

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD
(Through Virtual Hearing)

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

	ITA No. 275/Hyd/2019 (A.Y. 2010-11)		
	ITA No. 1343/Hyd/2019 (A.Y.: 2013-14)		
Amit Kumar Agarwal (HUF), Hyderabad. PAN: AABHA 3253 J	VS.	Income Tax Officer, Ward-7(3), Hyderabad.	
(Appellant)		(Respondent)	
Assessee by:	Shri K.C. Devdas		
Revenue by:	Shri Rohit Mujumdar, DR		
Date of hearing:	03/05/2021		
Date of pronouncement:	04/05/2021		

ORDER

PER A. MOHAN ALANKAMONY, AM:

Both the captioned appeals are filed by the assessee and they are filed against the orders of the Ld. CIT(A)-3, Hyderabad in appeal Nos. 0108/ITO-7(3)/Hyd/CIT(A)-3/2017-18, dated 19/12/2018 (ITA No. 275/Hyd/2019) and appeal No. 10323/ITO-7(3)/Hyd/CIT(A)-3/2018-19, dated 07/06/2019 (ITA No. 1343/Hyd/2019) passed U/s. 143(3) r.w.s 147 and U/s. 250(6) of the Act for the A.Ys. 2010-11 and 2013-14 respectively.

2. In ITA No. 275/Hyd/2019 the assessee has raised seven grounds in his appeal and they are extracted herein below for reference:-

- “1. *The order of the Ld. CIT(A) in sustaining the addition of Rs. 49,78,038/- is completely erroneous and unsustainable both in law and on facts of the case.*
2. *The Ld. CIT(A) in upholding the reopening of assessment U/s. 147 of the Act which was made on the premise of borrowed satisfaction and there was no independent application of mind and therefore the reassessment proceedings are bad in law, invalid and without jurisdiction and therefore must be quashed.*
3. *The Ld. CIT(A) failed to observe that the entire material of purchase and sales was available on record and there was no fresh / tangible material bought on record by the Assessing Officer in the reasons recorded accordingly, the provisions of reopening are squarely not applicable in the given case.*
4. *The Ld. CIT(A) failed to appreciate that all purchases and sales are supported by bills invoices and stock tally has been maintained showing inward and outward quantities relating to purchase and sales of iron ore on day to day basis and hence erred in sustaining the addition of Rs. 19,78,038/-.*
5. *The Ld. CIT(A) failed to note that quantitative details are matching and quality of Iron ore purchased has been sold to different parties of repute which are accounted in books of accounts and therefore CIT(A) erred in sustaining the addition of Rs. 49,78,038/-.*
6. *The Ld. CIT(A) erred in relying on the statement made by Sudher Yadav and came to an erroneous conclusion, when the statement was recorded behind the back of the appellant and a copy of which was neither given to the appellant nor was there an opportunity given for cross examination thus violating the principles of natural justice. Therefore, the addition of Rs. 49,78,038/- ought to have been deleted.*
7. *Any other ground or grounds that may be urged at the time of hearing.”*

3. In ITA No. 1343/Hyd/2019 the assessee has raised six grounds in his appeal and they are extracted herein below for reference: -

- “1. *The order of the Ld. CIT(A) in confirming the addition of Rs. 5 lakhs in an order passed U/s. 143(3) r.w.s 147 dated 28/12/2018 is unsustainable both on facts and in law.*
2. *The Ld. CIT(A) erred in upholding the reopening of assessment U/s. 147 of the Act which was made on the premise of borrowed satisfaction and failed to note that there was no independent application of mind by the Assessing Officer and therefore, ought to have clearly held that the entire re-assessment proceedings are bad in law, invalid and without jurisdiction and therefore ought to have quashed the assessment.*
3. *The Ld. CIT(A) failed to note that the reasons recorded for reopening the assessment U/s. 148 of the Act does not mentioned the quantum of income or income escaping assessment and hence the reasons recorded suffers from infirmity and therefore the reopening and reassessment proceedings are bad in law, invalid and without jurisdiction calling for quashing of the re-assessment proceedings.*
4. *The Ld. CIT(A) failed to note that notice issued U/s. 143(2) of the Act was not within the period of six months from the end of the financial year in which the return of income was furnished and therefore ought to have clearly held that the entire assessment proceedings were without jurisdiction, bad in law, invalid and therefore ought to have quashed the re-assessment proceedings.*
5. *The Ld. CIT(A) erred in confirming the addition of Rs. 5 lakhs which is totally contrary to the facts and evidence and therefore calls for deletion.*
6. *Any other ground or grounds that may be urged at the time of hearing.”*

4. At the outset, Ld. AR submitted before us that the Ld. CIT(A) has passed ex-parte orders in the case of the assessee for the AYs 2010-11 and 2013-14 without providing proper opportunity of being heard and

dismissed the appeals of the assessee. It was therefore pleaded that the matter may be remitted back to the file of the Ld CIT (A) in order to provide one more opportunity to the assessee of being heard. On the other hand, the Ld. DR submitted that the Ld. CIT(A) had provided sufficient opportunity to the assessee however, on the given dates of hearing, neither the assessee nor his Representative appeared before the Ld. CIT (A). Therefore the Ld. CIT (A) had no other option but to pass ex-parte orders based on the materials available on record. Hence, it was pleaded that the orders passed by the Ld. CIT(A) do not call for any interference.

5. We have heard the rival submissions and carefully perused the materials on record. Having regard to the facts and circumstances of the cases before us, We are of the view that though the Ld. CIT(A) has provided several opportunity to the assessees, none appeared on behalf of the assessees before the CIT(A) on the given dates of hearing except filing certain written submissions for the A.Y. 2010-11 and 2013-14. Therefore, the Ld. CIT (A) was left with no other option except to adjudicate the appeals ex-parte. However, keeping in view the facts and circumstances of the cases before us and the issues involved in the appeals, in the interest of justice, We hereby remit all the issues involved in both the appeals back to the file of Ld. CIT (A) in order to consider the appeals afresh on merits after affording one more

opportunity to the assessee of being heard. At the same breath, We also hereby caution the assessee to promptly co-operate before the Ld. CIT (A) in the proceedings failing which the Ld. CIT (A) shall be at liberty to pass appropriate orders in accordance with law and merits based on the materials on the record. It is ordered accordingly.

6. In the result, both the appeals filed by the assessee are allowed for statistical purposes as indicated hereinabove.

Pronounced in the open Court on the 04th May, 2021.

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

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 04th May, 2021

OKK

Copy to:-

- 1) Amit Kumar Agarwal (HUF) C/o. G.D. Upadhyay & Co., Chartered Accountants, 15-1-53, Siddiamber Bazar, Hyderabad, Telangana - 12.
- 2) Income Tax Officer, Ward-7(3), 8th Floor, Signature Towers, Kondapur, Hyderabad.
- 3) The Ld. CIT(A)-3, Hyderabad.
- 4) The Pr. CIT-3, Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File