

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND
SHRI S.S.GODARA, JUDICIAL MEMBER**

I.T.A. Nos.2252 & 2253/HYD/2017

Assessment Years: 2012-13 & 2013-14

KNR Contractors Private Limited, HYDERABAD [PAN: AADCK7749J]	Vs	The Income Tax Officer, Ward-2(1), HYDERABAD
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(Appellant)

(Respondent)

For Assessee : NONE

For Revenue : Shri Sunil Kumar Pandey, DR

Date of Hearing : 30-12-2020

Date of Pronouncement : 04-01-2021

ORDER

PER S.S.GODARA, J.M. :

These two assessee's appeals for AYs.2012-13 & 2013-14 arise from the CIT(A), Hyderabad's orders dated 26-06-2017 & 31-03-2017 passed in case No.0143/ITO, Ward-2(1)/2016-17 & 0144/ITO, Ward-2(1)/2016-17 respectively in proceedings u/s.143(3) of the Income Tax Act, 1961 [in short, 'the Act'].

Cases called twice. Nobody appeared at assessee's behest. These two appeals are taken up for adjudication *ex-parte* therefore.

2. For the reasons stated in the assessee's condonation petitions/affidavits filed on 6-07-2018 attributing delay of 68 days and 165 days (appeal-wise); respectively, to health issues

of the delinquent person in auditor's office, we quote hon'ble apex court's decision of Collector, Land Acquisition Vs. Mst.Katiji & Ors [167 ITR 471] (SC) that the cause of substantive justice must prevail over all technical aspects and accept the assessee's twin petitions herein-above. Both these appeals are taken up for adjudication on merits.

3. Coming to the sole issue we raised in assessee's former appeal ITA No.2252/Hyd/2017 (AY.2012-13), challenging the lower authorities' action estimating its income @8% and 7% in case of contract and sub-contract receipts; respectively in civil contractor business; resulting in computation of total income as Rs.2,58,93,067/- as against that declared of Rs.1,98,02,080/-, the CIT(A)'s detailed discussion, following the tribunal's order itself for the AY.2009-10 reads as under:

"3. Brief facts of the case are that the assessee company, engaged in the business of Civil construction, filed its Return of Income for AY 2012-13 on 29.09.2012 admitting total income of Rs.1,98,02,080/-. During the assessment proceedings it was noticed that invoices relating to the expenses were not properly vouched and hence the expenditure was not verifiable. When questioned, it was explained that due to execution of works in remote areas proper bills could not be obtained and hence the expenditure was later regularized by raising self vouchers. After considering the explanation of the assessee and after taking into the order of Hon'ble ITAT in the assessee's own case for A.Y. 2009-10, wherein estimation of income at 8% on direct contracts and 7% on sub-contracts was upheld. Assessing Officer went on to estimate the income at 8% on contract and 7% on sub-contracts. Thus the total income was assessed at Rs.2,58,93,067/- as against Rs.1,98,02,080/- returned by the assessee. As per the assessing officer, Assessee also agreed to this estimation. It is against this assessment that the present appeal is filed.

4. During the appellate proceedings it is contended that the assessee never agreed to the said estimation as pointed out by the Assessing Officer in the assessment order. It is further argued that the facts during the year under consideration are different from that of A.Y.2009-10 as there is increase in the price of steel and cement. Therefore, it is submitted that the decision of Hon'ble ITAT for A.Y.2009-10 cannot be applied in toto for the present assessment year. I have considered the arguments of the assessee and have gone through the facts of the case. It is not disputed that majority of the works which were undertaken in A.Y.2009-10 are still continuing. Therefore, the decision of the Hon'ble ITAT for A.Y.2009-10 still holds good. Further, from the perusal of assessment records it is seen that the assessee agreed to the addition during the assessment proceedings. It also needs to be noted that the assessee is not disputing rejection of book results. Even during the appellate proceedings it is not the plea of the assessee that he can substantiate the expenditure by producing complete bills and vouchers. Assessee is only asking for the percentage of estimation to be reconsidered and reduced. However, it is seen that the Assessing Officer has based his estimate on the findings of Hon'ble ITAT in the assessee's own case and the assessee has agreed to the addition during the assessment proceedings. Therefore, I do not see any reason to interfere with the estimation made by the Assessing Officer and hence the same is upheld".

There is no distinction on facts or law pointed out in all these assessment years in assessee's four substantive grounds in the instant appeal. We follow judicial consistency to affirm the impugned estimation(s) under challenge. The assessee's sole substantive grievance as well as his corresponding main appeal ITA No.2252/Hyd/2017 fail therefore.

4. We now come to the assessee's latter appeal ITA No.2253/Hyd/2017 (AY.2013-14). Its twin substantive grounds *inter alia* plead that both the lower authorities have erred in law and on facts in making disallowance of Rs.6,22,460/- u/s.40(a)(ia) of the Act on account of non-deduction of TDS & miscellaneous expenses of Rs.35,25,000/- ; respectively.

5. We advert to Section 40(a)(ia) issue and notice that the CIT(A) has not adjudicated upon the factual matrix of the relation between the assessee-deductor and its payee-deductee as per law as he has only gone by the tribunal's Special Bench's decision in Merilyn Shipping and Transport Ltd., Vs. ACIT [136 ITD 23] (SB) [16 ITR 1] (SB)(Visakha.)(Trib.) dealing with 'paid/payable' issue. The Revenue fails to dispute that this issue is no more *res integra* in view of the hon'ble apex court's judgment of Palam Gas Service Vs. CIT [394 ITR 300] (SC) that the impugned statutory provision applies in case of paid as well as expenses remaining payable during the year. The legislature has also inserted Section 40(a)(ia) 2nd proviso in the Act; vide Finance Act, 2012 w.e.f.01-04-2013, stipulating that the impugned statutory provision would not apply in case the assessee/deductor is not the assessee in default u/s.201(1) 1st proviso of the Act in view of the fact that the deductee has already been assessed *qua* the sum in question. The CIT(A) is therefore directed to examine the above former issue in light of this amended provisions as well.

The factual provision is no different *qua* the alleged agreed addition of Rs.35,25,000/- wherein the case records do not indicate any concession coming from the taxpayer's side. We thus restore both these issues back to the CIT(A) for his afresh adjudication as per law within three effective opportunities of hearing.

6. The assessee's former appeal ITA No.2252/Hyd/2017 is dismissed and latter case ITA No.2253/Hyd/2017 is treated as allowed for statistical purposes in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on the 4th day of January, 2021

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Hyderabad, Dated: 04-01-2021

TNMM

Copy to :

*1.KNR Contractors Pvt. Ltd., C/o. Shri Samuel Nagadesi,
Chartered Accountant, 408, Sri Ramakrishna Towers,
Besides Image Hospitals, Ameerpet, Hyderabad.*

2.The Income Tax Officer, Ward-2(1), Hyderabad.

3.CIT(Appeals)-9, Hyderabad.

4.Pr.CIT-2, Hyderabad.

5.D.R. ITAT, Hyderabad.

6.Guard File.