wherein it is confirmed that the liability has been repaid by the assessee by various cheques and the cheque numbers are also given along with dates. We find that these payments were made in 2009 i.e. prior to the

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assessment order dated 26/12/2011. Therefore, we are of the opinion; that though the confirmations are obtained subsequently in 2014, since payments were made even prior to the assessment, these evidences need to be considered by the AO in the interest of justice. In view of the same, we admit the additional evidence filed by the assessee and remand the issue to the file of the AO for reconsideration in accordance with law. Needless to mention that the assessee shall be given a fair opportunity of hearing and the assessee shall co-operate with the AO by providing all the necessary details, if any, further required by the AO

6. In the result, the assessee's appeal is treated as partly allowed for statistical purposes.

Pronounced in the open court on 10th July, 2015.

sd/-
(Jason P Boaz)
ACCOUNTANT MEMBER
Eksrinivasulu

sd/-
(Smt. P.Madhavi Devi)
JUDICIAL MEMBER

Copy to:

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

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore