

IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE
BEFORE SHRI. B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.05/Bang/2019
Assessment Year : 2010 - 11

M/s Hitech Comprint Pvt. Ltd., No.20, 1 st Main Road, Sunder Industrial Estate, New Timber Yard Layout, Mysore Road Cross, Bengaluru-560 026.	Vs.	The Dy. Commissioner of Income Tax, Circle-11(4), Bengaluru.
PAN - AAACH 4792 B		
APPELLANT		RESPONDENT

Appellant by	:	Shri Ravi Shankar S.V, Advocate
Respondent by	:	Shri Priyadarshi Mishra, JCIT (DR)

Date of Hearing	:	16-09-2020
Date of Pronouncement	:	06-10-2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order dated 12/11/2018 passed by Ld.CIT(A)-3, Bangalore for assessment year 2010-11 on following grounds of appeal:

"1. The order of the learned Commissioner of Income-tax [Appeals] passed under Section 250 of the Act in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.

2. *The appellant denies itself liable to be taxed over and above the income returned by the appellant of Rs. 15,98,780/-, under the facts and circumstances of the case.*

3. *The learned CIT(A) was not justified in holding that the additional evidence duly admitted and remanded to the file of the AO for the purpose of additional evidence, was not to be admitted in adjudicating the case, after receipt of a detailed remand report from the AO, on the facts and circumstances of the case.*

4. *The CIT(A) erred in law and on fact, in not holding that assessment passed under section 144 of the Act, was without proper application of mind and that the AO has not made a proper estimate, which was consumerate to the business of the appellant, on the facts and circumstances of the case.*

5. *Without prejudice, the powers of the CIT(A) was co-terminus with the AO and he ought to have verified the details etc and appreciated the evidence filed before him during the course of hearing the appeal and allowed the appeal, on the facts and circumstances of the case.*

6. *The CIT(A) erred in confirming the disallowance of expenditure of 69,57,364/- which were genuine expenses incurred by the appellant and the assessed income was in excess of 400% of the returned income of the appellant, on the facts and circumstances of the case.*

7. *Without prejudice and not conceding that the appellant has offered its true income in its return of income, the AO ought to have estimated the income, relying on businesses similar to that of the appellant, rather than disallowing the entire expenditure claimed, on the facts and circumstances of the case.*

8. *The appellant denies the liability to pay interest under section 234B, 234C and 234D of the Act in view of the fact that there is no liability to additional tax as determined by the learned assessing officer. Without prejudice the rate, period and on what quantum the interest has been levied are not discernable from the order and hence deserves to be cancelled on the facts and circumstances of the case*

9. *The appellant craves leave to add, alter, modify, delete or substitute any or all of the grounds and to file a paper book at the time of hearing the appeal.*

10. *In view of the above and other grounds that may be taken at the time of the hearing the appeal, the appellant prays that the appeal be allowed in the interest of justice and equity."*

Brief facts of the case are as under:

2. Assessee is a company and filed its return of income for year under consideration on 02/10/2010, declaring income of Rs.15,98,780/-. Return was processed and notice under section 143(1) and 143(2) was issued to assessee. Ld.AO issued notices

for hearing, however assessee failed to appear before Ld.AO. Accordingly, assessment was completed under section 144 read with 143 (3) of the Act, on best judgment. Ld.AO while passing assessment order, made addition amounting to Rs.69,57,364/- disallowing expenditure claimed by assessee.

3. Aggrieved by additions made by Ld.AO, assessee preferred appeal before Ld.CIT(A).

4. During the appellate proceedings, assessee filed various details in support of its contentions, that disallowance are wrongly made by Ld.AO. Ld.CIT(A) called for remand report from Ld.AO by remitting documents filed by assessee in support of claims disallowed. Ld.CIT(A) directed Ld.AO to give one more opportunity to assessee and verified all details and to send remand report.

5. Ld.AO vide letter dated 22/10/2014 called upon assessee to file details relied upon before Ld.CIT(A). Thereafter Ld.AO passed remand report which was forwarded to office of Ld.CIT(A) on 30/07/2018. In remand report Ld.AO noted that assessee only filed Ledger details of expenses and did not furnish any documentary evidence in support of its claim of expenses which were disallowed. Thereafter assessee once again requested Ld.CIT(A) vide its letter ated 02/08/2018 that, before finalising remand report, Ld.AO failed to granted opportunity to assessee to produce evidences. Ld.CIT(A) vide letter dated 09/08/2018, once again directed Ld.AO to accept details filed by assessee. Ld.AO accordingly granted opportunity of being heard to assessee and

to produce supporting evidences for expenses disallowed in assessment order dated 25/03/2018. Assessee accordingly, on 14/08/2018 and 21/08/2018 furnish details and evidence in support of claim being breakup of expenses and corresponding supporting evidences.

6. Ld.AR referring to page 47 of paper book submitted that, details filed by assessee along with supporting documents have been listed in remand report by Ld.AO. However, Ld.AO did not verify the same and requested Ld.CIT(A) to decide the issue on merits.

7. Ld.AR submitted that, in remand proceedings even after clear direction by Ld.CIT(A), Ld.AO failed to take necessary steps to verify details filed by assessee in respect of expenses claimed. He also submitted that, Ld.CIT(A) on receipt of remand report dated 21/08/2018, dismissed assessee's appeal by holding that, assessee failed to substantiate its claim. Ld.CIT(A) also rejected documents filed by assessee by not admitting it. Ld.AR submitted that, this amounts to violation of principles of natural Justice as Ld.CIT(A) originally directed Ld.AO to call for details and to carry out verification. And subsequently when relevant details were furnished by assessee before Ld.AO, in remand proceedings, neither Ld.AO nor Ld.CIT(A) acted upon to verify these documents/evidences. He thus submitted that, issue may be remanded in order to verify the documents filed by assessee.

8. Ld.Sr.DR submitted that the issue may be sent back to Ld.CIT(A) for verification of evidences filed by assessee.

9. We have perused submissions advanced by both sides in light of records placed before us.

10. In our opinion there was no application of mind by Ld.AO in remand proceedings. It is noted that, Ld.CIT(A) categorically directed Ld.AO to call upon relevant evidences from assessee and to verify in order to consider the claim of expenditure. We note that, when assessee filed bills/vouchers/evidences in support of expenditure claimed before Ld.AO during 2nd remand proceedings, no steps were taken by Ld.AO to verify the same for considering the claim of assessee in accordance with law. We further note that, Ld.CIT(A) does not admit evidences filed by assessee as according to Ld.CIT(A) assessee failed to show that proper opportunity to adduce evidence was not granted to assessee.

11. Action of Ld.AO is contrary to remand notice dated 20/10/2014, wherein Ld.CIT(A) directs Ld.AO to give one more opportunity to assessee and verify all details before sending the report. For the sake of convenience, the said letter issued by Ld.CIT(A) to Ld.AO is reproduced herein below:

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आयकर अयुक्त

(अपील्स - १)

MISSIONER OF INCOME TAX
(APPEALS-I)



Phone / Fax 23550531

PABX 23337669 to 74

Extn 250

No.59, HMT Bhavan

6th Floor, Bellary Road.

Ganganagar,

Bangalore - 560 032

No.171/DC-11(4)/A-I/13-14

Dated: 20/10/2014

To

The Deputy Commissioner of Income-tax,
Ward-11(4), Bangalore.

Subject: Calling for the remand report in the case of M/s Hitech Comprint Pvt. Ltd., No-B-65, Bommasandra Industrial Area, Hosur Road, Bangalore-560099 - Asstt. Year 2010-11 - reg.

During the course of hearing the appellant has produced all the details regarding the additions made by you vide order dated 25/03/2013. You are hereby directed to give one more opportunity to the appellant and verify all the details and send the report by 7th November, 2014.

(ARCHANA CHOUDHARY)

Commissioner of Income-tax

(Appeals)-I, Bangalore.

Copy to: 1. The Addl. Commissioner of Income-tax, Range-11,
Bangalore.

2. M/s Anil Bhandari & Associates, CAs.

12. In our opinion, Ld.CIT(A) cannot blow hot and cold at the same time and was duty bound to verify documents/evidences filed by assessee himself, when Ld.AO failed to carry out direction in accordance with law. Ld.CIT(A) has coterminous powers with Ld.AO. Under such circumstances we remand this issue back to Ld.CIT(A) with a direction to verify documents/evidences filed by assessee in support of its claim of expenditures. We also direct that, Ld.CIT(A) shall pass detailed order on merits, in accordance with law. Needless to say that proper opportunity of being heard must be granted to assessee.

Accordingly, grounds raised by assessee stands allowed for statistical purposes.

In the result, appeal filed by assessee stands allowed for statistical purposes.

Order pronounced in the open court on 6th Oct, 2020

Sd/-
(B. R. BASKARAN)
Accountant Member
Bangalore,
Dated, the 6th Oct, 2020.

Sd/-
(BEENA PILLAI)
Judicial Member

/Vms/

Copy to:

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

By order

Assistant Registrar, ITAT, Bangalore

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-09-2020		Sr.PS
3.	Draft proposed & placed before the second member	-09-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-09-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-09-2020		Sr.PS/PS
6.	Kept for pronouncement on	-09-2020		Sr.PS
7.	Date of uploading the order on Website	-09-2020		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-09-2020		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS