

**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
294/Hyd/13	2006-07	M/s.Arka Hotels Private Limited, Hyderabad [PAN: AABCA7646N]	Assistant Commissioner of Income Tax, Central Circle-1, Hyderabad
295/Hyd/13	2007-08		
296/Hyd/13	2008-09		
297/Hyd/13	2009-10		
298/Hyd/13	2010-11		

For Assessee : Shri S.Rama Rao, AR

For Revenue : Shri Sunil Kumar Pandey, DR

Date of Hearing : 28-04-2021

Date of Pronouncement : 27-05-2021

ORDER

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

These assessee's five appeals arise against the CIT(A)-1, Hyderabad's order(s); all dated 18-01-2013, passed in case Nos.0151 to 0155/CC-1/Hyd/CIT(A)-1/11-12; involving proceedings u/s.143(3) r.w.s.153C (in AYs.2006-07 to 2009-10) & u/s.143(3) (in AY.2010-11) of the Income Tax Act, 1961 [in short, 'the Act']; respectively.

Heard Shri S.Rama Rao and Shri Sunil Kumar Pandey, DR, representing assessee and Revenue respectively.

2. It transpires at the outset that the instant batch of five appeals involves almost all identical interconnected issues. The same are therefore taken up for adjudication.

3. Both the learned representatives submitted before us that the assessee's first and foremost identical grievance pleaded in AYs.2006-07 to 2009-10's ground Nos.2 & 3 challenges correctness of both the lower authorities' action treating the corresponding receipts of Rs.12,98,135/-, Rs.2,55,916/- and Rs.45,22,790/-; as income from house property & business income; as the case may be as per its P&L account; respectively. After vehemently arguing in favour of assessee's instant grievance for some time, learned counsel rose to his seniority and submitted that it no more wishes to press for the instant grievance subject to the condition that it does not face the double addition of very sum(s) under the twin heads of income.

3.1. Mr.Pandey on the other hand placed a very strong reliance on the learned lower authorities' action treating the impugned receipts in the instant three assessment years as income from other sources. He sought to highlight the fact that the search carried out in assessee's case had sufficiently proved that it had been issuing accommodation entry vouchers to the parents of the students from whom the capitation fee used to be collected by the group concern M/s.Joginpally B.R. Educational Society.

3.2. We have heard rival contentions. We make it clear first of all that assessee has itself conceded its challenge to correctness of learned lower authorities' action treating the

impugned sums; assessment-year wise (supra) as income from house property and business income; as the case may be; respectively. The short point that still requires our apt adjudication is as to whether the very amounts could also be allowed to be assessed under the head 'business' once they have been assessed as income from other sources.

Faced with this situation, we deem it appropriate to restore the instant issue back to the file of Assessing Officer to this limited extent only to the extent that whatever is the income assessed as income from other sources in the assessee's hands out of its books/P&L A/c of the corresponding assessment years, shall not be assessed under the head business income as well so as to avoid double addition. It is made clear that it shall be the assessee's risk and responsibility only to file on record all the relevant details proving that the very sums of additions before us have also been assessed under the head income from house property and business income; as the case may be. Needful shall be done within three effective opportunities of hearing. This first issue raised in the assessee's former three substantive grounds in AYs.2006-07, 2007-08, 2008-09 and 2009-10 is partly accepted for statistical purposes in foregoing terms.

4. Next comes the assessee's second substantive issue raised in its ground No.5 in AYs.2006-07, 2007-08 and 2008-09 and Ground No.4 each in AYs.2009-10 and 2010-11's appeals, involving varying sums of money to the tune of Rs.53.30 lakhs, Rs.74.50 lakhs, Rs.1,28,42,400/-, Rs.12 lakhs and 50.50 lakhs; respectively treated as 'un-explained cash credits u/s.68 of the Act.

4.1. Mr.Rama Rao's only argument during the course of hearing relies upon this tribunal's order in appeals filed by its group entity M/s.J.B.Educational Society, Hyderabad, dt.28-10-2013 that the very sums have been assessed therein and therefore, it is a clear cut instance of doubt addition in assessee's hands as well.

4.2. The Revenue's vehement contention before us is that the assessee has not been able to prove the corresponding nexus between the impugned addition viz-a-vis the sum assessed in M/s.J.B.Educational Society, Hyderabad's hands. The fact also remains that the Assessing Officer appears to have filed a remand report dt.22-04-2014 *prima facie* indicating the alleged nexus. Be that as it may, since much water is flown down the stream since 2013, we deem it appropriate to restore the instant second issue as well back to the file of Assessing Officer for his afresh factual re-conciliation to ensure that the impugned double addition is not made in the assessee's group entities' hands. It is further made clear that it shall be a risk and responsibility of the assessee only to file its supportive evidence proving live nexus of the impugned sister concern.

This second issue also accepted partly for statistical purposes in foregoing terms.

The assessee's appeals 294, 295 and 296/Hyd/2013 for AYs.2006-07 to 2008-09; respectively raising the instant twin ground only are partly allowed for statistical purposes in above terms.

5. This leaves us with the assessee's third substantive ground each in ITA Nos.297 and 298/Hyd/2013 for AYs.2009-

10 and 2010-11 seeking to delete interest disallowance(s) of Rs.19,34,277/- and Rs.14,55,802/-; respectively. After vehemently arguing some time in support of the assessee's grievance, learned counsel informed us that he no more wishes to press for the same keeping in mind the smallness of the amounts therein. This assessee's third substantive ground is rejected as not pressed in foregoing terms.

5.1. The assessee's latter twin appeals ITA Nos. 297 & 298/Hyd/2013 are partly accepted for statistical purposes in the very terms.

6. It lastly transpires that the assessee has also raised its main as well as additional substantive ground seeking to challenge validity of Section 153C proceedings on various facts. Learned counsel made it clear during the course of hearing that it no more wishes to press for the said legal issue as well. All these assessee's main as well as additional grounds *qua* to this effect shall stand declined as not pressed therefore.

7. All these assessee's appeals are partly 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 27th May, 2021

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

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

Hyderabad, Dated: 27-05-2021

Copy to :

1.M/s.Arka Hotels Private Limited, C/o.M/s.Mahesh, Virender & Sriram, Chartered Accountants, 6-3-788/36 & 37A, Ameer Pet, Hyderabad.

2.The Asst. Commissioner of Income Tax, Central Circle-1, Hyderabad.

3.CIT(Appeals)-1, Hyderabad.

4.CIT(Central)- Hyderabad.

5.D.R. ITAT, Hyderabad.

6.Guard File.