

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “A” BENCH: HYDERABAD

BEFORE SHRI B. RAMAKOTIAH, ACCOUNTANT MEMBER
ANDSHRI V. DURGA RAO, JUDICIAL MEMBER

ITA Nos.	A.Y	Appellant	Respondent
281/Hyd/2013	2007-08	ITO, Ward-11(3), Hyderabad	M/s KSR Constructions, Hyderabad. PAN-AAJFK4018M
282/Hyd/2013	2008-09		
283/Hyd/2013	2009-10		

C.O. Nos.	A.Y	Cross-Objector	Respondent
C.O No. 20/Hyd/2013(in ITA No. 281/Hyd/2013)	2007-08	M/s KSR Constructions, Hyderabad. PAN-AAJFK4018M	ITO, Ward-11(3), Hyderabad
C.O No. 21/Hyd/2013(in ITA No. 282/Hyd/2013)	2008-09		
C.O No. 22/Hyd/2013(in ITA No. 283/Hyd/2013)	2009-10		

For Revenue:	Shri M.H. Naik
For Assessee:	Shri Y. Suryanarayana

Date of Hearing :	21.06.2018
Date of Pronouncement :	28.06.2018

ORDER

PER Bench:

These are batch of appeals total six appeals, the main appeals are by Revenue against the common order of the CIT(A)-6, Hyderabad for the A.Ys 2007-08, 2008-09 and 2009-10 dated 30.11.2012 and Cross Objections are by Assessee in support of the order of CIT(A).

2. Briefly stated facts are that, Assessee filed incomes for the impugned assessment years. There were survey operations u/s 133A of the IT Act on 29.10.2010, during which certain documents and print outs were found and statements of the Managing Partner was recorded. In the consequential

proceedings, in response to the notice u/s 147 of the IT Act Assessee has repeated the originally admitted incomes. The assessment orders are more or less on stereo type for the three assessment years and A.O seems to have analysed the impounded material in A/KSR/2, without mentioning what those documents contained and why certain conclusions were drawn. As per the order, a show cause notice was issued to the assessee indicating that an amount of profit by Rs. 1.97 Crores was arrived at on the basis of the impounded material and why the same should not be assessed in respective assessment years. Without mentioning the reasons in the show cause notice, A.O mentioned the reply given by the assessee partially in page 2 of the order which also has indication that originally A.O proposed 30% estimation of income and later revised to 15%. The incoherent assessment order also indicate that Assessee claimed an expenditure Rs. 1 Crore to one Mr. Deshal which A.O observes as 'Assessee tried to introduced a new element of expenditure'. However, A.O concludes that Assessee has earned a proportionate profit of Rs. 39,40,000/- for the A.Y 2007-08 an amount of Rs. 63,04,000/- for the A.Y 2008-09 and for an amount of Rs. 75,25,910/- for the A.Y 2009-10. The balance amount seems to have been assessed in A.Y 2010-11 which is not subject matter of appeal at present.

3. The orders of the A.O are contested before the Ld. CIT(A) who after analysing the submissions of Assessee, impounded material has passed a detailed order, wherein at the end he has directed the A.O to verify the turnover as reported by Assessee and estimate income at 12.5% of such turnover. Aggrieved on the above order the Revenue has initially raised two grounds which are common in all the years as under:

“i. From the impounded material the evidence shown recognised by the assessee as own profit expenditure drawings etc was ignored by the Hon’ble Commissioner of the income Tax (Appeals).

ii. The assessee has not maintained proper books of account and the indicative profit can not be compared to the extremely low turnover in the return of income as the receipt of on money cannot be ruled out”.

3.1 Later Revenue has revised the grounds making elaborate grounds. For the sake of record the grounds raised in A.Y 2007-08 are extracted as under:

“1 The Ld. CIT(A). erred in estimating the profit of the assessee at 12.5% for A.Y 2007-08 which do not have any stand or legal binding.

2. The Ld. CIT(A). erred in non-appreciating the total profits of Rs. 39,40,000/- pertains to A.Ys 2007-08 as per project completion method. Since, as per the impounded material of S.No. 1 page 21 & 22 clearly establish that the total receipts of Rs. 6,51,53,500/- has been received by the assessee firm and cannot be deviated from the concept of unfinished flat.

3. The Ld. CIT(A). is erred in not accepting the fact of non-maintenance of books of accounts by the assessee firm in lieu which percentage of profits method is only left out option in determining the tax liability in the firms hands.

4. The Ld. CIT(A). erred in stating that the assessee will not be able to achieve turnover of Rs. 1.31 Crores for the A.Y 2007-08 and ignored the gross receipts received by the assessee firm from its customers.

5. The Ld. CIT(A). erred in ignoring the statements given by Mr. K. Kondal Rao who is in managing partner of the firm by whom the gross receipts, withdrawals by the partners from the firm etc. were duly certified and approved during the course of proceedings carried on u/s 133A of the IT Act.

6. The Ld. CIT(A). erred in accepting the contention of the assessee firm stating to have incurred on expenditure of Rs. 1.00 Crore to Mr. Deshal, even though Rs. 27 lakhs is appearing in the books impounded during survey.

7. The Ld. CIT(A). erred in accepting the diversion of gross receipts by assessee to hands of Mr. Shoukat to the extent of Rs. 2,24,73,000/- who has purportedly completed the wood work. This argument of assessee is intended to reroute the receipts of the firm to partners through Mr. Shoukat’s bank account, which is evident from the record but was completely ignored by the Ld. CIT(A). Hyderabad.

8. The Ld. CIT(A). erroneously found that the A.O did not consider the affidavit filed by Mr. Shoukat though the same was considered by the A.O even though it was filed three days before the time barring date of assessment.

9. The Ld. CIT(A). should have re-examined the works of Rs. 2,24,73,000/- purported to have been completed by Mr. shoukat or would have called for a remand report from the then A.O.

10. *The Ld. CIT(A). erred in non-consideration of statements given by the partners of the firm during the survey proceedings which is very much basis and vital evidence in stablishing the genuineness of transaction carried out by its firm and partners.*

4. Ld. DR in his arguments relied on the orders of A.O but in spite of appeals being filed in the year 2013 and taking a number of adjournments and also after filed revised grounds of appeal, Revenue has not placed any document on record, in support of the contentions. Noo paper book has been filed by Revenue to support any of the contentions.

5. The DR was specifically asked where the issue of Mr. shoukat raised in ground Nos. 7, 8 and 9 has been discussed by the A.O in the order and also the issue of Mr. Deshal contended in ground No. 6.

6. The Ld. Counsel for the Assessee, however submitted that CIT(A) has examined the impounded material, considered the statements documents placed on record and order of Ld. CIT(A) has been accepted, even though it is adverse to it. However, it was submitted that A.O has not given any consequential orders, as per the directions of the CIT(A) to examine the turnover and estimate the income at 12.5%.

7. We have examined the issues and considered the contentions of the parties, Ld. CIT(A) in his detailed order has considered each of submissions and has given a detailed order how the estimation of profit at Rs. 1.97 crores by the A.O is not correct. His finding on this issue in pare 6.6 are as under:

“6.6 As per the information brought on record, the profits of the firm were reckoned on the basis of the turnover which was quantified at Rs. 6.53 Crores, stated to be falling into AY 07-08, 08-09, 09-10 and 10-11, with that of the expenditure incurred in the process which

was put at Rs. 4.67 Crores, for arriving at the profit of Rs. 1.97 Crores that are in turn being apportioned among the four assessment years. In the assessment order, the additions were confined to the amount of Rs. 1.97 Crores, that is being distributed / apportioned among the four assessment years, on project completion method, and is quantified on the basis of figures as appeared in impounded material. In this process, the apportionment was taken place in the ratio of 20%, 32%, 38% and 100/0 for the AYs 2007-08, 2008-09, 2009-10 and 2010-11, respectively. There is no discussion in the assessment order, however, on the basis of the turnover for each of the assessment year but it is deemed to have been allocated for the said years on the proportionate basis of the profits, since the total profit was estimated @ 30% of the gross receipts for all the four years put together, which has been quantified at Rs. 1.97 Crores. As against the same, the appellant has filed the returns of income showing the gross receipts at Rs. 28,35,500/-, Rs. 39,40,730/-, Rs. 39,88,500/ and Rs. 3,64,73,152/- respectively for the AYs 2007-08, 08-09, 09-10 and 2010-11. Thus, there is a gap between the figures of gross receipts as adopted by the appellant and the Assessing officer. There are inconsistencies in the methods adopted by the assessing officer to arrive at the gross receipts on estimation basis in the name of project completion method. To illustrate, (1) the appellant firm has entered into development agreement only on 12.02.2007 whereas the assessing officer has adopted the turnover of almost Rs. 1.31 Cr which is proportionate turnover worked out on the basis of profits apportioned project completion method by the A.O. Keeping the fact that the agreement has taken place in February, 2007 in mind, it is impossible to achieve such turnover within a period of 45 days during the said Financial Year (2) the gross receipts (Rs. 6.53 Cr) as adopted by the A.O. to arrive at the profits of Rs. 1.97 Crores after deducting the total withdrawals by 3 partners, may go up if the figures standing in the name of Mr. Shoukat (Rs. 2.80 Cr) as appearing in impounded information, taken together (3) The profit sharing by 3 partners namely Mr. Kondal Rao, Mr. G.Rama Rao and Mr. Mohad. Saber (as per partnership deed) are in the ratio of 50; 25; 25;- where as the withdrawals made by the said partners are in the range of 55:25:20 with the amounts drawn by them shown at Rs. 1.87 Crores, Rs. 85.00 lakhs and Rs. 65.00 lakhs respectively, where as per the investments such ratios are put at 57:29:14.

7.1 With reference to the issue of Mr. Shoukat raised in ground Nos. 7, 8 and 9, as stated earlier was not even mentioned by the A.O in the assessment order in the impugned

three assessment orders, the CIT(A) analysed the issue and his findings in para 6.9 as under:

“6.9 The other aspect involved in this case is the turnover which is stated to be related to Mr. Mohd. Shoukat. The information related to the same are stated to be reflected in the impounded material in the form of computer printouts and also found a mention in the statements recorded from the partners during the assessment proceedings. It is also a fact that Mr. Mohd. Shoukat has filed affidavit on 13.12.2011 before the A.O. which appears to have not been considered by the A.O. and no reference is made in the assessment order. Since the amounts were shown to have been received by Mr. Shoukat towards the works completed for the buyers, which also appear to have been paid by the buyers mostly through banking channel, the same needed to be considered in his hands. However, the payments received by Mr. Shoukat also needed to be ascertained year wise, although he adopted all such receipts in one single year i.e. AY 2010-11, so as to arrive at the correct amounts of gross receipts in the hands of the appellant firm for each of the assessment year. The A.O. is directed to verify the same, in arriving at the correct quantum/amounts of the gross receipts in the names of the firm as well as Mr Mohd Shoukat, and to assess the correct incomes from such receipts/consideration in respective hands. While arriving at the correct consideration based on the registration documents/final payments, the amounts already offered by the appellant in return of income for AY 2007-08, 08-09, AY 2010-11 and 2011-12 and AY 2011-12 needed to be taken into consideration since the date of survey (29.10.2010) falls in the AY 2011-12”.

7.2 We have noticed that before arriving at the decision of the ‘estimation of profit’ Ld. CIT(A) has examined the orders of the A.O, impounded material and statements of the partner and has arrived at estimation of income by stating as under:

“7.1 While computing the total income, the A.O. has quantified the income of the appellant firm at Rs. 1,97,00,000/- as relatable to AY 2007-08, 08-09, 09-10 and AY 2010-11. The said amount is distributed to the AY 2007-08, 08-09 and AY 2009-10 at Rs. 39,40,000/- (20%), Rs. 63,04,000/- (32.0%) and Rs. 75,25,914/- (38%) respectively left the balance for the AY 2010-11, which is equivalent/approximately at Rs. 19,70,000/- (10%) / on the project completion method as presumed by the A.O. on estimation basis, as indicated in the earlier paras of this order.

While quantifying the income of the appellant firm for the said four years at Rs. 1,97,00,000/- the A.O. appears to have taken the figures as appeared at page 22 of impounded material in annx. MS/KSR/2. The said page have figures under various heads such as 'investment amounts (Rs. 80,71,336, Rs. 40,50,000/- and Rs. 20,00,000/-) in the name of a) Mr. Kondal Rao, Mr. G.Rama Rao and Mr. Md. Saber respectively, the partners of the firm. Similarly, the same page have amounts indicated against the heads Flats received amount (Rs. 6,53,60,375/-) 'Expenditure' (Rs. 4,67,78,820/-). Further, certain amounts are shown as 'expenditure' against the names of Mr. Kondal Rao (Rs. 1,87,71,336/-) G. Rama Rao (Rs. 85,50,000/-) and Md. Saber (Rs. 65,00,000/-). As it has been revealed, though it has not been elaborated in assessment order, the A.O. has quantified the amount of Rs. 1,97,00,000/- as profit of the firm, being the difference between the total amounts of investments made by the partners i.e. Rs. 1,41,21,336/- (total of Rs. 80,71,336/- Rs. 40,50,000/- and Rs. 20,00,000/-) and Rs. 3,38,21,336/- being the outflow of funds moved through the three partners (Rs. 1,87,71,336 + Rs. 85,50,000/- + Rs. 65,00,000/-) which were considered as withdrawals by the three of such partners and accordingly A.O. has treated the amounts of Rs. 1,97,00,000/- as surplus of receipts over and above the investments of the partners.

7.2 The appellant objected for such quantification. It was submitted that A.O. erred in completing the assessment by estimating profits at 30% on gross receipts, and such quantification is a mere guesswork. In this context, the appellant referred to the show cause notices issued by the A.O. where in the A.O. himself has mentioned the profit at 15% as per the show cause notice dated 21/12/2011/ whereas the same has been revised to 30% as per show cause notice dated 23.12.2011, and contended that A.O. has taken different stand on the same issue in quickest possible time. The appellant further contended that, estimation must not be arbitrary, vague and fanciful but be legal and regular and should be comparable to the businesses of similar line and relied on judicial decisions as reported in 68 ITR 796 (Ker), (Joseph Thomas & Bros Vs. CIT) and 64 ITR 175 (AP) (S.Subbaiah Setty & Sons Vs. CIT).

7.3 While continuing the submissions, the appellant further submitted that there is no basis for quantifying the profits at Rs. 1,97,00,000/- arrived by deducting the expenditure (Rs. 4,67,78,820/-) from gross receipts, (Rs. 6,53,60,375/-) or by reducing the amounts of investments (Rs. 1,41,21,336/-) from the total withdrawals (Rs. 3,38,21,336/-), which has been apportioned among the four years i.e. AY 2007-08 to 2010-11, since the gross figure of receipts as adopted by the A.O. (Rs. 6.53 Crores) and as indicated in impounded material also indicate the amounts received by Mohd. Shoukat, towards the cost of finishing work, as per the agreements entered by the individual buyers with him. It was also submitted that, the withdrawals as indicated in the impounded material (Rs. 3,38,21,336/-) also incorporate the figure of amount of Rs. 17,00,000/- shown under the head 'Investments' (Page 22 of Annexure MS/KSR/2) taken from Mr. Habeeb AliKhan, but got merged with figures shown as withdrawals against the 3 names of partners.

Further, the appellant submitted that the amounts shown to have been withdrawn by Mr. Kondal Rao (Managing Partner) and other partners also have the figures of the amounts paid towards various expenses of the firm, and the main instance of such payments were indicated to be an amount of Rs. 27,00,000/- shown against the name of Mr. Deshal, which is also raised through a separate ground of appeal as an expense, which was not considered by the AO., in quantifying the income at Rs. 1,97,00,000.

The appellant also pointed to the inconsistencies in the statements of the partners, who have put the figures of gross receipts and total profits of the firm/differently at different times, and also the withdrawals made by them, which do not match with one another, but was taken as the basis by the A.O., in quantifying the income of the appellant firm. It was also referred by the appellant albeit without specifying the names of the parties/cases where surveys conducted on the same day by the A.O., where the net profits were adopted at 12% and prayed for estimating the profit at 12% of the gross receipts of the firm as proposed to before the A.O. while replying the show cause notice dated 21.12.2012.

7.4 Perused the observations of the A.O. in assessment order and submissions of the appellant with respect to the copies of the impounded material. As could be seen from the assessment order, there is no clarity on the basis, on which the profits of the firm for 4 years was quantified at Rs. 1.97 Crores. However, the perusal of the impounded material (page 22 of MS/KSR/2) indicate that the figure nothing but net of the withdrawals made by 3 partners and their investments. The figure of Rs. 1.97 crores also indicate the amounts of profits estimated @ 30% by the A.O. on the turnover of Rs. 6.53 crores (Rs. 1.96 crores to be precise), if the show-cause notice issued by the A.O. prior to the passing of the assessment order is any indication. However, the figure of Rs. 1,97,00,000/- matches precisely with that of the net of the amounts withdrawn by partners (Rs. 3,38,21,336/-) and their investments (Rs. 1,41,21,336/-). If the said basis adopted by the A.O. taken as basis, the same appear to be suffering from certain inconsistencies. To point out the figure of Rs. 17,00,000/- as shown in investments against the name of Habeeb Alikhan does not reflect in the investments tagged to the partners but shown to have mixed up with the withdrawals, since no such amounts were shown as outflow, separately. Similarly, the amounts of withdrawals as indicated against the names of partners, also indicate payments made to other persons, whose names are indicated impounded material, such as Mr. Deshal, Kamalakar, Mr. Shoukat etc. for example, an amount of Rs. 27,00,000/- is the amount shown to have paid to Mr. Deshal which was claimed as expense, but was not considered by the A.O. In fact, this issue has been raised as a separate ground of appeal by the appellant. The impounded material which has been relied upon by the A.O. also contain the said information, but has been ignored by the A.O. Keeping the above facts in mind, the quantification of income as arrived by the A.O. at Rs. 1,97,00,000/- cannot be held as a valid basis and as such do not survive the test of scrutiny. Under the circumstances, the profits need to be estimated, as it has been

repeatedly submitted and proved by the appellant that no books of account were maintained and the method adopted by the A.O. are not reliable or substantiated with any basis.

7.5 In the instances, where the books of accounts are either not maintained or maintained but not reliable, the estimation becomes inevitable. However, the estimation should be reasonable and based on the facts as available in the case, and also in similar line of business. In this case, initially the A.O. has sent the show cause notice proposing for the estimation of the profit @ 15% on the gross receipts, which has been subsequently revised and adopted at 30% for arriving at the profits of the business of the appellant firm. However, the said estimation is indicated to be inconsistent with the set of facts that have been brought on the record, such as the withdrawals made by the partners over and above the investments made by them.

Though there is no specific basis for estimation of the profits a 15% originally and at 30% subsequently by the A.O., the rate as adopted at 15% initially, is nearer, to the results of business in similar line. In fact, the appellant shown to have accepted for estimation of the profit at 12%, while replying to the initial show cause notice, that has taken the estimation of profit at 15%.

7.6 Though exactly not on the same facts of the case, the judicial rulings have determined the estimated profits in the case of civil contractors/builders in the range of 8 to 12.5%, depending on the facts and circumstances of each case. Various judicial decisions indicate the profits in the above mentioned ranges, where estimation has become inevitable. Further, in the cases, where the surveys have taken place, within the jurisdiction of the same A.O. on the same day, the profits of the business were shown to have been estimated at 12%, while completing the assessments. In such a situation and similarity of facts, the appellant's profits deserved to be determined in the range of rates of profits as adopted. Under the circumstances, I am of the considered opinion that keeping the facts of the business on similar lines as well as the circumstances and facts of the case and based on the ratios of the judicial decisions on the subject matter in the appeal under reference, the net profit @ 12.5% may meet the justice at both the ends. Accordingly, the A.O. is directed to estimate the profits at 12.5% on the gross receipts/turnover determined for the AY 2007-08, 2008-09 and 2009-10.

7.3 In view of the detailed orders of the Ld. CIT(A) and the findings which are not controverted by Revenue, we have no hesitation to confirm the orders of the CIT(A). As stated earlier A.O has not considered any of the documents properly nor passed the orders in a speaking manner and the basis for arriving at the income has not been specified in the

assessment orders categorically. Even the show cause notice issued was not extracted and his order does not indicate on what basis the profits were arrived at. It is only the CIT(A) order which gives some picture of the issues and why Ld. CIT(A) has to reject the A.O's contentions and estimate the profit. It is also surprising to note that no consequential orders have been passed by the A.O so far as submitted by the Ld. Counsel for the Assessee. It is high time that A.O should give effect to the orders of the CIT(A) whether appeal is preferred or not. The A.O is directed to pass the consequential orders immediately. The orders of the CIT(A) stands confirmed. In the result, appeals of Revenue are dismissed as there is no merit in the grounds raised.

8. The Cross Objects are in fact in support of Ld. CIT(A) and therefore they are treated as academic in nature. In the result both Revenue appeals and C.Os are treated as dismissed.

Order pronounced in the open court on 28th June, 2018.

Sd/-

**(V. DURGA RAO)
JUDICIAL MEMBER**

Sd/-

**(B. RAMAKOTIAH)
ACCOUNTANT MEMBER**

Hyderabad, Dated: 28th June, 2018.

KRK,

Copy to

1.	M/s KSR Constructions, H.No. 5-5-13, sangeeth Nagar, Kukatpally, Hyderabad.
2.	ITO, Ward-11(5), Hyderabad.
3.	CIT (A)-6, Hyderabad.
4.	Addl. CIT, Range-11, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File