

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

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

ITA No.	A.Y.	Appellant	Respondent
362/Hyd/18	2009-10	American Infoserv Private Limited, Hyderabad [PAN: AAFC A3535L]	Deputy Commissioner of Income Tax, Circle-1(1), Hyderabad
858/Hyd/17	2010-11		
1171/Hyd/17	2009-10	Deputy Commissioner of Income Tax, Circle-1(1), Hyderabad	American Infoserv Private Limited, Hyderabad [PAN: AAFC A3535L]
1172/Hyd/17	2010-11		

For Assessee : Shri P.Murali Mohana Rao, AR

For Revenue : Shri Rajendra Kumar &
Shri Rohit Mujumdar, DRs

Date of Hearing : 15-07-2021

Date of Pronouncement : 20-07-2021

ORDER

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

These two Revenue's and assessee's cross-appeals ITA No.1171/Hyd/2017 with ITA No.362/Hyd/2018 for AY.2009-10 & ITA No.1172/Hyd/2017 with ITA No.858/Hyd/2017 for AY.2010-11 arise against the CIT(A)-1, Hyderabad's separate orders; both dated 21-02-2017 passed in case Nos.0304 & 0305/CIT(A)-1/Hyd/2013-14/2016-17, involving proceedings u/s.143(3) r.w.s.147 and u/s.143(3) of the Income Tax Act, 1961 [in short, 'the Act']; respectively.

Heard both the parties. Case files perused.

2. It transpires at the outset that these instant Revenue's appeals ITA Nos.1171 & 1172/Hyd/2017 and assessee's case ITA No.362/Hyd/2018 suffer delay from 31 days each and 248 days; respectively stated to be attributable to the reason(s) beyond its control as per condonation petition(s)/affidavit(s). No rebuttal has come from either side to this effect.

The impugned delays in all the above appeals are condoned therefore.

3. We next find both the assessee's appeals ITA Nos.858/Hyd/2017 and 362/Hyd/2018 raise a purely legal question of validity of the impugned assessment making various disallowances/additions based on the special auditor's report submitted u/s.142(2A) of the Act. The assessee has raised its first, fourth to sixth substantive grounds in AY.2009-10 and 11th substantive ground in AY.2010-11 that this entire procedure adopted Section 142(2A) of the Act is not sustainable in law since the corresponding Special Auditor's reports have been submitted beyond the prescribed time period. The Revenue's vehement contention on the other hand is that the foregoing statutory provision stipulates onus on the assessee than on the department to furnish the corresponding special audit report u/s.142(2C) of the Act. It also sought to highlight the fact that this assessee had not at all co-operated with the Special Auditor in AY.2009-10.

4. We have given our thoughtful consideration to the foregoing rival submissions against and in support of the validity of the special auditor's reports in both these assessment years. There is no dispute between the parties

that the Assessing Officer(s) had directed special audit(s) in both these assessment years as per his order(s) to this effect dt.26-12-2012. We further note that the Special Auditor had filed his both of his reports on 29-06-2013.

5. We find no substance in Revenue's foregoing arguments supporting the Special Auditor's twin reports. This is for the reason that the impugned special audit reports forming the basis of the various impugned disallowances/additions i.e. Section 10A, foreign branch expenses, Sections 40(a)(ia) and 40A(3) disallowances and un-related business expenses etc; have ever been prepared beyond the stipulated time period of 180 days from the Assessing Officer's directions to this effect issued to the assessee. We further wish to make it clear that this is not the Revenue's case before as that the assessee had in fact received the Assessing Officer's Section 142(2A) r.w.s.(2C) direction on any other day and date; as the case may be within 180 days counted backwards from 29-06-2013 (supra). We thus adopt strict interpretation as per the hon'ble apex court's recent landmark decision in Commissioner of Customs Vs. Dilip Kumar (2018) 9 SCC 1 (FB)(SC) and hold that the impugned Special Auditor's report forming the basis of various disallowances/additions deserves to be quashed as non est. Ordered accordingly. All the foregoing disallowances/additions based on the said twin special audit reports also deserve to be deleted since having no legs to stand.

6. Mr.Mujumdar lastly sought to buttress the point that the assessee has not co-operated before the Special Auditor or

Assessing Officer throughout. We find no reason to accept this last argument as well since the special auditor's report in pgs.11 to 40 of the paper book (AY.2010-11) makes it clear that he had very much visited the assessee's head office as well as the branches and got all the necessary material.

7. The assessee's 1st and 4th to 6th substantive grounds in AY.2009-10 and 11th substantive grounds in AY.2010-11 stand accepted.

All other issues on merits in all these four cross appeals are rendered academic.

8. To sum-up, Revenue's appeals ITA Nos.1171 & 1172/Hyd/2017 are dismissed and assessee's cross appeals ITA Nos.858/Hyd/2017 and 362/Hyd/2018 are allowed. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 20th July, 2021

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Hyderabad,
Dated: 20-07-2021

TNMM

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

Copy to :

1.American Infoserv Private Limited, C/o. P.Murali & Co., Chartered Accountants, 6-3-655/2/3, 1^s Floor, Somajiguda, Hyderabad.

2.The Deputy Commissioner of Income Tax, Circle-1(1), Hyderabad.

3.CIT(Appeals)-1, Hyderabad.

4.The Pr.CIT-1, Hyderabad.

5.D.R. ITAT, Hyderabad.

6.Guard File.