

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'B', HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA No. 1522/Hyd/2018
Assessment Year: 2013-14

Nhance Engineering Solutions Pvt. Ltd.,
Hyderabad. vs. Dy. Commissioner of
Income-tax,
Circle – 16(1), Hyderabad.

PAN – AABCN9474D

Appellant

Respondent

Assessee by: Shri N. Venkateswara Rao
Revenue by: Shri Phani Raju

Date of hearing: 07/02/2019
Date of pronouncement: 20/02/2019

ORDER

PER S. RIFAUR RAHMAN, AM:

This appeal filed by the assessee is directed against the order of CIT(A) – 4, Hyderabad, dated, 10/05/2018 for AY 2013-14.

2. Brief facts of the case are that the Assessee company filed its return of income for the AY 2013-14 on 02/12/2013, declaring total income of Rs. 39,26,388/- and book profit u/s 115JB at Rs. 16,54,169/-. The return was processed u/s 143(3) and subsequently the case was selected for scrutiny. Notices u/s 143(2) and 142(1) were issued and duly served on the assessee. In response to the said notices, the AR of the assessee furnished the information called for.

2.1 After going through the information furnished by the assessee, the AO observed that the assessee company had credited a sum of Rs. 20 lakhs under sales & other income on

account of sales of old furniture, which was shown in the computation of income as the slump sale and tax @ 20% was computed separately. When the AO asked the assessee to file submissions in support of its claim, it was state that the assessee company was looking for investors and proposed investors were not interested in the existing business of the company and hence, company decided to transfer the assets and employees of the existing division to its subsidiary and accordingly the net assets value of the fixed assets transferred was Rs. 68,78,403/- for consideration of Rs. 88,78,403/- and the difference of Rs. 20 lakhs gain was offered for taxation as per the provisions of the Act.

2.2 The AO after considering the submissions of the assessee, observed that as per the provisions of section 50B(3) of the Act, the assessee required to furnish in the prescribed form 3CEA along with the return of income, certified by an Accountant. He noted that assessee did not file form 3CEA along with return of income, but, the same was submitted during the course of hearings. The AO, therefore, did not allow the rebate in the income tax and the profit of Rs. 20 lakhs was treated as short profit and added to the total income on the reason that the assessee did not comply with the provisions of section 50B(3). He calculated the tax on Rs. 20,00,000/- on higher rate i.e. 30% instead of 20% as claimed by the assessee.

3. When the assessee preferred an appeal before the CIT(A), the CIT(A) confirmed the order of AO.

4. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising the following grounds of appeal:

"Based on the facts and circumstances of the case and in law, the learned Assessing Officer ("AO") / Learned Commissioner of Income-Tax (Appeals) erred in:

1. *Alleging that the capital gains on Slump sale not do not qualify under section 50B of the Income Tax Act, 1961 since appellant failed to file the Form 3CEA along with the return of Income.*

2. *Not appreciating the fact that the Form 3CEA is filed during the course of assessment proceedings and ignoring the judicial precedents in this regard.*

3. *Computing Gains on Slump sale @ 30% instead of special rate of 20%.*

4. *Initiating penalty proceedings u/s 274 r.w.s 271 of the Act.*

The Appellant also submits that each of the above grounds is independent and without prejudice to the other grounds of appeal preferred by the Appellant.”

5. Before us, Id. AR submitted that there is no provision to file the audit report along with return of income, at the time of online filing of return of income and assessee can file the report only at the time of assessment. Even otherwise, non-furnishing of audit report is a technical default and curable. For this proposition, he relied on the decision in the case of Kayees Tourist Home Vs. ACIT, TS-5495-ITAT-2014 (Cochin), a copy of which is filed before us.

6. The Id. DR, on the other hand, relied on the orders of revenue authorities.

7. Considered the rival submissions and perused the material on record. We notice that assessee has applied concessional tax u/s 50B in the return of income. It is a fact that audit report was not filed at the time of filing of return of income in the AY under consideration. There is no possibility that assessee is expected to file the report along with the return of income, when there is provision to file with the return of income. As long as, it is submitted at the time of

assessment, it is as if filed along with the return of income. The AO is expected to accept the report when it is filed at the time of assessment. The claim of the assessee can be submitted only at the time of assessment when the case is selected for scrutiny. AO has to consider the submissions of the assessee when it is filed at the time of assessment. Even otherwise, the filing of report is curable even if it is not submitted along with the return of income. This cannot be the reason for the AO to deny the benefit which is lawfully eligible. Therefore, we direct the AO to accept the audit report and allow the benefit u/s 50B to the assessee. Accordingly, grounds raised by the assessee on this issue are allowed.

8. Ground No. 4 regarding initiation of penalty proceedings u/s 274 rws 271 of the Act, is premature in nature, hence, need no adjudication.

9. In the result, appeal of the assessee is allowed.

Pronounced in the open court on 20th February, 2019.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, dated 20th February, 2019.

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Copy forwarded to:

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2. *DCIT, Circle – 16(1), 1st Floor, IT Towers, Hyderabad.*
3. *CIT(A) - 4, Hyderabad*
4. *Pr. CIT – 4, Hyderabad*
5. *The DR, ITAT, Hyderabad*
6. *Guard File*