

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD
(Through Virtual Hearing)

BEFORE SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND
SHRI S.S. GODARA, JUDICIAL MEMBER

ITA No.1905/Hyd/2018		
A.Y. 2009-10		
Asst. Commissioner of Income Tax, Central Circle-1(3), Hyderabad.	Vs.	Sri Syed Zain Bilgrami, 8-2-316/A/7, Plot No.137, Road No.4, Banjara Hills, Hyderabad. PAN: AACPZ 6368 A
(Appellant)		(Respondent)
Revenue by	Smt. V. Rajitha, DR	
Assessee by	Sri Mohd. Afzal, AR	
Date of hearing:	30/08/2021	
Date of pronouncement:	17/09/2021	

ORDER

PER A. MOHAN ALANKAMONY, A.M:

This appeal is filed by the Revenue against the order of the Ld. CIT(A)-11, Hyderabad in appeal No. 0638/10-11/ACIT CC-1(3)/CIT(A)-11, Hyd/18-19, dated 25/05/2018, dated 25/05/2018 passed U/s. 143(3) r.w.s 153A of the Act for the A.Y. 2009-10.

2. The Revenue has raised seven grounds in its appeal however the cruxes of the issues are as follows:

- (i) The Id. CIT (A) has erred in estimating the income of the assessee at 8% of his gross turnover when the Ld. AO had estimated the same at 44.5% based on the return filed by the assessee for the AY 2005-06 and 2006-07.
- (ii) The Ld. CIT (A) has erred in deleting the addition made by the Ld. AO for Rs. 2 lakhs being unexplained cash found during the course of search.
- (iii) The Ld. CIT (A) has erred in deleting the addition made by the Ld. AO for Rs. 1,44,95,000/- by estimating the value of the vehicles found at the premises of the assessee during the search proceedings.

3. The brief facts of the case are that the assessee is an individual engaged in the business of buying and selling of cars. A search and seizure operation u/s. 132 of the Act was conducted in the residential premises of the assessee on 28/8/2008. Thereafter the assessee filed his return of income for the AY 2009-10 on 10/12/2010 declaring his income as Rs. 8,00,704/-.

4. **Ground No.(i):** In the sworn statement the assessee has stated that his business activities as import of cars, servicing and maintenance

of foreign cars as well as local cars, dealing with damaged cars met in road accidents, specialised in Vintage cars and servicing and maintenance of Vintage cars all over India, preparing cars for racing and car rallies and maintenance of the same. During the course of the proceedings before the Revenue it was revealed and admitted by the assessee that he was not maintaining books of accounts. During the course of search various loose sheets were recovered from the assessee towards which the assessee could not furnish any satisfactory explanations. Therefore, the Ld. AO estimated the gross turnover of the assessee at Rs. 4,69,73,498/- taking into consideration of the documents found during the course of the search. Thereafter, the Ld. AO determined the income of the assessee at 44.5% of the turnover based on the return filed by the assessee for the preceding years which works out to Rs. 2,09,03,207/-. On appeal, the Ld. CIT (A) after deliberating the issue at length and also after obtaining certain remand report came to a conclusion that estimation of income at 8% would suffice in the case of the assessee.

5. Before us, the Ld. AR vehemently argued stating that the entire addition was made based on dump documents which does not have any evidentiary value. The Ld. AR further submitted that the loose documents found during the course of the search in the premises of the assessee were all estimates, noting's and scribbles which cannot be

relied upon. It was therefore submitted that though the addition sustained by the Ld. CIT (A) is arbitrary and unjustified, further addition will lead to injustice to the assessee. The Ld. DR on the other hand vehemently argued in support of the order of the ld. AO and prayed for reinstating the same.

6. We have heard the rival submissions and carefully perused the materials on record. On perusing the loose sheets relied by the assessee we find that the source of unaccounted income earned by the assessee are from purchase and sale of cars from own funds, purchase and sale of cars on commission basis and from repairs & services of vehicles. Thus, the turnover of the assessee is from the above three different sources for which estimation of profit has to be made appropriately because net profit ratio will differ from activity to activity. Estimation of income on the three different sources of income on an overall basis at 44.5% will be too harsh on the assessee and at the same time such estimation at 8% will bring loss to the Revenue. Therefore, in order to make a proper analysis on these issues, we are of the view that the matter is required to be remitted back to the file of Ld. AO for de novo consideration. Accordingly, we hereby remit this issue back to the file of the Ld. AO for fresh consideration. We also make it clear that the loose sheets found during the course of the search on the premises of the assessee cannot be treated as dump documents

as the assessee has failed to give proper explanation towards the same. Accordingly, ground no.1 is disposed off.

7. **Ground No.(ii):** During the course of search, an amount of Rs. 2,09,000/- was found and recovered from the premises of the assessee. Since the assessee could not explain the source, the Ld. AO added the same as undisclosed cash. On appeal, the ld. CIT (A) granting the benefit of telescoping keeping in view of the income declared by the assessee in the earlier years and deleted the addition. At the outset we do not find any infirmity in the order of the Ld. CIT (A) on this issue because it is apparent from the earnings of the assessee that he has sufficient source to retain cash in hand to the extent of Rs.2,09,000/- .

8. **Ground No. (iii):** During the course of search 14 vehicles were found in the premises of the assessee. The assessee could not produce any details in support of his claim that those vehicles did not belong to him. Therefore, the ld. AO estimated the value of those vehicles at Rs. 1,44,95,000/- and added to the income of the assessee under the head 'unexplained investment on vehicles'. On appeal, the Ld. CIT (A) deleted the addition after obtaining a remand report from the Ld. AO. The relevant para from the order of the ld. CIT (A) is extracted herein below for reference.

“6.4.4. I have considered the assessment order, remand report, submissions of the assessee and the materials placed before me. The assessee is in the business of running automobile workshop and also dealing in new / second hand vehicles. The assessee is bound to receive vehicles for repairs and also for sale. The vehicles found at the premises cannot be said to belong to the assessee without any evidence / basis. The explanation of the assessee has not been cross-verified with the RTA authorities. No proper enquiry was conducted with RTA authorities. The details of ownership of various vehicles along with copies of Registration Certificate submitted by the assessee were not enquired into. The assessee gave explanation with reference to each of the vehicles which has not been contradicted by the Assessing Officer with any evidence / enquiry. Out of the vehicles found, the assessee owned 2 vehicles for acquisition of which the assessee gave explanation. In the absence of any evidence to show that the vehicles are owned by the assessee, mere presence of vehicles at assessee’s premises who is in vehicle repair / workshop business, cannot be a ground for additions holding the value of vehicles as unexplained investment. There is no evidence to show that the assessee has made investment in purchase of those vehicles. In view of the above, it is held that the addition made is not warranted and the same is deleted.”

9. The Ld. DR could not successfully rebut to any of the findings of the ld. CIT (A) elaborate in his detailed order after considering the remand report from the Ld.AO. Therefore, we do not find it necessary to interfere in the order of the Ld. CIT (A) on this issue.

10. In the result, appeal of the Revenue is partly allowed for statistical purposes as indicated herein above.

Pronounced in the open Court on the 17th September, 2021.

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

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 17th September, 2021.

OKK

Copy to:-

- 1) Asst. Commissioner of Income Tax, Central Circle-1(3), 7th Floor, Aayakar Bhavan, Basheerbagh, Hyderabad.
- 2) Shri Syed Zain Bilgrami, 8-2-316/A/7, Plot No. 137, Road No.4, Banjara Hills, Hyderabad.
- 3) The CIT (A)-11, Hyderabad.
- 4) The Principal Commissioner of Income Tax (Central), Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File