

IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE

BEFORE SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER  
AND SHRI NARENDRA KUMAR CHOUDHARY, JUDICIAL MEMBER

|                           |
|---------------------------|
| ITA No.1188/Bang/2015     |
| Assessment year : 2011-12 |

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| Shri Tukuram D. Nagare,<br>Prop. Sri Om Sai Steels,<br>Gokul Road,<br>Hubli.<br><b>PAN: AATPN 0190K</b> | Vs. | The Commissioner of<br>Income Tax,<br>Hubli. |
| APPELLANT   |     | RESPONDENT                                   |

|               |   |                                |
|---------------|---|--------------------------------|
| Appellant by  | : | Smt. Sheetal Borkar, Advocate  |
| Respondent by | : | Ms. Neera Malhotra, CIT-II(DR) |

|                       |   |            |
|-----------------------|---|------------|
| Date of hearing       | : | 09.03.2016 |
| Date of Pronouncement | : | 11.03.2016 |

**ORDER**

*Per B. Ramakotaiah, Accountant Member*

This appeal is by the assessee against the order of the Commissioner of Income-Tax (CIT), Hubli dated 27.11.2014 u/s. 263 of the I.T. Act.

2. The assessee has contested the impugned order on various reasons which include:-

- (a) No notice has been served;
- (b) No Authorised Representative (AR) authorized by assessee did appear;
- (c) the impugned order was not passed on the date stated, as the same was served after more than 7 months; and
- (d) on merits, there is no error in the order passed by the AO which is prejudicial to the interests of Revenue.

3. In the course of hearing of appeal, the Id. CIT(DR) was directed to obtain a report from the CIT along with the record. The Id. CIT(DR) vide letter dated 9.12.2015 asked for a report from the CIT and the report of the CIT is placed on record, which is as under:-

“2. In the case of Sri Tukaram D Nagare an order U/s 263 was passed on 27.11.2014 for the A.Y.2011-12. In this case a survey u/s 133A was conducted on 14.03.2011 and the trading results as well as the gross profit details were obtained as on the date of survey. Subsequently, the assessee filed the return of income for the A.Y. 2011-12 on 08.10.2011 declaring income of Rs.1,42,72,240/-. The case was selected for scrutiny and the assessment was completed u/s 143(3) by determining the total income at Rs.1,43,40,900/-.

3. On verification of records by the then CIT, it was noticed that the assessee has reduced the gross profit by Rs. 13,96,023/-. It was also noticed that the assessee had debited expenses under the head commission of Rs.10,84,628/-, huge payments to creditors, huge salary payments to his sons etc.. as on 31.03.2011, which was not at all shown as on 14,03.2011 (on the date of survey). Further, it was observed by the CIT, that the AO has not examined the issue of investment in construction of house with reference to source and also actual investment. Based on the factual facts, the CIT, held that the assessment order passed by the AO was erroneous and also prejudicial to the interest of revenue. The order was passed by the CIT, Hubballi, based on the

facts available on record, which was not considered by the AO while passing the assessment order u/s 143(3), dated: 25.11.2013.

4. As regards, the issue of notice to the assessee, it appears from the order sheet that notice has been drafted and issued. However, the office copy of the notice is not on the record.

5. As regards, the attendance of Sri Arvind Kubsad, about whom the assessee has claimed his ignorance, it is ascertained that, he is the authorised representative of the assessee, who is a Leading chartered accountant. It is ascertained that he regularly appears on behalf of the assessee before the AO. Therefore, the contention of the assessee that he doesn't know Mr. Arvind Kubsad appears incorrect and also to take advantage of the situation. Eventhough, his attendance, is not recorded in the order sheet, it appears that he appeared before the then CIT and his office missed to record his presence.

6. Further, the order was passed on 27.11.2014 only and the same was served on to assessee subsequently. On the same day a copy of the order was sent to the CIT, Panaji, as well as to the JCIT, R-1, Hubballi. However, the acknowledgement for having served the order to the assessee is not traceable.

7. Despite the above facts, it s apparent that that the CIT had passed the there are certain procedural shortcomings; it may be prayed before the Hon'ble ITAT to remit the matter back to the Pr.CIT for fresh adjudication. Case record in one docket is forwarded herewith.”

4. We have also perused the record of the CIT and noticed that except the noting, “Put up draft notice”, there are no other entries.

5. Considering the assessee's contentions and the report of the Id. CIT and examination of the file of Id. CIT, we are of the opinion that the proceedings concluded by the CIT u/s 263 cannot be sustained. As submitted by the Id. CIT in his report, there is no office copy of the notice.

Assessee's submits that no notice was issued or received by him. Further, as admitted in the report, there is no entry of Shri Arvind Kubsad being the AR and also being a person who is authorized to attend the proceedings. Not only that, there is 8 months delay in serving the order, which gives rise to a doubt about the date on which the order has been passed. Be that as it may, even the order of the CIT does not indicate on which date the case was posted. First para in page 5 is as under:-

“ Thus, in view of the foregoing I find that the assessment order passed by the AO has not only become erroneous but also is very much prejudicial to the interest of revenue. The assessee was given an opportunity of being heard by posting the case for hearing on.”

5.1 There is no date mentioned after the words ' hearing on'. This indicates that no date has been fixed for hearing the assessee. Even in first page of the impugned order, only date of order was mentioned without date of hearing. Thus it indicates that principles of natural justice were not adhered to or fulfilled. Even though the report justifies the action of CIT by the office now, we can not justify the proceedings which were concluded even without a notice to assessee. In view of above lapses, we are of the opinion that no notice has been issued or served on the assessee and no person authorized by the assessee could represent before the CIT. In view of this, without going into the merits of the issue raised by the Id. CIT or contentions raised by the assessee that there is no error in the order passed by AO which may prejudice the interests of revenue, we set aside

the order of Id. CIT and restore the assessment order passed by the AO on 25.11.2013.

6. In the result, the assessee's appeal is allowed.

Pronounced in the open court on this 11<sup>th</sup> day of March, 2016.

Sd/-

(NARENDRA KUMAR CHOUDHURY )  
Judicial Member

Sd/-

( B. RAMAKOTAIAH )  
Accountant Member

Bangalore,  
Dated, the 11<sup>th</sup> March, 2016.

/D S/

Copy to:

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

By order

Assistant Registrar,  
ITAT, Bangalore.