

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

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

ITA No.	Asst. Year	Appellant	Respondent
1018/Hyd/18	2009-10	Laxmi Nilaya Constructions, HYDERABAD [PAN: AACFL2770Q]	The Asst. Commissioner of Income Tax, Central Circle-2(3), HYDERABAD
1019/Hyd/18	2010-11		
1020/Hyd/18	2011-12		

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

Date of Hearing : 28-08-2019
Date of Pronouncement : 26-11-2019

ORDER

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

These are assessee's appeals for the AYs.2009-10, 2010-11 & 2011-12 against the order of the Commissioner of Income Tax (Appeals)-12, Hyderabad, dated 14-03-2018 respectively.

Condonation of delay:

2. These appeals of assessee have been filed with a delay of 05 days. Ld.Counsel for the assessee, Shri K.A.Sai Prasad, has filed affidavits separately for these appeals, seeking condonation of delay for all these appeals, by stating that –

‘The appeal of the above named assessee before First Appellate Authority was represented by me and the order of the First Appellate Authority was received on 17.03.2018. The due date for filing the appeal was 16.05.2018. After preparing to relevant appeal papers I left them with my office staff and had to leave for Tirupathi in connection with a batch of appeals posted for hearing on 17.05.2018 before Income Tax Appellate Tribunal at Tirupati camp. The office people could not contact the partner concerned.

After I returned back from Tirupathi, I contacted the assessee and the appeal was filed on 21.05.2018 causing a delay of 5 days’.

2.1. Considering the petition for condonation of delay in respect of assessee’s appeals and being satisfied with the reasonable cause for the delay, we hereby condone the delay in filing the appeals, and the appeals are admitted.

3. Since the facts and issues involved in all these appeals are common and identical, all these appeals were heard together and are being disposed by way of this common and consolidated order. For the sake of convenience, appeal in ITA No.1018/Hyd/2018 for the AY.2009-10 is discussed hereunder in detail.

4. Brief facts of the case are that the assessee is a partnership firm, which came into existence on 13-07-2003 and is engaged in the business of real estate and constructions and

Sri Kaithi Damodar Reddy is the Managing Partner of the firm. There was a search and seizure operation u/s.132 of the Income Tax Act [Act] in the case of the Managing Partner of the firm on 24-12-2014, during the course of which, incriminating documents belonging to the assessee-firm were found and seized. Therefore, the AO of Sri Kaithi Damodar Reddy recorded the satisfaction and thereafter, the same was transferred to the AO of the assessee before us. The assessee's AO issued notice u/s.153C of the Act on 09-09-2016, in response to which, the assessee filed its returns of income for the relevant assessment years.

5. During the assessment proceedings u/s 143(3) r.w.s. 153C of the Act, the AO observed that the assessee-firm has constructed 18 flats in the name and style of *Laxminilaya Constructions*, admeasuring 25000 Sq.Ft. and that during the course of search, the Managing Partner, Sri Kaithi Damodar Reddy admitted that the flats were constructed and the entire sales have been shown during the FYs.2008-09 and 2009-10 and 2010-11, and though the flats were registered @ Rs.1,800/- per Sq.Ft., they have actually sold them at an average price of Rs.2,100/- per Sq.Ft, resulting in undisclosed income of Rs.75 Lakhs (Rs.300 x 25000). The Managing Partner, accordingly agreed to admit the income of Rs.75 Lakhs as 'un-disclosed income' for the FYs.2008-09 and 2009-10. During the course of assessment proceeding, AO required the assessee to furnish the details of sales of the above venture. The assessee stated that all the 18 flats in the venture were sold in the AYs.2009-10 to 2011-12, the details of which are as under:

Sr No	Particulars	Number of flats sold	Area of flats sold	Sales Consideration (Rs.)	Avg. rate per Sq Ft at which sale offered to tax	Net Profit @8% estimated on Turnover (Rs.)
1	AY 2009-10	11	13,753 sq ft	85,22,000	620	6,92,112
2	AY 2010-11	3	3,712 sq ft	31,66,000	853	2,53,380
3	AY 2011-12	4	4,989 sq ft	48,35,500	969	3,86,840
	Total	18	22,454 sq ft	1,65,23,500		13,32,332

5.1. Assessee filed its returns of income in response to the notice u/s.153C of the Act declaring business income @8% of also the turnover which is not reflected in the books of account. On perusal of the seized material, AO observed the following details of respective sale proceeds together with amount received towards amenities and the rate at which the flats have been sold, as is evident from the hand-book, which was found and seized.

Apartm-ent No	Name of the person	Amount Rs.	Period	Rate	Sq ft	Amount received towards amenities	Amount received
101	Rama rao	1,00,000	Jul-07				
102	K. Bal reddy	20,00,000		1800	1221	1,00,000	20,00,000
103	Jashuva reddy	10,00,000	Mar-08				

	Jashuva reddy	10,00,000	Jun-08				
105	Mohan reddy	23,50,000	Dec-08	2100	1162	1,00,000	23,90,000
	Mohan reddy	50,000	Apr-09				
201	G Sudarshan reddy	16,38,000	Nov-08				
202	Chandrasekhar reddy	11,00,000	Mar-08	2200	1221	1,00,000	26,00,000
	Chandrasekhar reddy	17,00,000	Jan-09				
203	G Ravinder reddy	24,38,000	Nov-08				
204	S Madhava reddy	27,59,000	Mar-08				
205	D Venkata Narayan reddy	13,00,000	Mar-08	2200	1162	1,00,000	25,20,000
	D Venkata Narayan reddy	12,20,000	Dec-08				
301	V Krishna reddy	15,00,000	Mar-08				
	V Krishna reddy	3,00,000	Aug-09				
302	Yella reddy	10,00,000	Mar-08	2200	1221	1,00,000	27,00,000
	Yella reddy	13,00,000	Mar-09				
	Yella reddy	4,00,000	Mar-09				
303	Bojja Mohan reddy	13,00,000					
304	Rajender reddy	27,00,000					
401	Satyanarayana	20,00,000	Mar-09				
402	Dharma reddy	23,00,000	Mar-08	2100	1221	1,00,000	23,00,000
403	Partha sarathi reddy	23,80,000	Mar-09	1800	1350	1,00,000	23,80,000
502	Venkatadri	24,90,000	Mar-09				
503	Srinivas rao	12,00,000	Mar-10				
	Total	3,75,25,000				7,00,000	1,68,90,000

5.2. Based on the above details and the statement of the Managing Partner, the AO was of the opinion that assessee has suppressed the turnover for all the assessment years by declaring the sale consideration only @ Rs.619/-, 852/- and

969/- per Sq.ft. respectively for the AYs.2009-10, 2010-11 and 2011-12 and thus, deviating from the rate of Rs.2,100/- as admitted by Sri Kaithi Damodar Reddy. Assessee was therefore asked to show cause as to why the amount of Rs.3,59,76,500/- representing the suppressed sales should not be brought to tax. He further observed that the assessee has received a sum of Rs.1 Lakh per flat towards amenities and the same was also not offered to tax. The assessee, however, reiterated that the income has been offered @8% of the turnover which is duly reflected in the return of income and that no addition can be made without any incriminating material. The AO, however, was not satisfied with the assessee's submissions and accordingly made an addition of Rs.2,14,54,440/-, being the difference in the sale consideration computed @ Rs.2,100/- per sq.ft. and the sale consideration declared by the assessee.

5.3. Aggrieved by the above order, the assessee preferred an appeal before the CIT(A), who granted partial relief to the assessee by directing the AO to take only 40% of the suppressed turnover as 'assessee's income' instead of treating the entire amount as 'suppressed income'. Against this order of the Ld.CIT(A), both the parties filed appeals before the Tribunal. The Revenue's appeals against the order of the CIT(A) deleting the additions to the extent of 60% of the suppressed turnover for all the three A.Ys dismissed on account of low tax effect. In the assessee's appeals, the following grounds are raised:-

“1. The learned First Appellate Authority failed to appreciate the legal position that initiation of proceedings u/s 153C of the Act is illegal since there is no material belonging to the appellant found during the search u/s 137 in the case of K. Damodar Reddy.

2. The learned First Appellate authority failed to appreciate the fact that the entire quantification of suppression in turnover made by the Assessing Officer is based on assumptions and presumptions.

3. Without causing prejudice to the above grounds.

a. The learned First Appellate Authority is not justified in directing the Assessing Officer to adopt 40% of the suppressed turnover as income ignoring the appellants claim that the net profit element in the estimated undisclosed turnover is a small percentage.

b. The learned First Appellate Authority is not justified in directing the Assessing to estimate the net profit at a very high figure 40% of the finally computed undisclosed turnover.

4. The appellant craves leave to add amend or alter any of the grounds at the time of hearing of appeal”.

6. At the time of hearing, Ld.Counsel for the assessee submitted that assessee does not wish to press Ground No.1. Hence, the same is dismissed, as not pressed.

7. Ld.Counsel for the assessee argued that the A.O. has adopted the rate of Rs. 2,100/- per sq. ft. for all the flats for all the 3 FYs relevant to the AYs before us, whereas as per the seized material and the evidence available on record, some of the flats were sold @ Rs.1,800/- per sq.ft. only. Therefore, according to him, the quantification of the suppressed turnover by the AO is purely on assumptions and presumptions and is not based on the material available on

record. He further submitted that the correct figures as appearing in the seized material are only to be taken into consideration. He submitted that as per the evidence on record, amenities were also considered to be part of the sale consideration, and, therefore no separate addition is to be made. He submitted that the income of the suppressed turnover may also be estimated @ 8% as already declared by the assessee on the disclosed receipts of the assessee. He also placed before us a copy of seized material to support his point. He also raised an additional ground vide letter dated 'nil'. However, at the time of hearing the Ld.Counsel for the assessee did not advance any arguments in respect of the same. Therefore, the same is rejected.

8. The Ld.Counsel for the assessee relied upon the following case laws in support of his contention that the entire receipts cannot be treated as income of the assessee and only the income portion can be brought to tax and that it has to be estimated at 8% of the turnover.

(i) ITA Nos. 95 to 97/H/2018 in the case of Sampada Homes, Hyd. to which both of us are signatories.

(ii) ITO vs. M/s Satya Parvathi Constructions, Ongole in ITA Nos. 336/Hyd/2016 and 1595/Hyd/2016.

9. On the other hand, Ld.DR supported the orders of the authorities below and also placed reliance on the following case law in support of his contention that the order of CIT(A) in estimating the income @ 40% is to be upheld.

(i) Smt.Dayawanti vs. CIT (2016) 75 taxmann.com 308 (Del.)

(ii) Kermex Micro Systems (India) Ltd. Vs. DCIT (2014) 47 taxmann.com 375 (AP)

- (iii) *ACIT vs. Rushabh Vatika (2013) 35 taxmann.com 383 (Rajkot-Trib.)*
(iv) *Transport Corpn India Ltd. (2002) 123 taxman 806 (AP)*
(v) *Sobti Construction (India) Ltd. (2008) 174 taxman 39 (Del)*
(vi) *Dhakeswari Cotton Mills Ltd. Vs. CIT (1954) 26 ITR 775 (SC)*

10. Having regard to rival contentions and material placed on record, we find that undisputedly the seized material was found from the possession of the assessee according to which, assessee has sold 18 flats over a period of 3 years and rates at which each of the flat sold is also mentioned in the documents. As pointed out by Ld. Counsel for the assessee, some of the flats were sold at Rs.1,800/- per sq.ft. and some other flats at Rs.2,200/- per sq. ft. It is the statement of Sri Kaithi Damodar Reddy, partner of assessee company, which is relied upon by the AO and CIT(A) to treat Rs.2,100/- per sq. ft. as the average rate for all the flats. However, as held by Hon'ble High Courts and Hon'ble Supreme Court in a catena of judgements, the statement of the assessee has to be corroborated with evidence on record to make the addition. In the case before us admittedly, some of the flats were sold at Rs.2,200/- where as others are sold at Rs.1,800/- per sq.ft. However, there are certain flats against which no rate is mentioned. In case of such flats, AO can rely upon the statement of the Managing Partner and adopt the price of Rs. 2,100/- per sq. ft. and arrive at the sale consideration in respect of such flats. Therefore, we are inclined to agree with the Ld. Counsel that the suppressed turnover has to be adopted on the basis of the seized material only and not solely on the basis of the sworn statement of the Managing Partner of the

firm. Therefore, we direct the AO to adopt the suppressed turnover as per seized documents only; where rate is available and in respect of the flats, where the rate is not mentioned, to adopt Rs. 2,100/- per sq.ft. Further, with regard to the receipt of Rs.1 lakh per flat towards amenities, we find that in the seized material it is clearly mentioned that Rs.1 lakh is collected towards amenities. Therefore, the addition of Rs.18 lakhs (in all the three years) is upheld.

11. The next question that arises is estimation of income from such receipts. As pointed out by the Ld.CIT(A) in her order, there are various decisions in which it has been held that entire receipts cannot be treated as income of the assessee and only income portion embedded therein, has to be brought to tax. The decisions relied by Ld.DR are also to the effect that income has to be estimated on a realistic basis and when seized material indicates the suppressed turnover, the same has to be brought to tax. The Ld.Counsel for the assessee relied upon the decision of the Coordinate Bench in the case of Sampada Homes (to which both of us are signatories) wherein, we held 10% of the receipts to be reasonable estimation of income. He has also placed reliance upon M/s Sathya Parvathi Constructions (supra), wherein the income has been estimated at 8% of the gross receipts and prayed that in this case also 8% to be adopted.

11.1. We find that in the case of M/s Sampada Homes (supra), the facts are exactly the same and it was also based on the same set of facts i.e. search and seizure u/s 132 of the Act on the sister concern of the assessee herein and the sworn

statement of Sri K.Damodar Reddy and additions were also made based on the same material. Therefore, respectfully following the decision of Coordinate Bench, we hold that 10% of the suppressed turnover has to be treated as reasonable income of the assessee.

12. Accordingly, ground of appeal no.3 is partly allowed.

13. In the result, appeals of the assessee for all the 3 AYs are partly allowed.

Order pronounced in the open court on 26th November,2019.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-

(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad

Dated: the 26th November, 2019

TNMM/gmv

Copy to :

1. Laxmi Nilaya Constructions, C/o. Ch.Parthasarathy & Co., 1-1-298/2/B/3, 1st Floor, Sowbhagya Avenue, St.No.1, Ashoknagar, Hyderabad.
2. Asst. Commissioner of Income Tax, Central Circle-2(3), Hyderabad.
3. CIT (Appeals)-12, Hyderabad.
4. The Pr.CIT(Central), Hyderabad.
5. D.R. ITAT, Hyderabad.
6. Guard File.

S.No.	Details	Date
1	Draft dictated on	28-08-19
2	Draft placed before author	29-08-19 20-11-19
3	Draft proposed & placed before the Second Member	
4	Draft discussed/approved by Second Member	
5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement	26-11-19
7	File sent to Bench Clerk	
8	Date on which the file goes to Head Clerk	
9	Date on which file goes to A.R.	
10	Date of Dispatch of order	