

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" : HYDERABAD**

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

I.T.A. No. 1836/HYD/2017

Assessment Year: 2006-07

M/s. Mahalakshmi Liquor Promoters Private Limited, HYDERABAD
[PAN: AABCM3739N] Vs Income Tax Officer,
Ward-16(2), HYDERABAD

(Appellant)

(Respondent)

Stay Application No. 29/Hyd/2019

(Arising out of ITA No. 1836/Hyd/2017)

Assessment Year : 2006-07

M/s. Mahalakshmi Liquor Promoters Private Limited, HYDERABAD
[PAN: AABCM3739N] Vs Income Tax Officer,
Ward-16(2), HYDERABAD

(Applicant)

(Respondent)

For Assessee : Shri A.V. Raghuram, AR
For Revenue : Shri Satya Pinisetty, DR

Date of Hearing : 21-02-2019

Date of Pronouncement : 13-03-2019

ORDER

PER Smt. P. MADHAVI DEVI, J.M. :

This is assessee's appeal for the AY. 2006-07, against the order of the Commissioner of Income Tax (Appeals)-4, Hyderabad, dated 22-02-2016.

2. Brief facts of the case are that, the assessee-company engaged in the promotion of liquor business, filed its return of income for the AY. 2006-07 on 29-11-2006, declaring income of Rs. 18,69,190/-.

3. During the assessment proceedings for the AY. 2007-08, pursuant to the order u/s. 263 of Income Tax Act [Act], the Assessing Officer therein had examined the payment of Rs. 1,40,00,000/- for purchase and development of land and observing that the lands were purchased during the FY. 2005-06, relevant to the AY. 2006-07, it was observed that the proceedings for the AY. 2006-07 have to be reopened and therefore, no adverse view was drawn for the AY. 2007-08. Accordingly, the assessment proceedings were re-opened 147 of the Act. During the re-assessment proceedings, Assessing Officer observed that assessee has purchased lands during the year and the value of the asset was shown in the Fixed Asset Schedule at Rs. 1,44,89,400/-. As per the information available from the letter dt. 12-11-2009 of the facilitator filed during the course of scrutiny assessment for the AY. 2007-08, Assessing Officer observed that the actual cost of land is Rs. 59 Lakhs and that Rs. 70 Lakhs is incurred for development of land. He observed that the assessee has not submitted substantial evidence for incurring the expenses in support of the claim for development and has not proved that the cost of the land is higher than what is shown in the Fixed Assets Schedule. Therefore, he held that the value of the asset has been inflated by the assessee, leading to draw an inference

that the liabilities to that extent are not genuine and therefore are required to be added as *un-explained credit*. He therefore brought the difference of amount i.e., Rs. 1,44,89,400 – 59,00,000 = Rs. 85,89,400/- to tax. The assessment was completed u/s. 144 r.w.s. 147 of the Act due to non co-operation by the assessee.

3.1. Aggrieved by the addition made by the Assessing Officer, assessee preferred an appeal before the CIT(A) with a delay of 61 days in filing of the appeal. The assessee filed an application for condonation of delay and also filed detailed submissions on the merits of the addition made by the Assessing Officer. The Ld.CIT(A) observed that the assessee has not appeared before the Assessing Officer and also has not appeared before her, inspite of several opportunities given by her. She therefore confirmed the additions made by the Assessing Officer. Hence, the assessee is in second appeal before us, raising the following grounds of appeal:

“1. On the facts and in the circumstances of the case, the order of the Commissioner of Income Tax (Appeals)-4, Hyderabad, is perverse, illegal and unsustainable in law.

2. The Commissioner (Appeals) erred in sustaining the illegal and non est assessment order which was passed in gross violation of principles of natural justice.

3. The Commissioner (Appeals) erred in sustaining the addition of Rs.85,89,400 towards alleged unexplained credits being the excess value of land over assets. Both the authorities below failed to appreciate the explanation submitted by the Appellant with respect to the purchase and sale of land.

4. The Commissioner (Appeals) as well as the Assessing Officer have considered only half the information filed by the Appellant, and have come to a wrong conclusion resulting in huge addition of Rs.85,89,400.

5. The finding of the AO that the Appellant incurred Rs.70 lakhs for development of land and which finding was sustained by the Commissioner (Appeals) is factually incorrect. Both the authorities below failed to appreciate the explanation of the Appellant that it has not incurred any expenditure on development.

For these and other grounds that may be urged, it is prayed that the appeal may be allowed deleting the addition of Rs.85,89,400 with costs in favour of the appellant”.

4. The Ld. Counsel for the assessee, Shri A.V. Raghuram, while reiterating the submissions made before the CIT(A), has drawn our attention to the assessment order for the AY. 2007-08, wherein the payment of Rs. 1,40,00,000/- during the financial year relevant to the AY. 2006-07 is recorded.

4.1. The Ld. Counsel for the assessee has also drawn our attention to Page No. 13 of the Paper Book, wherein the details of payments to the extent of Rs. 1,40,00,000/- by way of cheques is mentioned. In para 3 of the said letter dt. 12-11-2009 of the facilitator, it is also mentioned that a sum of Rs. 1,40,00,000/- is an advance for purchase of seven acres of land and future development of land, brokerage and commission. It was mentioned that an amount of Rs. 70 Lakhs was towards land cost and the balance of Rs. 70 Lakhs was towards development of land and other related expenses. It is mentioned in the letter, that till such date of the letter, the venture has registered only 5.43 acres of land and since the

entire 7 acres could not be procured, it was agreed that this land will be re-sold by him and profit on this will be paid to assessee, after retaining 50% with himself and it is also mentioned that as part of this transaction, the said facilitator has paid through his group, a total sum of Rs. 155 Crores and their cheque numbers and details thereof have been clearly given. Ld. Counsel also submitted that assessee had filed all these details before the CIT(A), but the CIT(A) has dismissed the appeal on the ground that assessee has not appeared before her. He prayed that the assessee should be given a proper opportunity of being heard in this case.

5. The Ld.DR, on the other hand, supported the orders of the authorities below and submitted that though several opportunities were given by the CIT(A), none appeared before her to explain the case. Therefore, CIT(A) was constrained to confirm the assessment order.

6. Having gone through the material on record and considering the rival contentions, we find that the Assessing Officer has made an addition of Rs. 85,89,400/- as excess liability over assets and has treated it as *Escapement of income*. Since the assessee did not appear before the Assessing Officer and explain the facts to the Assessing Officer and even the CIT(A) has not considered the issue on merits, we are of the opinion that this issue needs to be re-verified by the Assessing Officer in the light of the assessee's contentions as above and the material filed by the assessee before the CIT(A).

Therefore, we deem it fit and proper to remand the issue to the file of Assessing Officer with a direction to re-consider the issue *denovo* in the light of the evidences filed by the assessee.

7. In the result, the appeal of assessee is allowed for statistical purposes.

8. Since the appeal of the assessee has been disposed-of vide order even dated, the Stay Application filed by the assessee has become infructuous. Accordingly, the same is rejected.

9. To sum-up, the appeal of assessee is allowed for statistical purposes and the Stay Application is dismissed.

Order pronounced in the open court on 13th March, 2019

Sd/-

(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Sd/-

(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated 13th March, 2019

TNMM

Copy to :

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C/o. K. Vasant Kumar, A.V. Raghu Ram, P. Vinod &
M. Neelima Devi, Advocates, 610, Babukhan Estate,
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- 2. Income Tax Officer, Ward-16(2), Hyderabad.*
- 3. CIT(Appeals)-4, Hyderabad.*
- 4. Pr.CIT-4, Hyderabad.*
- 5. D.R. ITAT, Hyderabad.*
- 6. Guard File.*