

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ B ‘ Bench, Hyderabad
(Through Video Conferencing)
Before Shri S.S. Godara, Judicial Member
AND
Shri Laxmi Prasad Sahu, Accountant Member

ITA No.118/Hyd/2021		
Assessment Year: 2007-08		
Dy. C.I.T Circle 2(1) Hyderabad (Appellant)	Vs.	Time Projects (P) Ltd Hyderabad PAN:AACCT1128K (Respondent)
Revenue by:	Sri Rohit Mujumdar	
Assessee by:	Sri A.V. Raghuram, DR	
Date of hearing:	25/08/2021	
Date of pronouncement:	08/09/2021	

ORDER

Per S. S. Godara, J.M.

This Revenue's appeal for the A.Y 2007-08 against the order of the CIT (A)-11, Hyderabad in Appeal No.10312/2019-20, dated 01.10.2020 in proceedings u/s 143(3) rws 147 of the Income Tax Act, 1961 (in short the Act).

Heard both the parties. Case file perused.

2. Coming to the Revenue's first and foremost substantive grievance that the CIT (A) erred in law and on facts in quashing the impugned reopening as an invalid one, we note that the Assessing Officer had recorded his reopening reasons dated 10.01.2013 as under:

“To
The Principle Officer,
M/s. Time Projects Pvt. Ltd.,
Pothula Towers Annexe,
6-3-883/Fl, 2nd Floor,

Somajiguda Circle,
Begumpet Road, Hyderabad-5000 16.

Sir/Madam,

Sub: Reasons for the re-opening of assessment U/s.147 of I T. Act, 1961 in your case - Asst. Year 2007-08 - communicating - Reg.

The reasons for re-opening of assessment u/s.147 of the Income Tax Act, 1961, for the Asst. Year 2007-08. are furnished as under:-

It was noticed vide "Schedule 12 (Development Administrative and Selling Expenses]" forming pan of P&L account for the year ending 31.03.2007 that an amount of Rs.2,86,13,678/- was debited towards site development expenses. The ledger account of "Site Development account" for the period 01.04.2006 to 31.03.2007 shows an amount of Rs.2.24,21.116/- was accounted as provisions in respect of three projects namely (i) Golden Ridge [GR] Phase-I- Rs.1,08,75,811/- (ii) Golden Ridge [GR] Phase -II, Rs.1,10,95,305/- and (iii) Time City Phase-I, Rs.4,50,000/-. In order to substantiate its claim of this provisional site development expenditure of Rs.2,86,13,678/-, the assessee company in its letter dated 28.08.2009 stated that the provisions for expenses was created to spent once it had sufficient funds. It also stated the difference between sales and the total expenses already incurred and the "provisions for future expenses" was shown as income and paid necessary tax on the same.

Further, as seen from the accounts of the three projects, the assessee made sales as follows:

Time city Phase-I	Rs. 12,34,695
2 Golden Ridge Phase-I	Rs.2,21,49,639
3 Golden Ridge Phase-II	Rs.3,86,53,822
TOTAL	Rs.6,20,38,156

The same was accounted in the P&L account for the year ended 31.03.2007.

The closing WIP (Work in progress) of all the three projects as per respective accounts shows as follows:

1. Time City Phase - I	Rs. 1,94,04,547
2. Golden Ridge Phase-I	Rs. 82,72,285
3. Golden Ridge Phase II	Rs. 39,48,585
TOTAL	Rs. 3,16,25,417

The same was accounted vide Schedule-6 Work in Progress. Hence, from the working as provided by the assessee company, there was no account of any provisional income on the above three projects in order to claim any provisional expenses against it. Further, income tax does not recognize any provisional income or provisional expenses. Income and expenditure accrued and due are only to be accommodated in the books of account.

In view of the above, the provisional expenditure of Rs.2,24,21,116/- debited against three projects as mentioned above cannot be allowed as expenditure actually incurred during the previous year relevant to the A.Y 2007-08. Hence, the same needs to be disallowed.

*Sd/-
(R.S.Arvinthakshan)
Dy.CIT, Circle-2(3)
Hyderabad*

3. Suffice to say, we notice with the able assistance from both the parties that we are in A.Y 2007-08 wherein the Assessing Officer had formed his opinion of the assessee's taxable income having escaped assessment beyond the specified period of 4 years from the end of the assessment year. And further that the Assessing Officer's foregoing reasons nowhere state that it was on account of the assessee's failure in disclosing "fully" and "truly" all the particulars that its taxable income has escaped the assessment in the light of section 147 first proviso. We therefore, adopt stricter approach in the light of hon'ble apex court's recent landmark decision Commissioner of Customs vs. Dileep Kumar Rai & Others in CIVIL APPEAL NO. 3327 OF 2007, dated 30th July, 2018 to hold that the CIT (A) has rightly accepted the assessee's legal grounds vide following detailed discussion:

"5.2 I have considered the reasons recorded by the Assessing Officer, submissions of the appellant, directions of the Hon'ble ITAT and the material placed before me. It is very clear from the reasons recorded that the material relied on by the Assessing Officer is the financial statements submitted by the appellant along with the Return of Income and the explanation dt.28.08.2009 submitted by the appellant during the course of proceedings u/s.143(3) before the Assessing Officer. There is no new material brought on record and it was the same material which was before the Assessing Officer while concluding the assessment proceedings was considered by the Assessing Officer. The details regarding the provision for expenses-WIP were specifically called for by the Assessing Officer and submitted by the appellant. The Assessing Officer is deemed to have taken a considered view on the above material. The next Assessing Officer has taken a different view and the 'reasons to believe' that income has escaped assessment was recorded. The same amounts to 'change of opinion' i.e forming to different opinion on same set of facts. Reopening of assessment on mere "change of opinion" is not allowed as laid down by various decisions of ITAT/High Court/Supreme Court. It is settled position of law that re-opening

of assessment on 'change of opinion' is not allowed. The following decisions are in favour of the appellant on this issue.

- a) *CIT vs. Kelvinator India Ltd, 320 ITR 561 S.C*
- b) *CIT vs. Orient Craft Ltd 354 ITR 536 (Del.)*
- c) *Suryalakshmi Pemmaraju vs. Income Tax Officer (ITA No.2222 & 2223/Hyd/2011)*
- d) *ESS ESS Constructions vs. ACIT – ITA 632 & 633/Hyd/2012.*

Respectfully following the law laid as above, it is held that the proceedings u/s 147 are not validly initiated and the consequent order is set-aside. The appellant succeeds on the grounds raised”

4. We accordingly see no merit in the Revenue’s instant and foremost grievance. Hon'ble Bombay high court in Hindustan Lever Ltd. vs R.B. Wadkar, Assistant on 25 February, 2004 (2004) 190 CTR Bom 275 holds that an Assessing Officer reopening reasons have to be read on standalone basis without having scope for addition, dilution or substantive improvement therein at a later stage.

5. This Revenue’s appeal is dismissed in above terms.

Order pronounced in the Open Court on 8th September, 2021.

Sd/- (LAXMI PRASAD SAHU) ACCOUNTANT MEMBER	Sd/- (S.S. GODARA) JUDICIAL MEMBER
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Hyderabad, dated 8th September, 2021.

Vinodan/sps

Copy to:

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2	Time Projects (P) Ltd, No.6-3-883/F/A/ Somajiguda Circle, Begumpet, Hyderabad 500016
3	CIT (A)-11, Hyderabad
4	Pr. CIT -Central, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order