

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC - A” BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER

ITA No.1295/Bang/2016
Assessment year : 2006-07

The Income Tax Officer, Ward 1(1), Hubbali.	Vs.	M/s. Corporate Developers, Vidyanagar, Hubbali. PAN: AAHFC 1955B
APPELLANT		RESPONDENT

Appellant by	:	Shri D.K. Jha, JCIT(DR)
Respondent by	:	None

Date of hearing	:	26.12.2016
Date of Pronouncement	:	23.02.2017

ORDER

This appeal is preferred by the assessee against the order of CIT(Appeals) *inter alia* on the following grounds:-

“1. Whether on the facts and circumstances of the case, the Ld. CIT(A) was correct in accepting the version of the assessee that the consideration of Rs.30,00,000/- paid on 20-01-2006 was out of explained source when no material, whatsoever, was furnished before the Assessing Officer to explain the same during the assessment proceeding.

2. Whether on the facts and circumstances of the case, the Ld. CIT(A) was correct in holding that the assessee had paid the consideration of Rs.30,00,000/- through banking channel and thus the same cannot be treated as the income of the assessee without allowing the Assessing Officer an opportunity, under

Rule 46A of the Income Tax Rules 1962, to examine the bank account with respect to credits, if any, in the said bank account.

3. Whether on the facts and circumstances of the case, the Ld. CIT(A) was correct in holding that the assessee had incurred registration expenses of Rs.4,08,268/- out of explained source and thus the same cannot be treated as the income of the assessee without allowing the Assessing Officer an opportunity, under Rule 46A of the Income Tax Rules 1962, to examine fresh evidence furnished during appellate proceedings to explain the source.

4. Whether on the facts and circumstances of the case, the Ld.CIT(A) was correct in holding that the assessment order suffers from defects as the basis of treating the assessee as AOP and assessing the income in the hands of AOP is not at all ascertained and given in the assessment order whereas based on the material available on record, the basis of ascertaining the status as "AOP" was properly established.”

2. This appeal was listed for hearing on 26.12.2016, but none appeared on behalf of the assessee. On perusal of the record, it is noticed that notice of hearing was served upon the assessee. Since none appeared on behalf of assessee despite valid service of notice, I have no option but to hear the appeal *ex parte, qua* the assessee. Accordingly revenue was heard.

3. During the course of hearing, the Id. DR for revenue has invited our attention that during the course of survey upon the business premises of assessee, certain documents containing the details of certain expenses were found and on the basis of this document, assessment was reopened u/s. 147 of the Income-tax Act, 1961 [“the Act”]. In these documents, it has

been stated that assessee has incurred certain expenses of Rs.4,08,268 and Rs.30 lakhs shown as 'Sullad advances'. Since the document contained certain information about the payment pertaining to "Sullad Green park" project, the assessee was asked to explain the said entries. The AO also issued a letter to Sri Gangadhar V Sullad and Sri Mallikarjun Sullad requesting them to confirm that they have received Rs.30 lakhs from Shri Mukesh Patadia, Sri Sajeedali Farash, Sri Mallikarjun B Kallur and in response thereto, it was stated by Sri Gangadhar and Sri Mallikarjun Sullad that they have entered into an agreement to develop the plot along with Shri Mukesh Patadia, Sri Sajeedali Farash and Sri Mallikarjun B Kallur for development of their ancestral land and have received refundable security deposit of Rs.10 lakhs each. All these 3 persons were asked to respond with regard to this letter and in response thereto, the brother of Sri Mukesh Patadia i.e., Sri Raju Patadia attended and filed a letter stating that M/s Corporate Developers has come into existence on 07.08.2006 as a partnership firm, therefore return of partnership firm was not filed. The AO proceeded to complete the assessment holding the date of payments towards development of land on 21.01.2006 by Shri Mukesh Patadia, Sri Sajeedali Farash and Sri Mallikarjun B Kallur are the working partners in the firm as per partnership deed dated 07.08.2006 and the status was taken as AOP for AY 2006-07. Accordingly assessment was framed on a total income of Rs.34,08,268 [30,00,000/- being amount paid towards

development of land and Rs.4,08,268 being expenses incurred by assessee as per impounded material].

4. Aggrieved, the assessee has preferred an appeal before the CIT(Appeals) with the submission that the AO has completed the assessment u/s. 144 of the Act without looking to the evidence filed before him. The CIT(Appeals) examined the issue in the light of submission of the assessee and has cancelled the assessment having observed that there was no case for the AO to initiate proceedings u/s. 147 for the AY 2006-07, without ascertaining the full facts.

5. The Id. DR further contended that during the course of survey, certain documents were found on the basis of which enquiry was conducted and when the assessee was unable to satisfy the source of investment, the additions were made. When it was stated that return for AY 2006-07 was not filed by the assessee, the AO has reopened the assessment u/s. 147 of the Act. Therefore, there is no infirmity in the reopening of the assessment. The CIT(Appeals) ought to have disposed of the appeal on merits instead of quashing the assessment.

6. Having carefully examined the orders of lower authorities, I find that during the course of survey, certain documents were found on the basis of which it has been revealed that assessee has made certain payments. When it was confronted, the assessee could not furnish satisfactory explanation. More so, it was also stated that assessee did not come into

existence during the impugned assessment year, therefore no return was filed. Whereas the AO had made out a case that investment was made by the partners of the assessee before making the additions. In the light of these facts, I am of the view that the CIT(Appeals) ought to have adjudicated the issue on merits instead of quashing the assessment. I, therefore, set aside the order of CIT(Appeals) and restore the matter to his file, with the direction to adjudicate the issues on merits, after affording opportunity of being heard to the assessee.

7. In the result, the appeal of revenue stands allowed for statistical purposes.

Pronounced in the open court on this 23rd day of February, 2017.

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 23rd February, 2017.

/ Desai Smurthy /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.