

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

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER  
and  
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA No.1003/Bang/2015  
(Assessment year: 2008-09)

M/s.Bellad & Co.,  
Vidyanagar,  
Hubballi. ... Appellant  
*PA No: AAACB7277M*

Vs.

Addl. Commissioner of Income-tax,  
Hubballi. ... Respondent

Appellant by : Shri C.R.Nulvi, CA  
Respondent by : Shri C.N.Bipin, JCIT(DR)

Date of hearing : 04/07/2016  
Date of pronouncement : 27/07/2016

**O R D E R**

**Per INTURI RAMA RAO, AM :**

This is an appeal filed by the assessee directed against the order of the CIT(A), Hubli, dated 26/02/2015 for the assessment year 2008-09.

2. The assessee raised the following grounds:
  1. The order of the A.O is opposite to the law, judicial pronouncements and fact and circumstances of the case.

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2. Whether the authorities below right in law and under the fact of the case in holding the amount spent for construction of temporary structure on leasehold premises as capital in nature against the claim made by the appellant as revenue in nature.
  3. On the facts and circumstances of the case, the A.O erred in disallowing the expenditure of Rs.35,300/- on shamiyana expenditure which is incurred for the purpose of business.
  4. For these and other reasons which may be adduced at the time of hearing, the appellant prays before this Hon'ble Bench to delete the addition made by the A.O.
  5. Appellant Craves Leaves, to add, to alter, to amend and to delete any of the ground at the time of hearing.
2. Ground Nos.1, 4 & and 5 are general in nature and do not require adjudication.
3. Ground No.2 relates to disallowance of Rs.26,28,636/- incurred on construction of shed in the leased premises. It is the contention of the assessee that the assessee had constructed a temporary structure for office as well as workshop on the leased premises. The same may be allowed as revenue expenditure. In support of this, he relied on the following decisions:
- i. *CIT Vs ACC Ltd (172 ITR 257)(SC);*
  - ii. *CIT Vs. Madras Auto Services Ltd. (233 ITR 468)(SC)*
  - iii. *CIT vs. TVS Lean Logistics Ltd. (293 ITR 432)(Madras)*
  - iv. *CIT Vs Hari Vignesh Pvt Ltd 281 ITR 338*
  - v. *CIT Vs Dr. A.M.Singhwi (302 ITR 26)*
  - vi. *Herbert International Pvt Ltd Vs ACIT (103 TTJ 78)*

On the other hand, learned Departmental Representative relied on the orders of the lower authorities.

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4. We heard rival submissions and perused material on record. From the perusal of the submissions, it is crystal clear that the expenditure has resulted in creation of asset. The fact that new asset was created in the leased premises does not make difference in view of Explanation inserted to section 32 of the IT Act. Therefore, expenditure incurred is of capital nature and is entitled only for depreciation as held by the AO. Hence, ground No.1 is dismissed.

5. Ground No.3 relates to shamiana expenditure. There was no dispute about nature of expenditure incurred by the assessee. This kind of expenditure is revenue in nature. The AO is directed to allow the same as expenditure.

6. In the result, the appeal filed by the assessee is partly allowed.

*Order pronounced in the open court on 27<sup>th</sup> July,2016*

sd/-  
**(SUNIL KUMAR YADAV)**  
**JUDICIAL MEMBER**

Place : Bangalore  
D a t e d : 27/07/2016  
*srinivasulu, sps*

**Copy to :**

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

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

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore