

**THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SHRI D. MANMOHAN, VICE PRESIDENT
AND SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER**

**ITA No.771/Hyd/2014
Assessment Year: 2008-09**

Dy. CIT,
Circle-1(2),
Hyderabad.

vs. M/s CSR Estates Ltd.,
Hyderabad.
PAN – AAACC8216H

(Appellant)

(Respondent)

Revenue by : Smt. Divya K.J
Assessee by : Shri P. Murali Mohan Rao

Date of hearing : 03-05-2018
Date of pronouncement : 09-05-2018

ORDER

PER SHRI B. RAMAKOTAIAH, AM:

This is an appeal by Revenue against the order of Ld. CIT(A)-V, Hyderabad dated 31-12-3013. Revenue has raised three grounds on two issues as under:

“ii. The CIT(A) erred both in facts and in law in deleting the addition of unexplained credits of the assessee u/s 68 of the IT Act.

iii. The CIT(A) ignoring the fact that, for treating a credit to be genuine credit worthiness and genuineness of transaction has to be proved during assessment proceedings.

iv. The CIT(A) ignoring the fact that the assessee has not produced any evidence for cost of construction neither during assessment proceedings nor at the time of remand report”.

Ground nos. 1 and 5 are general in nature.

2. Briefly stated, assessee engaged in the business of property development, filed its return of income for the A.Y 2008-09 admitting the total income as per normal computation at Rs. 2,80,68,253/- and book profit u/s 115JB of the IT Act at 3,05,36,748/-. In the assessment completed, A.O made two major disallowances, which are contested:

(a) Addition u/s 68 of the IT Act towards unexplained funds Rs. 1,81,67,715/-.

(b) Disallowance towards cost of construction Rs. 18,33.695/-

2.1 Ld. CIT(A) in his order has deleted the above additions hence, Revenue is aggrieved and is in appeal before us.

3. Grounds No ii & iii pertain to issue of addition u/s 68 of the IT Act. In the course of assessment proceedings, A.O on verification of the general ledger reconstructed ledger account of Smt. C. Sreelatha and arrived at balance of 1,88,08,626/- as stated in the assessment order. As per the reconstructed ledger account, since the amount shown against Smt. C. Sreelatha was at the above amount and the credit balance in her account as verified by A.O was only Rs. 1,000/-, the variation of Rs. 1,88,07,626/- was brought to the notice of Assessee. As Assessee did not give any clarification, A.O treated the same as 'unexplained payments' made to the Director to the company. A.O

brought the above amounts as unexplained funds of the company and brought to tax u/s 68 of the IT Act.

4. During the appeal proceedings, it was argued that the amount of 1,81,67,715/- and Rs. 6,39,911/- was fully explained as per the ledger accounts furnished before A.O and no addition is warranted. Ld. CIT(A) referred the matter to the AO for a remand report and subsequently gave relief to the assessee by stating as under:

“5.2 I have carefully considered the submissions made by the appellant, gone through the facts of the case and perused the assessment order and other material available on record. I am not in agreement with the A.O’s inference that the closing balance of Rs. 1,88,08,626/- in the ledger account of Smt. C. Sreelatha prepared by the A.O as on 31.03.2008 represents the unexplained funds of the appellant company. When the credit appearing in the name of Sri Shekar Reddy for Rs. 2,39,28,710/- is explained, the impugned amount of Rs. 1,88,08,626/- is also explained. As evident from the ledger account of Sri C. Shekar Reddy, funds to the extent of Rs. 2,39,28,710.94/- have been transferred to Smt. C. Sreelath’s account by way of journal entry. Even though the A.O has not enquired into genuineness or otherwise of the credit of Rs. 2,39,28,710.94/- appearing in the name Sri. C. Shekar Reddy, the identity etc., of Sri C. Shekar Reddy is established; he is one of the directors of the appellant company who is assessed to tax before the ITO ward 4(4) Hyderabad with PAN AA2PC9163B. As pointed out by the appellant no opportunity, what so ever, was given to the appellant by the A.O to offer its explanation with regard to the credits appearing in the ledger account of the director Sri. C. Shekar Reddy which is very much available with the A.O at the time of completion of the assessment. Therefore, I have no hesitation to hold that the amount of Rs. 1,81,67,715/- is explained and no addition is called for in this regard. The A.O is directed to delete the addition. The appellant gets relief of Rs. 1,81,67,715/-. Hence ground No. 1 is allowed in favour of the appellant”.

5. After considering the rival contentions, we are of the opinion that there is no merit in the grounds raised by Revenue. First of all, as seen from the ledger accounts, the transactions between Assessee and her husband and the company are reflected in the ledger accounts. On what basis A.O has recreated the so called ledger account and asked for explanation of Assessee is not forthcoming from the order. The matter was also remanded to A.O for necessary verification and there is no dispute that Assessee has filed all the ledger copies before A.O and CIT(A). Thus we uphold the order of Ld. CIT(A) given on facts. Moreover, it is also noticed that A.O has arrived at 'unexplained fund payments' to the director. How the provisions of Sec. 68 of the IT Act for unexplained cash credits can be invoked for the amounts paid by Assessee, even as per A.O's working, is not understandable as the provisions are not applicable, both on law as well as on facts. It is also surprising that Ld. CIT without application of mind, has approved the second appeal on an issue like this. There is no merit in the ground, hence dismissed.

6. As regards disallowance of Rs. 18,33,695/- contested in ground no. iv, while calculating the long term capital gains, A.O has disallowed the cost of construction claimed during the year to an extent of Rs. 18,33,695/-. The reason for disallowance is that Assessee has not justified the above claim. During the appellate proceedings, Assessee furnished the necessary bills and submitted that the vouchers were also available. The matter was also

remanded to A.O who however did not agree with the contentions. Ld. CIT(A) after considering the submissions deleted the disallowance stating as under:

“6.2 I have carefully considered the submissions of the appellant, gone through the facts of the case and perused the assessment order and other material available on record. I find that the expenditure incurred is through the channel of banking and the same is incurred towards the cost of the construction. As the expenditure is incurred towards cost of construction and the genuineness of the same has been proved y the channel of banking, I direct the A.O to delete the disallowance of Rs. 18,33,695/- made by the A.O towards cost of construction. Ground Nos 2 & 3 are, therefore, decided in favour of assessee”.

7. It was the contention of Ld. DR that even though Assessee has furnished the ledger account copy, so called vouchers were not furnished and claim of expenditure was not justified, whereas Ld. A.R submitted that all the vouchers and details were available with A.O and also with the Ld. CIT(A) who has examined and allowed the amount.

8. After considering the rival contentions, we do not see any reason to interfere with the order of Ld. CIT(A), who deleted the disallowance after due examination. Since the matter was remanded to A.O during the appellate proceedings and A.O has submitted the report vide letter dated 22.06.2012, we are of the opinion that there is no need to give another opportunity to A.O, who simply refuses to examine the contentions when it was remanded by Ld. CIT(A). In view of that, we find no merit in DR's contentions that the matter may be referred to A.O for

fresh examination. There is no merit in the contentions and accordingly the grounds are rejected.

9. In the result appeal filed by Revenue is dismissed.

Pronounced in the open court on 09th May, 2018.

Sd/-
(D. MANMOHAN)
VICE PRESIDENT

Sd/-
(B. RAMAKOTAIAH)
ACCOUNTANT MEMBER

Hyderabad, Dated 09th May, 2018.

KRK

- 1) *M/s CSR Estates Ltd., 3-6-432, 2nd Floor, Velama House, Himayat Nagar, Hyderabad.*
- 2) *Dy. CIT, Circle-1(2) Hyderabad.*
- 3) *CIT(A) -V, Hyderabad.*
- 4) *The Addl. CIT, Range-1, Hyderabad.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File*