

**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**

I.T.A. No. 926/HYD/2016

Assessment Year: 2010-11

Yeses Infrastructure
Private Limited,
HYDERABAD
[PAN: AAACY0786A]

(Appellant)

DCIT, Circle-3(3),
Vs HYDERABAD

(Respondent)

For Assessee : Shri Samuel Nagadesi, AR
For Revenue : Shri Sunil Kumar Pandey, DR

Date of Hearing : 22-04-2021
Date of Pronouncement : 21-05-2021

ORDER

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

This assessee's appeal for AY.2010-11 arises from the CIT(A)-5, Hyderabad's order dated 29-02-2016 passed in case No.0480/2014-15/CIT(A)-5, in proceedings u/s.144 of the Income Tax Act, 1961 [in short, 'the Act'].

Heard both the parties. Case file perused.

2. It transpires at the outset that this assessee's instant appeal suffers from 22 days delay stated to be attributable to the reason(s) beyond its control as per condonation petition/affidavit dt.16-08-2016. No rebuttal has come from

the departmental side. The impugned delay is condoned therefore.

3. The assessee has pleaded the following substantive grounds in the instant appeal:

“1. On the facts and in the Circumstances of the case the impugned order of the Confirming the order of the Assessing Officer is erroneous in law and facts of the case.

2. On the facts and in the circumstances of the case, the learned Commissioner is erred in confirming the order of Assessing Officer estimating the profits at 8% of the gross receipts and making an estimation of income at Rs.1,79,42,900/-. On the facts and in the circumstances of the case the learned Commissioner ought to have accepted the income as returned by the appellant and ought not to have confirmed assessment on estimation.

3. On the facts and in the circumstances of the case the learned Commissioner erred in law and facts of the case in confirming the addition of Rs.3,25,72,532/- under Section 68 of the Income-tax Act, 1961. On the facts and in the circumstances of the case the learned Commissioner ought not to have confirmed the same as Assessing Officer having resorted to assessment under section 144 at the best of his judgment ought to have held that no other addition can be made purely on surmise and caprice against the principles of natural justice.

4. On the facts and in the circumstances of the case the learned Commissioner erred in law and facts of the case in making confirming the addition of Rs.1,43,573/- addition made by the Assessing Officer treating the same as income under the head income from other sources ignoring the fact that the same is to be part of the income under the head profits and gains of business or profession and included in the income returned.

5. On the facts and in the circumstances of the case the learned Commissioner erred in law and facts of the case in confirming the addition of Rs. 2,86,324/- as the total income is recognized by the appellant as per the method of accounting regularly employed and the difference as per Form 26AS is due to the difference in the same between person deducting the tax in respect of income accrued but not due at the end of each financial year.

6. The Appellant craves leave to add to/ alter/ modify/ change/ substitute/ amend all or any of the above grounds”.

4. Learned counsel vehemently contended during the course of hearing that the assessee could not file the necessary details neither during assessment or before the CIT(A) regarding the twin main issues of estimation of 8% of gross profit *qua* the alleged sub-contractual receipts resulting in addition of Rs.1,79,42,900/- in both the lower proceedings. And also that he could not get confirmations of the investor parties regarding Section 68 addition of Rs.3,25,72,532/-. Learned counsel further undertook to file all the relevant details at least *qua* the instant twin main issues as well as the third and fourth grievances raised at assessee's behest; if afforded yet another innings before the Assessing Officer.

5. Mr.Pandey on the other hand, took us to the CIT(A)'s detailed discussion mainly in para 10.6 that he had duly forwarded the assessee's additional evidence to the Assessing Officer; who in turn issued notices as well, but nobody turned up. The said findings relied upon at the Revenue's behest read as under:

"10.6 It is significant to mention here that these clarifications and details were furnished for the first time during the appeal proceedings. Thus, these evidences were treated as additional evidences under rule 46A and accordingly the assessing officer was asked to examine the genuineness and authenticity of the claim of the assessee with regard to share application and unsecured loan. The assessing officer issued summons under section 131 to the investors / creditors which were quoted by the assessee. None of these investors appeared before the assessing officer. Subsequently, the assessee company was asked to produce these share applicants vide his summons dated 11 January 2006. The assessing officer noted that the assessee company neither produced the investors nor produced requisite information as was asked. Hence the assessing officer requested that the appeal may be decided on merits. Remarkably, the appellant earlier argued that under Section 68 the

assessee shall be asked to discharge the initial burden of proof cast upon him as to:

- i) identity of the person;*
- ii) creditworthiness of the person; and*
- iii) genuineness of the transaction”.*

6. We have given our thoughtful consideration to the assessee's arguments seeking yet another innings before the Assessing Officer and find no merit for the sole reason that the CIT(A) had indeed sought a remand report from the Assessing Officer wherein neither the assessee nor its so called investor parties appeared. This is therefore not an instance wherein any afresh innings before the Assessing Officer would serve any useful purpose anymore. We thus decline the assessee's instant 'set aside' plea and affirm the learned lower authorities' action on all issues raised at its behest.

7. This assessee's appeal is dismissed.

Order pronounced in the open court on 21st May, 2021

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

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

Hyderabad,
Dated: 21-05-2021

Copy to :

1. Yeses Infrastructure Private Limited, C/o. Shri Samuel Nagadesi, Chartered Accountant, 408, Sri Ramakrishna Towers, Beside Image Hospitals, Ameer Pet, Hyderabad.

2. The DCIT, Circle-3(3), Hyderabad.

3. CIT(Appeals)-5, Hyderabad.

4. Pr. CIT-5, Hyderabad.

5. D.R. ITAT, Hyderabad.

6. Guard File.