

**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 Nos.844/Hyd/2018 & 734/Hyd/2017		
Assessment Years: 2008-09 & 2010-11		
Ocean Park Multitech Ltd Hyderabad PAN:AAACO5367P	Vs.	Dy. CIT, Circle 16 Hyderabad
ITA No 1038/Hyd/2017 Assessment Year: 2010-11		
Dy. CIT Circle 16(2) Hyderabad	Vs.	Ocean Park Multitech Ltd Hyderabad PAN:AAACO5367P
Assessee by:	Sri S. Rama Rao	
Revenue by:	Sri Y.V.S.T. Sai, CIT (DR)	
Date of hearing:	20/12/2021	
Date of pronouncement:	22/12/2021	

**ORDER**

**Per S. S. Godara, J.M.**

The instant batch of three cases pertains to a single assessee therein M/s. Ocean Park Multitech Ltd. Former A.Y 2008-09 contains assessee's appeal ITA No.844/Hyd/2018 preferred against the CIT(A)-4 Hyderabad, dated 20-05-2016 in case No.0178/16-17/ACIT.Cir.16(2)/CIT(A)-4/Hyd/16-17 in proceedings u/s 143 rws 147 of the Income Tax Act, 1961, in short "the Act". Latter A.Y 2010-11 involves the assessee's and Revenue's cross appeal ITA Nos.734/Hyd/2017 and 1038/Hyd/2017 directed against the very CIT (A)'s common order dated 28.03.2017 passed in appeal No.0018/15-16/DCIT.Cir. 16(2)/CIT(A)-4/Hyd/16-17 in proceedings u/s 143(3) of the Act.

Heard both the parties. Case files perused.

2. We take up for former A.Y 2008-09 involving assessee's appeal ITA No.844/Hyd/2018. Learned Counsel is fair enough that he is not pressing for the assessee's first and foremost ground challenging validity of section 148/147 proceedings. Rejected accordingly.

3. We next advert to the assessee's latter substantive ground challenging correctness of both the lower authorities action disallowing its repair and maintenance expenditure claim of Rs.21.09 lakhs to the extent of 20% coming to Rs.4,21,800/- allegedly due to lack of sufficient cogent evidence. Needless to say, the very factual position has continued before the tribunal as well wherein neither this taxpayer has filed all necessary evidence are the repair & maintenance heads nor there is any justification in the impugned estimated disallowance at much higher rate of 20%. We thus conclude that a lumpsum estimation of 10% of the impugned claim would be just and proper with a rider that the same shall not be treated as a precedent. The assessee gets 50% relief. Necessary computation shall follow as per law. Its former appeal ITA No.844/Hyd/2018 is partly allowed in forgoing terms.

4. Next comes A.Y 2010-11 involving the Assessee's appeal ITA 734/Hyd/2017 raising the sole substantive ground that both the lower authorities have erred in fact and in disallowing its development expenditure of Rs.3.60 crores. The CIT(A) discussion to this effect reads as under:

*“7.1 With regard to the disallowance of expenditure of Rs.3.60 crores, Assessing Officer during the course of assessment proceedings observed as under:*

*“The assessee company was asked to furnish the vouchers/ details in support of the expenditure claimed towards development of land in the computation of capital gains under the head cost of improvement, which was paid to M/s. Prestige Avenue Ltd. In spite of several reminders issued, there is no response from the assessee company. Therefore, it is proposed to disallow the expenditure claimed in the computation of capital gains and accordingly a show cause letter was issued in this regard on 7.03.2015. The reply made by the assessee-company was carefully considered, since it had not furnished any details / information in support of the above expenditure of Rs.3.60 crores, it is accordingly disallowed in the computation of capital gain. JJ*

*7.2 In this regard, the appellant submitted as under:*

*“Prestige Avenues Ltd. submitted the bills for payment of the works done by them in the appellant company. As per their bills, the appellant company claimed the expenditure in the Computation of Capital Gains statement. These amounts were paid or adjusted out of the amounts receivable from them and as per the bills the expenditure shall be allowed. JJ*

*7.3 During the appellate proceedings also the appellant had not furnished any information / details with regard to the expenditure of Rs.3.60 crores to substantiate the claim of expenses. Therefore, the expenses are treated as not genuine. Hence, the addition made by the Assessing Officer is confirmed and the relevant ground raised by the appellant is dismissed”.*

5. Learned Counsel vehemently reiterated the assessee's pleadings that it had executed the corresponding development/improvement work regarding its land held as a capital asset and therefore, both the lower authorities ought to have allowed the same. We find no merit in the assessee's instant sole substantive ground as it is noticed that there is hardly any supportive evidence apart from self serving expenditure vouchers which are in the nature of payee's outstanding adjustments only. There is not even a photograph of the works executed attached

along with the necessary details as to what was the alleged improvement carried out in the corresponding capital asset so as to be eligible for deduction u/s 48 r.w.s 49 of the Act. We thus hold that the assessee's instant arguments do not deserve to be accepted since supported by self-serving vouchers turning out be adjustment entries only. The impugned disallowance of Rs.3.6 crores stand affirmed therefor. The assessee's appeal ITA No.734/Hyd/2017 is rejected.

6. We now advert to the Revenue's appeal ITA 1038/Hyd/2017 raising its sole substantive ground that the CIT (A) has erred in law and on facts in deleting undisclosed income addition of Rs.12.34 crores as under:

*"5.1 With regard to addition of undisclosed income amounting to Rs.12.34 crores, the Assessing Officer during the course of assessment proceedings observed as under:*

*"After the survey operation conducted u/s 133A in the premises of M/ s. Ocean Park Multitech Pvt. Ltd. on 19.03.2010, certain incriminating material was found and impounded. During the assessment proceedings on verification of impounded material and the information furnished during the assessment proceedings, it is found that as per MOU between Radha Realty Corporation India Pvt. Ltd. (RRCPL) and the assessee-company, M/s. RRCPL had paid an amount of Rs.16.25 crores to the assessee company. Further, as per the ledger extract of Shri P.Ravi Kumar, Director of the assessee company, in the books of RRCPL, it is found that an amount of Rs. 70 lakhs was received from M/s. RRCPL by way of cash towards total payments received by the assessee company as part of the above transaction. To sum up the assessee-company had received a total amount of Rs.17.2 crores towards sale of 4.2 crores of land from M/s. RRCPL instead of Rs.4.86 crores shown in its books of account. In this regard, the assessee-company's reply to the show-cause letter dated 17.03.2015 is not acceptable for the reason that no details evidencing its regarding these transactions between them were furnished and a mere statement that RRCPL had not paid the amount – without any proof is not acceptable. As the onus lies on the assessee company that these transaction did not occur and sufficient proof of such exact amounts quantified, evidencing the transactions*

*between the two parties was not furnished the assessee company's request is not acceptable and accordingly the excess amount of Rs.12.34 crores received by the assessee-company, being the difference between Rs.17.2 crores and Rs.4.86 crores is added back to the assessed income."*

*5.2 In this regard the appellant submitted as under:*

*"The appellant company sold land admeasuring acres 4-20 guntas of land to M/s. R. G. Prime Spaces (P) Ltd. nominee of M/s. Radha Realty Corporation (P) Ltd Consenting Party for a total Sale Consideration of Rs. 4, 86, 00, 000. 00 only evidenced by Agreement of Sale cum G.P.A for the land situated at Kokapet(V), Rajendra Nagar (M), R.R.Dist.*

*The Assessing Officer as per the seized material a document MEMORANDUM OF UNDERSTANDING as payment of Rs.17 crores paid by the Radha Realty Corporation Ltd. paid the amount to the appellant which is not executed either by any party nor signed by any of them. The Assessing Officer by seeing this Un-Executed Memorandum as basis of the payment of the amount which cannot be taken as basis or proof for payment of the amount. It is to be treated as Dumb Evidence. On this basis only he made an addition of Rs.12.34 crores as received by the appellant company after deleting the above sale consideration.*

*Before entering the above said Sale Agreement both the parties filed suits against each of them and as settled in the Lok Adalat and withdrawal all the cases filed between them and entered into a compromise and withdrawn all the cases filed by them. »*

*5.3 I have carefully considered the facts of the case, assessment order and the submissions of the appellant. The addition mainly made by the Assessing Officer for this A.Y of Rs.12.34 crores as undisclosed income based on Memorandum of Understanding (MOU) between Radha Realty Corporation India Pvt Ltd and appellant company. With regard to this submission of the appellant verified and considered. The MOU mentioned by the Assessing Officer in the order was unsigned. A remand report was called for from the Assessing Officer to verify the details. In the remand report dated 23.03.2017, the Assessing Officer stated that no signed copy of MOU was available with them and there was no survey folder and no documents were available in the office with them. Therefore, it is proved that the Assessing Officer made the additions without any further enquiry and evidence simply basing on the MOU which was not signed. Hence, the*

*addition made by the Assessing Officer is deleted. Hence, the relevant ground raised by the appellant is allowed”.*

7. It is sufficiently clear that the CIT (A) has gone by the Assessing Officer’s remand report dated 23/12/2017. A perusal of the said alleged remand report forming part of the Revenue’s paper book indicates that the DCIT, Circle 16(2) had clarified before the CIT (A) that its office was not having the corresponding documents impounded during the course of survey. The CIT (A) termed the said alleged remand report to have supported the assessee’s case which totally appears perverse conclusion therefore.

8. We next notice from assessee’s as well as department’s detailed paper books running into 180 and 25 pages; respectively that not only the former had entered into various MOUs/agreement with M/s Radha Reality Corp. India (P) Ltd; as per the impounded documents forming subject matter of addition, but also there were civil suit proceedings before the learned Civil Court at LB Nagar between the vendor and the vendee parties. The said pleadings finally culminated in a compromise petition prima facie revealing that the assessee had indeed received the impugned undisclosed income amount from the vendee party by way of multiple development agreements. And also that the corresponding impounded documents at pages 175 onwards prima facie contain not only the assessee’s seal but also signature of the authorized person which the Revenue claims to be covered u/s 292C(1)(iii) of the Act having presumption of correctness. Be that as it may, the fact remains that the CIT (A) has brushed aside alay of the foregoing materials forming part of the case file merely on the basis of a non-existent supportive remand report in above

terms. Faced with this factual situation, we deem it appropriate to restore the Revenue's instant grievance back to the CIT(A) for afresh adjudication within three effective opportunity of hearing. It is made clear that our foregoing detailed discussions shall not be treated as a final adjudication qua the corresponding facets pertaining to the undisclosed income addition. The Revenue's cross appeal 1038/Hyd/2017 is allowed for statistical purposes in above terms.

9. The assessee's appeal ITA 844/Hyd/2018 is partly allowed and 734/Hyd/2017 is dismissed whereas the Revenue's cross appeal ITA 1038/Hyd/2017 is allowed for statistical purposes in above terms. A copy of the above order be placed in concerned files.

Order pronounced in the Open Court on 22<sup>nd</sup> December,2021.

<b>Sd/-</b> <b>(LAXMI PRASAD SAHU)</b> <b>ACCOUNTANT MEMBER</b>	<b>Sd/-</b> <b>(S.S. GODARA)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 22<sup>nd</sup> December, 2021.

**Vinodan/sps**

Copy to:

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2	Dy.CIT, Circle 16 (2) Hyderabad
3	CIT (A)- IV, Hyderabad
4	Pr. CIT - IV Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*