

आयकर अपीलीय अधिकरण, विशाखापट्टणम पीठ, विशाखापट्टणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गराव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.387/Vizag/2014
(निर्धारण वर्ष / Assessment Year: 2008-09)

M/s. Sri Balaji Constructions
Kakinada
[PAN No.ABKFS3444D]
(अपीलार्थी / Appellant)

ACIT, Central Circle
Rajahmundry
(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by : Shri G.V.N. Hari, AR
प्रत्यार्थी की ओर से / Respondent by : Shri Debakumar Sonowal,
DR
सुनवाई की तारीख / Date of hearing : 03.01.2018
घोषणा की तारीख / Date of Pronouncement : 10.01.2018

आदेश / ORDER

PER Bench:

This appeal filed by the assessee is directed against order of the Commissioner of Income Tax (Appeals) {CIT(A)}, Guntur vide ITA No.447/CIT(A)/GNT/10-11 dated 24.2.2014 for the assessment year 2008-09.

2. The assessee filed return of income declaring income of ₹ 63,920/- on 29.7.2008. A search and seizure operation was conducted in the group cases of the assessee on 3.2.2009. Subsequently, the A.O. has issued a notice u/s 153C of the Income Tax Act, 1961 (hereinafter called as 'the Act') on 3.3.2010 calling for the return of income and the assessee has filed the return of income on 23.4.2010 admitting total income of ₹ 63,920/-. Thereafter, the A.O. conducted the enquiries and completed the assessment u/s 143(3) r.w.s. 153C of the Act on total income of ₹ 11,69,338/-. During the assessment proceedings, the A.O. made addition of ₹ 11,05,418/- on estimation basis. During the search proceedings, the assessee has admitted additional income of ₹ 20 lakhs for the assessment year 2009-10 and accordingly, filed the return of income. The assessing officer has recorded a statement u/s 131 of the Act on 2.3.2009 from Shri Kotta Srinivas, wherein, the flat buyer admitted that he had agreed to pay ₹ 11,75,000/- and paid ₹ 11 lakhs for purchase of flat No.S-5 (1075 Sft) as per which the sale price worked out to Rs.1,093/- per Sft. The A.O. collected the information from the flat buyers and also market information regarding the cost of construction and the sale price of the flats and also recorded the statements from the land owners and determined the sale price at an average rate of ₹ 989/- and the cost of construction at ₹ 650/- and

accordingly estimated the undisclosed income at ₹ 11,05,500/- and brought to tax.

3. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and the Ld. CIT(A) allowed the assessee's appeal partly. Against the order of the CIT(A), the assessee is in appeal before this Tribunal.

4. During the appeal hearing, the Ld. A.R. of the assessee has argued that for the assessment year 2008-09, there was no incriminating material available with the A.O. to invoke the provisions u/s 153C of the Act. The entire assessment was made on market information collected by the A.O. without any basis of incriminating material. Therefore, The Id. A.R. argued that the notice issued u/s 153C of the Act is bad in law and consequent assessment made by the A.O. required to be quashed.

5. On the other hand, the Id. D.R. supported the order of the lower authorities and argued that the DDIT has recorded the statement u/s 132(4) of the Act wherein the assessee has admitted the additional income of Rs.20 lakhs u/s 132(4) of the Act and hence the assessing officer has rightly issued the notice u/s 153C of the Act for the assessment year 2008-09 it require to be upheld.

6. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. A search and seizure operation was conducted in the group cases of the assessee on 3.2.2009 and during the course of search, the assessee has admitted additional income of Rs.20 lakhs for the assessment year 2009-10. There was no search carried out by Income Tax Department in the case of the assessee and there was no material found in the premises of the searched person relating to the assessee evidencing the undisclosed income for the assessment year 2008-09. As per the provisions of section 153C of the Act, the A.O. is permitted to invoke the provisions of section 153C of the Act by issuing notice u/s 153C of the Act, when there is an incriminating material available with the searched person and the satisfaction not recorded by the A.O. In the assessee's case as per the assessment order, the entire assessment order made on estimation basis but not on the basis of any incriminating material. The A.O. has invoked the provisions of section 153C of the Act since the books of accounts were not produced by him during the search proceedings and held that the assessee has not maintained the books of accounts. However, on verification of paper book filed by the assessee it is observed that the assessee is maintaining the books of accounts, compiled profit and loss account and balance sheet as per the books of

accounts and filed the return of income on 29.7.2008. The assessee's case is also covered by section 44AB of the Act for tax audit. Therefore, merely because the books of accounts could not be produced on the date of search or could not be traced it cannot be presumed that the assessee has not maintained the books of accounts. Further, the search was conducted in the residence of Sri Subba Rao but not in the business premises. The Ld. CIT(A) has accepted in the order that the assessee had maintained the books of accounts in paragraph No.4.3.7 which is extracted as under:

"4.3.7 In the appellant's case, the A.O. has recorded that books of accounts were not available at the time of search. On the other hand, the appellant himself has stated that the books of accounts were presented during the course of assessment proceedings. What is relevant however is that the appellant prepared his books of accounts on percentage completion method and had them audited on 25.9.2008. The profit and loss account has been prepared on the basis of the same percentage completion method. This method is regularly employed by real estate developers and is in fact the preferred method of accounting as opposed to other methods, such as project completion method. The advantage of the percentage completion method employed by the appellant firm is that revenue cannot be postponed and it is recognised the moment it is received. The assessing officer has given no finding as to why he has rejected the method of accounting followed by the appellant except to say that books of accounts were not available at the time of search. The Assessing Officer was bound to explain why the method of accounting followed by the appellant in preparing its final accounts submitted along with the return of income did not, in his opinion, reveal the true and correct income of the appellant firm. Having failed to do so, I find no basis in the Assessing Officer's rejection of the method of accounting followed by the appellant firm.

4.3.8 Secondly, as discussed above, books of accounts can be rejected even where the method of accounting is acceptable but the books are found to be false or fabricated. The Assessing Officer has referred to statements of certain flat owners, where the amount claimed to have been paid by them has been found to be in excess of what is recorded in

the books of accounts. Further, the Assessing Officer has mentioned that the appellant firm could not submit supporting bills and vouchers for various expenses claimed. These are valid grounds for rejection of books of accounts. Thus, regarding grounds of appeal No.1 & 2 the Assessing Officer's action in rejecting the method of accounting is held as incorrect while his rejection of books of accounts based on incorrect entries recorded therein is upheld."

7. From the order of the Ld. CIT(A), it is evident that the assessee has maintained the books of accounts and followed the consistent method of project completion method. The CIT(A) also found that there is no basis for rejection of the method of account followed by the assessee. There is no incriminating material available to the revenue in the premises of the searched person relating to the assessee. The statement recorded u/s 132(4) of the Act related to the A.Y. 2009-10 but not related to the assessment year 2008-09. During the appeal hearing, the Id. D.R. did not place any evidence with regard to the incriminating material found in the premises of the searched person relating to the assessee. Now it is settled issue that for initiating the proceedings u/s 153C of the Act, it is incumbent upon the A.O. to have the incriminating material evidencing the undisclosed income. In the assessee's case no such evidence was found during the course of search in the group cases. As per the provisions of section 153C of the Act, it is mandatory to have the satisfaction of the A.O. that money, bullion, jewellery or other valuable article or thing or any books of accounts, documents seized or requisitioned pertains to or relates to the assessee,

which means that unless there is an incriminating material belonging to the assessee is found, the action u/s 153C of the Act is not permissible. In the assessee's case there was no incriminating material found and seized from the premises of the group cases. Therefore, we hold that the notice issued u/s 153C of the Act is not sustainable and accordingly quashed. This view is upheld by the Hon'ble Supreme Court in the case of CIT Vs. Sinhagad Technical Education Society (2017) 84 Taxmann.com 290 (SC). Respectfully following the judgement of the Hon'ble Supreme Court, we hold that the notice issued u/s 153C of the Act is unsustainable and accordingly quashed.

8. In the result, the appeal filed by the assessee is allowed.

The above order was pronounced in the open court on 10th Jan'18.

Sd/-

(वी. दुर्गराव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 10.01.2018

VG/SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – M/s. Sri Balaji Constructions, C/o M. Anandam & Co., Chartered Accountants, 7A, Surya Towers, S.P. Road, Secunderabad
2. प्रत्यार्थी / The Respondent – The ACIT, Central Circle, Rajahmundry
3. आयकर आयुक्त / The CIT, Guntur
4. आयकर आयुक्त (अपील) / The CIT (A), Guntur

5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम /
DR, ITAT, Visakhapatnam
6. गार्ड फाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM

