

**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
396/Hyd/20	2010-11	M/s.K.B.Rolling Mills Private Limited, Petbasheerabad (V), Quthbullapur (M), Ranga Reddy Dist. [PAN: AABCK0631P]	Asst. Commissioner of Income Tax, Central Circle-3(1), Hyderabad
397/Hyd/20	2011-12		
398/Hyd/20	2012-13		
399/Hyd/20	2013-14		
400/Hyd/20	2014-15		
401/Hyd/20	2015-16		
402/Hyd/20	2016-17		

For Assessee : Shri P.Murali Mohana Rao, AR  
For Revenue : Shri D.Srinivas, DR

Date of Hearing : 22-07-2021  
Date of Pronouncement : 24-09-2021

**ORDER**

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

These assessee's seven appeals for AYs.2010-11 to 2016-17 arise against CIT(A)-11, Hyderabad's common order dt.31-01-2020, passed in appeal Nos.306 to 309 and 311, 316, 320/2017-18/CIT(A)-11/Hyd/2019-20, involving proceedings u/s.143(3) r.w.s.153A for the AYs.2010-11 to 2015-16 and

u/s.143(3) (for the AY.2016-17) 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 the assessee's pleadings raise its four-folded issues in lead AY.2010-11's appeal ITA No.396/Hyd/2020 whilst challenging legality of the impugned Section 143(3) r.w.s.153A assessments followed by suppressed income on account of out of books production/turnover of Rs.12,29,20,136/- Section 40A(3) disallowance of Rs.8,32,282/- and Section 68 un-explained cash credits addition of Rs.3,75,75,971/- thereby treating commission income as bogus; respectively. There is further no dispute that the assessee has raised identical substantive grounds in the remaining six appeals as well since the only difference therein is *qua* quantum of the impugned additions and disallowances; as the case may be.

We advert to the basic relevant facts.

3. The assessee-company manufacture iron and steel involving re-rolling, TMT Bars etc. It had filed its return of income on 08-09-2010 in the "lead AY.2010-11" declaring income of Rs.72,10,790/- which stood "summarily" processed u/s.143(1)(a) of the Act. The department thereafter appears to have conducted the impugned search on 29-10-2015. The Assessing Officer thereafter initiated Section 153A proceedings. The assessee filed its return(s) dt.07-06-2017. The Assessing Officer next completed his impugned Section 143(3) r.w.s.153A assessments making the foregoing three additions (*supra*). The first and foremost issue arises for our apt adjudication in the given facts and circumstances is as to

whether both the learned lower authorities have rightly framed Section 153A assessment proceedings followed by the impugned corresponding disallowances/additions or not?

Our reply to the same is in assessee's favour and against the department.

There can be hardly any dispute that various judicial precedents i.e.,

- i. CIT Vs. Kabul Chawla, (2016) [380 ITR 573] (Delhi)
- ii. CIT Vs. Continental Warehousing Corporation (2015) [374 ITR 645] (Bom)
- iii. PCIT Vs. Saumya Constructions (P) Ltd. [387 ITR 529]
- iv. CIT Vs. IBC Knowledge Park Pvt. Ltd. [385 ITR 346] (Kar)  
and
- v. CIT Vs. Veerprabhu Marketing Ltd (2016) [73 taxmann.com 149] (Cal)

hold in identical terms that such a search assessment in absence of any incriminating material found or seized during the course of search is not sustainable. The Revenue's case in light of the hon'ble jurisdictional high court's decision in Gopal Lal Bhadraka Vs. DCIT (2012) [346 ITR 106] (AP) CIT Vs. Rajkumar Arora [367 ITR 517] (All) & E.N.Gopa Kumar Vs. CIT (2016) [390 ITR 131 (Kerala) is that *the department can very well initiate/frame Section 153A assessments for determining total income of an assessee involving Section 132 search action.* We find no substance in the latter's preceding arguments since the hon'ble jurisdictional high court; more particularly, nowhere took a contrary view that the impugned assessments would be valid even in absence of incriminating

material. All what their lordships hold is that an Assessing Officer could very well take up additional issues as well in case Section 153A proceedings have been initiated on the basis of incriminating material.

4. Coupled with this, there is hardly any quarrel between the parties that all what the department had allegedly recovered during the course of search from the assessee's business premises is Annexure-A/KBR OFF/01, i.e the "electricity consumption bill of the factory for the FY.14-15" as per the Assessing Officer's discussion in pg.6 para 10(b) of the assessment order. There is not even an iota of evidence or supportive material in favour of the department that the same in any case involved facts and figures which ran contrary to the assessee's books of account, journals and ledgers maintained in the regular course of business. We therefore hold that both the lower authorities have erred in law and on facts in framing the impugned assessment(s) in absence of any incriminating material found during the course of search. Learned lower authorities rather committed a fatal error rather in terming the foregoing power bill as incriminating material.

5. The outcome of all the foregoing issues on merits also is no different. This is for the reason that we have already indicated in the preceding paras that the department had not found any material at all; whatsoever, which could even remotely suggest that the assessee had concealed its alleged suppressed turnover in all these assessment years. This itself is the perfect instance wherein the learned departmental authorities have gone by extrapolation method so as to

presume the specified clandestine turnover going by assumptions in power consumption's sectoral norms than finding any specific fault with the raw-material consumed as well as the corresponding fixed assets etc. showing any abnormal repairs etc. Case law (2015) 371 ITR 373 (P&H) CIT Vs. Ram Steel Industries; (2020) 182 ITD 441 (Ahmedabad), DCIT Vs. M/s.Asian Granito India Ltd. (246 ITR 671) (Bombay), CIT Vs. C.J.Shah and Co. (2000) [246 ITR 671] (Bom) hold that such an addition based merely on sectoral power consumption trends is also not sustainable.

6. Learned departmental representative lastly submitted that the assessee's authorised person had duly admitted the impugned suppressed turnover in the search statement. We do not find any such admission from the assessee's side since all its authorised persons had done was to estimate the corresponding power sector consumption trends than anything else. Be that as it may, the CBDT's twin circulars dt.10-03-2003 and 18-12-2014 have made it clear that such admissions or confessional statements made during the course of a search or survey; as the case may be, do not hold any significance in absence of contemporaneous supportive evidence. We conclude in all these facts that both the lower authorities have erred in law and on facts in making the impugned identical addition of suppressed turnover of Rs.12,29,20,136/- in lead AY.2010-11 and varying sums in all remaining assessment years. The same stands deleted in all appeals.

7. Next comes the second issue on merits regarding correctness of Section 40A(3) disallowance of Rs.8,32,282/- in

AY.2010-11 made by the learned lower authorities on the ground that the assessee had deliberately reduced the corresponding payment instances less than the prescribed limit; as the case may be as per its authorised person's statement (supra).

8. Learned departmental representative has placed reliance on the assessee's authorised person's search statement to this effect as well. We notice that the assessee appears to have made trip-wise payments only than those involving the transport invoices on whole-sum basis. This is also not the Revenue's case that all of these invoices are well beyond the specified limit of the cash payment in the relevant previous year. We therefore hold that the impugned addition based on mere search statement which goes against the record, is not sustainable. The same is directed to be deleted in all the appeals.

9. We are now left with Section 68 addition of Rs.3,75,75,971/- which represents the assessee's commission income treated as bogus un-explained cash credits in both the lower proceedings. There is hardly any dispute that the assessee had claimed to have received the impugned sum(s) from Mumbai based company M/s.Benzo Chem Industries Pvt. Ltd., through banking channels along with corresponding TDS deduction as well. Learned lower authorities hold that the same is in the nature of accommodation entry only since the corresponding entity(ies) had not supported its explanation of having arranged the marketing and sales for the payer entity.

Learned departmental representative sought to clarify that the assessee's authorised person's statement could not throw light on the place(s) of these entity(ies) as well. We decline the Revenue's instant last adjustment as well since not only all the impugned commission payments have been subjected to TDS by the concerned payer M/s.Benzo Chem Industries Pvt. Ltd. but also it has come on record that latter; on its own, had very well confirmed before the Assessing Officer *qua* sales & marketing arrangement with the taxpayer vide letter dt.24-11-2015. We further make it clear that the Assessing Officer herein did not undertake any further confirmation from the payer's side since he has adopted the above stated technical reasoning to treat the assessee's commission income as "un-explained cash credits". We therefore hold that the same deserves to be deleted. We order accordingly.

Same order to follow in all the remaining assessment years as well.

10. All these assessee's appeals are allowed in above terms. A copy of this common order be placed in the respective case files.

*Order pronounced in the open court on 24<sup>th</sup> September, 2021*

Sd/-  
**(LAXMI PRASAD SAHU)**  
**ACCOUNTANT MEMBER**

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

Hyderabad,  
Dated: 24-09-2021

*Copy to :*

*1.M/s.K.B.Rolling Mills Private Limited, C/o. P.Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Hyderabad.*

*2.The Asst.Commissioner of Income Tax, Central Circle-3(1), Hyderabad.*

*3.CIT(Appeals)-11, Hyderabad.*

*4.Pr.CIT-Central, Hyderabad.*

*5.D.R. ITAT, Hyderabad.*

*6.Guard File.*