

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

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.	A.Y.	Appellant	Respondent
1226/Hyd/15	2009-10	M/s.Padmasri Townships Pvt. Ltd., Hyderabad [PAN: AADCP9596L]	Income Tax Officer, Ward-16(2), Hyderabad
370/Hyd/17			

For Assessee : Shri P.Murali Mohana Rao, AR

For Revenue : Shri Sibendu Moharana, DR

Date of Hearing : 01-02-2021

Date of Pronouncement : 24-02-2021

ORDER

PER BENCH :

These two assessee's appeals for AY.2009-10 arise from the CIT-IV & CIT(A)-4, Hyderabad's orders dated 10-03-2014 & 05-10-2016 in proceedings u/s. 263 & 143(3) r.w.s.263 of the Income Tax Act, 1961 [in short, 'the Act']; respectively.

Heard both the parties. Case files perused.

2. Learned CIT-DR pin-pointed at the outset that the assessee's former appeal ITA No.1226/Hyd/2015 challenging correctness of the CIT's revision order u/s.263 terminating the regular assessment dt.30-12-2011 as erroneous and prejudicial to the interest of the Revenue, suffers from 591 days delay in filing.

3. Mr.Moharana next submitted that assessee's condonation petition/affidavit dt.19-10-2015 contains a single para of explanation that the records had been mis-placed by

the concerned staff only without any material particulars in support thereof.

4. Learned authorised representative vehemently opposed the Revenue's foregoing contentions. He took us to the assessee's condonation petition dt.12-08-2016 stating the reasons of the impugned delay *inter alia* on account of absence of its managing director, misplacement of the case file as well as other corresponding factors. The same sufficiently suggest that the impugned delay is neither intentional nor deliberate on account of the reasons beyond assessee's control. Hon'ble apex court's landmark decision Collector, Land Acquisition Vs. Mst.Katiji & Ors [167 ITR 471] (SC) holds that the cause of substantial justice must prevail over all technical aspects and more so, when an assessee has proved satisfactorily that it was prevented from filing the appeal within the prescribed time limit due to unavoidable circumstances. We thus accept the assessee's foregoing condonation petition its former appeal ITA No.1226/Hyd/2015 is taken up for hearing.

5. We next advert to the CIT's revision order under challenge. He has reproduced his show cause notice issued to the assessee that the assessee had made cash payments to land owners of Rs.1,22,97,207/- which attracted Section 40A(3) disallowance and the Assessing Officer had not verified the said payments. We find that the CIT has erred in invoking the impugned revision mechanism. A perusal of the assessment order dt.30-12-2011 makes it clear that the Assessing Officer had applied 8% income element on assessee's receipts thereby rejecting its books of accounts.

Hon'ble jurisdictional high court's much deliberated decision in Indwell Constructions Vs. CIT [232 ITR 776] (AP) holds that the above stated statutory provision does not come into play in case of rejection of books of accounts followed by estimation of profits. That being the case, we hold that the Assessing Officer's action in not invoking the impugned disallowance u/s.40A(3) is neither erroneous nor prejudicial to the interest of the Revenue since the assessee's profits already stood estimated @8%. We thus reverse the CIT's revision directions on this count alone. The assessee's former appeal ITA No.1226/Hyd/2015 is allowed.

6. The assessee's latter appeal ITA No.370/Hyd/2017 is in Section 143(3) r.w.s.263 proceedings as a necessary consequence to the CIT's revision directions. This assessment itself stands quashed, since the impugned addition of disallowance of Rs.1,22,97,207/- along with Rs.1,46,71,043/- on land development, vehicle maintenance and car hire charges have no legs to stand in view of our findings in Section 263 appeal. ITA No.370/Hyd/2017 is also accepted.

7. These two assessee's appeals are allowed, in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 24th February, 2021

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

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

Hyderabad, Dated: 24-02-2021

Copy to :

*1.M/s.Padmasri Townships Pvt. Ltd., C/o. P. Murali & Co.,
Chartered Accountants, 6-3-655/2/3, 1st Floor,
Somajiguda, Hyderabad.*

2.The Income Tax Officer, Ward-16(2), Hyderabad.

3.CIT(Appeals)-4, Hyderabad.

4.Pr.CIT-IV, Hyderabad.

5.D.R. ITAT, Hyderabad.

6.Guard File.