

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

AND

SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No. 657/Hyd/2019 Assessment Year: 2015-16		
Shri Vijayashekar Reddy Chama, Hyderabad. PAN ADZPC 9315Q (Appellant)	Vs.	Income-tax Officer, Ward - 8(2), Hyderabad. (Respondent)
Assessee by:		Shri T.Chaitanya Kumar.
Revenue by:		Shri Sunil Kumar Pandey (D.R)
Date of hearing:		28/04/2021
Date of pronouncement:		02/09/2021

O R D E R

Per L.P.Sahu, A.M. :

This assessee's appeal arises from the Commissioner of Income Tax (Appeals)-2, Hyderabad's order dt.27.03.2019 passed in case No. 10496/2017-18/CIT(A)-2 in proceedings under Section 143(3) of Income Tax Act, 1961 ('the Act').

Heard both the parties. Case file perused.

2. The assessee has raised the following substantive grounds in the instant appeal :

“ 2. The order of the learned CIT (Appeals) erred in confirming action of the Assessing Officer without considering the appellant submissions i.e. disallowing expenditure an amount of Rs.61,63,596.

3. The learned CIT (Appeals) erred in confirming the action of the Assessing Officer in making addition an amount of Rs.5,00,000 treating unexplained credit.

4. The learned CIT (Appeals) erred in confirming the action of the Assessing Officer in determining the total income at Rs.57,02,600 as against the income/(loss) admitted at (Rs.9,60,916).”

3. We advert to the first and foremost substantive grievance that both the lower authorities have erred in law and on fact in disallowing expenditure amount of Rs.61,63,596. Learned CIT(A)'s detailed discussion to this effect reads as under :

6. The Decision:

In this case it was noted by the AO that the appellant has claimed a loss of Rs. 9,60,916/- on the turnover of Rs. 5,82,59,966/-. It was noted on enquiry that in the purchases the appellant had included the privilege fee paid to the excise department and a cumulative debit of Rs. 4,74,62,620/- (Rs. 4,17,80,447/- + Rs. 56,82,173/-) was made accordingly. The appellant had further separately claimed a deduction of privilege fees of Rs. 61,63,596/- in the P & L account.

The appellant failed to substantiate the same during the course of appeal proceedings and even during the course of assessment proceedings. Therefore, the AO disallowed the same and added the same to the total income of the appellant.

The appellant has pleaded that the income should be estimated at 3% as it was done in A.Y. 2014-15. This year the AO has not rejected books of accounts of the appellant and only disallowed an inadmissible expenditure, which the appellant has failed to prove. In view of the same, there is no merit in the plea of the appellant to request for an estimation at 3% as the AO has not disallowed the book results or rejected the books but merely has disallowed an expenditure.

In view of the same, the addition of Rs. 61,63,596/- is upheld and the claim of the appellant is rejected devoid of evidence and substantiation. In view of the same, the ground nos. 3, 4 and 5 are dismissed accordingly.

4. The assessee's argument during the course of hearing is that he intends to file additional evidence qua the impugned purchases as well as liability thereof; if granted yet another opportunity be provided before the Assessing Officer. And also that the preceding assessment year 2014-15 had been rejection of books of accounts followed by estimation of profit @ 3% only whereas the learned lower authorities have adopted altogether a new course of action by disallowing the impugned expenditure. The learned departmental representative has strongly supported the impugned disallowance made by the lower authorities.

5. We have given our thoughtful consideration to rival pleadings. We, prima facie, notice that there is no indication either in the assessment or in the CIT(A) order as to the assessee's liability to pay the impugned

privilege fees amount to the extent of Rs.61,63,596. Faced with this situation, we deem it appropriate to restore back to Assessing Officer with a rider that it shall be the taxpayer's risk and responsibility only to produce all the relevant details in consequential hearing before the Assessing Officer who shall afford three effective opportunities only. The assessee or his learned authorised representative shall appear before the Assessing Officer on or before 30.11.2021 for further factual verification in above terms. This former substantive ground is treated as allowed for statistical purposes.

6. Coming to the assessee's latter substantive ground seeking to reverse unexplained credit addition of Rs.5 lakhs, learned counsel stated very clearly that the same be rejected as not pressed keeping in mind the smallness of the amount involved. Accordingly this ground is dismissed as not pressed.

7. We lastly acknowledge that although the instant appeals are being decided after a period of 90 days from the date of hearing as per Rule 34(5) of the IT(AT) Rules 1963, the same however, does not apply in the covid lockdown situation as per hon'ble apex court's recent directions dated 27-04-2021 in M.A.No.665/2021 in SM(W)C No.3/2020 'In Re Cognizance for

extension of limitation' making it clear that in such cases where the limitation period (including that prescribed for institution as well as termination) shall stand excluded from 14th of March, 2021 till further orders.

8. This assessee's appeal is partly allowed for statistical purposes.

Order pronounced in the open court on 2nd September, 2021.

Sd/-

(S.S. GODARA)
Judicial Member

Sd/-

(L.P. SAHU)
Accountant Member

Hyderabad, Dt. 02.09.2021.

* Reddy gp

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3.	Pr. C I T-2, Hyderabad.
4.	CIT(Appeals)-2, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.