

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri S.Rifaur Rahman, Accountant Member**

ITA No.607/Hyd/2018
(Assessment Year: 2013-14)

M/s. Southern Realtors & Towers Private Limited Hyderabad PAN:AAJCS1895B (Appellant)	Vs	Dy. Commissioner of Income Tax, Circle 3 (2) Hyderabad (Respondent)
--	----	--

For Assessee :	Shri K.A. Sai Prasad
For Revenue :	Shri Y.V.S.T. Sai, CIT(DR)

Date of Hearing:	08.11.2018
Date of Pronouncement:	06.12.2018

ORDER

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal for the A.Y 2013-14 against the order of the Pr. CIT (3), Hyderabad u/s 263 of the Act, dated 1.2.2018.

2. Brief facts of the case are that the assessee company deriving income from house property and income from other sources, filed its return of income for the A.Y 2013-14 on 29.09.2013 declaring an income of Rs.1,81,67,710/-. The assessment was completed u/s 143(3) of the Act after making an addition of Rs.2,22,750 to the returned income. Subsequently, the CIT perused the assessment records by invoking the provisions of

section 263 and observed that there were certain discrepancies which are as follows:

“3. On examination of the assessment record, discrepancies are noticed in the following issues:

- a) As seen from the agreement entered with the tenants, the municipal tax shall be payable by the tenants and as such the claim of municipal tax of Rs.3,57,524 needs to be disallowed.*
- b) The assessee received maintenance charges from tenants of Rs.9,55,856/-. Since the assessee had claimed expenditure for maintenance etc., at 30% of rent received (Rs.67,06,931) against the actual expenditure of Rs.17,25,575/- as per P&L A/c, the income of Rs.9,55,856 needs to be added to total income.*
- c) As seen from computation, the assessee claimed TDS of Rs.25,58,898 on the incomes but the income was offered short as under:*

	Income As per TDS claim (computation)	Income offered as per return	Income short offered
Kalaniketani	2,20,32,522	2,05,18,259	15,14,263
My Time Travelcy	7,74,341	4,92,768	2,81,573
YKM Hotels	6,14,297	4,98,028	1,16,269
YKM Health	6,38,825	4,98,028	1,40,797
		Short	20,52,902

Hence, the short income of Rs.20,52,902 needs to be added to the total income”

Therefore, the CIT was of the opinion that the assessment order passed u/s 143(3) dated 23.12.2015 is erroneous and prejudicial to the interest of the Revenue. Therefore, he proposed to revise the same u/s 263 of the Act. The assessee submitted its explanation as under:

“5. The case was posted for hearing on 28.09.2017. The assessee stated that the deductions claimed are in order and submitted explanations as under:

- a) Municipal Tax of Rs.3,57,524 was not paid by the tenant but paid by the assessee on 26.03.2013 vide SBI cheque No.614252, Rs.58,274/- and No.614254 Rs.2,99,250. As the taxes are actually paid by it, the assessee claimed that deduction is allowable u/s 23(a).*
- b) Standard deduction (30% of rent received) is allowed as adhoc/flat deduction on Net Annual Value u/s 24(a). There is no link of expenditure incurred. As such 30% deduction is allowable whether amount spent or not.*

With regard to maintenance charges, details are as under:

<i>Building & Maint. Charges</i>	<i>Rs.3,95,256</i>
<i>Electricity charges</i>	<i>Rs. 72,757</i>
<i>Salary</i>	<i>Rs.3,00,000</i>
<i>Security charges</i>	<i>Rs.4,04,634</i>
<i>Total</i>	<i>Rs.11,72,647</i>

Maintenance charges received is Rs/9,55,856. Thus, there is deficit of Rs.2,16,791 which is not even claimed from the income. Neither maintenance charge nor expenditure incurred is to be considered u/s 24.

c) There is no mismatch of income as per Return of income and TDS details. TDS on rent was deduction u/s 194I whereas TDS on maintenance charge was deducted u/s 194C.

	Rent	Maintenance	Total	Rent as per return	Rent as per 26AS
My Time Travelex	4,92,768	2,81,573	7,74,341	4,92,768	4,92,768
YKM Hotels	4,92,752	1,21,545	6,44,297	4,92,768	4,92,768
YKM Health	5,19,907	1,18,918	6,38,825	4,98,028	5,19,907

In case of Kalaniketan, Rs.33,31,378 was received from the lessee during the month of June, 2012 which is inclusive of rent (Rs.17,41,402/-) and Service Tax (Rs.15,89,976/-)".

3. The CIT however, was not convinced with the assessee's contentions and therefore, set aside the assessment order with a direction to redo the same in accordance with law after allowing an opportunity of being heard to the assessee and after due verification of submissions made by the assessee. Aggrieved by the revision order, the assessee is in appeal before us.

4. The learned Counsel for the assessee drew our attention to the copy of the letter dated 11.02.2015 filed by the assessee before the AO which are placed at pages 12 and 13 of the Paper Book wherein the information regarding the Municipal Tax paid by the assessee, the maintenance charges and the details of the share application money received by the assessee

are furnished. Pages 14 is the copy of the Municipal receipts and page 15 is the assessee's submissions to the AO giving the details called for by the AO including the reconciliation of the receipts and TDS as per 26AS. On page 18 is the notice of the AO dated 9.2.2017 u/s 154 of the Act to rectify certain mistakes in the assessment order and at para 2 thereof is the issue with regard to the maintenance charges received from the tenants and the expenditure on maintenance claimed against the same. Page 19 to 20 is the information submitted by the assessee after which 154 proceedings were dropped. Therefore, the learned Counsel for the assessee submitted that the AO had verified and applied his mind to the information and the relevant issues and therefore, the assessment order is not erroneous and prejudicial to the interests of the Revenue. He relied upon the decision of the Tribunal at Mumbai in the case of Narayan Tatu Rane vs. ITO reported in (2016) 70 Taxmann.com 227 (Mum.Trib) wherein it was held that the Commissioner u/s 263 cannot direct the AO to carry out fishing and roving enquiries with an objective of substituting his views with that of the AO. The learned Counsel further submitted that the Pr. CIT had also not brought out as to how the assessment order is erroneous and prejudicial to the interests of the Revenue. Therefore, the revision order is not sustainable.

5. The learned DR however, supported the orders of the Pr. CIT.

6. Having regard to the rival contentions and the material on record, we find that to exercise jurisdiction u/s 263 of the Act,

twin conditions of the assessment order being erroneous as well as prejudicial to the interests of the Revenue are to be satisfied. If the AO does not make any enquiry and allows deductions claimed by the assessee, then it may be said that the assessment order is erroneous. But, in the case before us, it is clear that the AO had called for the details during the assessment proceedings and had further issued a notice u/s 154 and after being satisfied, has dropped the 154 proceedings. Therefore, it is clear that the AO has applied his mind to the information filed by the assessee and therefore, the assessment order cannot be said to be erroneous. The issues raised by the CIT as the mistakes/discrepancies are of factual nature and not against the law, therefore, for this reason also, the assessment order cannot be said to be erroneous.

7. Further, we also agree with the contention of the learned Counsel for the assessee that the CIT cannot direct the AO to redo the assessment without pointing out the errors committed by the AO and without giving a finding as to how the assessment order is erroneous. From the literal reading of the order u/s 263, we find that the CIT pointed out certain discrepancies and then subsequently reproduced the assessee's submissions and then directed the AO to redo the assessment. Thus, there is no finding whatsoever, as to whether the assessee's contentions were acceptable to him or not and as to how the assessment order is erroneous. Therefore, the revision order passed by the Pr. CIT is not sustainable. The assessee's appeal is accordingly allowed.

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

Order pronounced in the Open Court on 6th December, 2018.

Sd/-
(S.Rifaur Rahman)
Accountant Member

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 6th December, 2018.

Vinodan/sps

Copy to:

- 1 Ch. Parthasarathy & Co. 1-1-298/2/B/3, 1st Floor, Sowbhagya Avenue, St. No.1 Ashok Nagar, Hyderabad 500020
- 2 Dy.CIT, Circle 3(2), 7th Floor, Signature Towers, Kondapur, Hyderabad
- 3 Pr. CIT (3) Hyderabad
- 4 The DR, ITAT Hyderabad
- 5 Guard File

By Order