

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

BEFORE SHRI. N. V. VASUDEVAN, JUDICIAL MEMBER

AND

SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

I.T.A No.975/Bang/2014  
(Assessment Year : 2008-09)

Shri. Mallikarjunaiah Udayshankar,  
No.148, 6<sup>th</sup> Main, 2<sup>nd</sup> Phase, 2<sup>nd</sup> Stage,  
Mahalakshmpuram, West of Chord Road,  
Bangalore 560 083  
PAN : AACPU0412C

..Appellant

v.

Asst. Commissioner of Income-tax,  
Circle -8(1), Bangalore

..Respondent

Assessee by : Shri. Naginchand Khincha, CA  
Revenue by : Dr. P. K. Srihari, Addl. CIT

Heard on : 21.09.2015

Pronounced on : 30.09.2015

**ORDER**

**PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :**

In this appeal filed by the assessee its grievance running through grounds  
1 to 6 raised are two.

02. First is that an addition of Rs.88,50,000/- made on advertisement  
expenditure paid by it to one M/s. Orange Properties was confirmed by the CIT

(A). Second is that the CIT (A) partially sustained disallowance made by the AO on Unregistered Dealer ('URD') purchases and labour charges.

03. Facts apropos are that assessee engaged in a business as contractor and seller of flats had filed his return of income declaring income of Rs.31,17,740/-. During the course of assessment proceedings it was noted by the AO that assessee had paid a sum of Rs.92,62,100/- as advertisement charges. Out of the said amount, a sum of Rs.88,50,000/- was payments to M/s. Orange Properties located at 114/1, Outer ring road, Dodda Banaswadi, Vijayabank Colony, Bangalore. AO required the assessee to produce details for claim of expenditure and also issued summons u/s.131 of the Act, to the managing partner of M/s. Orange Properties. Summons could not be served personally but was served by affixture. However, no reply was received to the summons. Assessee was required to produce the managing partner of M/s. Orange Properties. Assessee expressed its inability to produce the said person. AO deputed his Inspector to the premises of M/s. Orange Properties and the Inspector reported that the said firm was in the business of providing advertisement services and had failed to credit the service taxes collected by them from its clients to the government account. According to the Inspector, partners of M/s. Orange properties had collected huge advances from public for allotment of sites but had not allotted the sites as promised. Partners of the firm were absconding.

04. As per the Inspector, Police were in search of the partners. AO was of the opinion that in view of the circumstances in which M/s. Orange Properties was placed, the expenditure claimed by the assessee towards advertisement could not be considered as genuine. As per the AO, summons issued to the said firm was returned and there was no confirmation from them. He disallowed the sum of Rs.88,50,000/- claimed as advertisement expenditure paid to M/s. Orange Properties.

05. In its appeal before the CIT (A) argument of the assessee was that the payments to M/s. Orange Properties were all through banking channels after due deduction of tax at source. As per the assessee just because criminal proceedings were initiated against M/s. Orange Properties, a claim of allowance could not be denied. Assessee placed before the CIT (A) statement showing year wise details of business canvassed by M/s. Orange Properties for the assessee and copy of advertisement published in newspaper and copy of confirmation letter dt.16.01.2011 from the said party. CIT (A) was however of the opinion that assessee could not give reasons why these records could not be produced before the AO. Further as per the CIT (A), though assessee was having a bill dt.16.01.2008 of M/s. Orange Properties, it could not be correlated to payments made by the assessee to the said party as reflected in its ledger. Further as per the CIT (A), correspondence between M/s. Orange Properties and the assessee through which the said M/s. Orange Properties had forwarded cheques received by it from various parties for flats also could not be correctly

correlated with the sale of flats effected by the assessee. In view of these contradictions, CIT (A) upheld the disallowance.

06. Now before us, Ld. AR assailing the orders of lower authorities submitted that assessee had effected all payments only through banking channels. Assessee had produced invoices. Assessee had produced ledger page in its books which reflected each and every payment to M/s. Orange Properties. Assessee could not be blamed or put in peril for M/s. Orange Properties becoming insolvent or its partners becoming untraceable. Just because assessee could not produce managing partner of the said firm, a disallowance ought not to have been made.

07. Per contra, Ld. DR supported the orders of lower authorities.

08. We have perused the orders and heard the rival contentions. It is not disputed that assessee had made payments to M/s. Orange Properties through banking channels. Assessee no doubt had produced an invoice from M/s. Orange Properties before the CIT (A). One of the reasons cited by the CIT (A) to confirm the disallowance is that bill dt.16.01.2008 of M/s. Orange Properties could not be correlated with payments reflected in the ledger of the assessee. Assessee had produced copies of advertisement placed in newspaper by M/s. Orange Properties. In our opinion, the evidence produced by the assessee required more detailed examination at the level of the AO. Even though the concerned M/s. Orange Properties is untraceable, there are ways and means available with the AO to verify the authenticity and correctness of the claim

preferred by the assessee. We are of the opinion that the issue requires a fresh look by the AO. We set aside the orders of the lower authorities on this issue and remit it back to the file of the AO for fresh consideration in accordance with law.

08. Only other issue raised by the assessee is that the CIT (A) partially sustained disallowance made by the AO on purchases from unregistered dealers and labour charges totalling to Rs.9,91,165/-. We find that AO had made disallowance of 10% for a reason that the payments were effected by cheques in the absence of bills. CIT (A) had reduced the disallowance to 5% of the total expenditure. In the nature of work of the assessee, it may not be always be possible to produce bills and vouchers for purchase of sand, jelly and labour charges. In the fitness of things we are of the opinion that disallowance of 4% of the total outgo would suffice. Ordered accordingly.

10. In the result, appeal of the assessee is allowed protanto.

Order pronounced in the open court on 30th day of September, 2015.

Sd/-

(N. V. VASUDEVAN)  
JUDICIAL MEMBER

Sd/-

(ABRAHAM P GEORGE)  
ACCOUNTANT MEMBER

MCN

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR 6. ITAT, Bangalore

By Order