

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No.537/Viz/2019

(निर्धारण वर्ष / Assessment Year : 2014-15)

DCIT,
Circle-3(1),
Visakhapatnam.

(अपीलार्थी/ Appellant)

Vs. M/S. Hillocks Hotels Pvt Ltd.,
11-2-16, Prashanth, Daspalla
Hills, Visakhapatnam,
Andhra Pradesh.
PAN: AACCH 3481 P
(प्रत्यर्थी/ Respondent)

CO No.152/Viz/2019

(In आयकर अपील सं./ I.T.A. No.537/Viz/2019) (निर्धारण वर्ष / AY : 2014-15)

M/S. Hillocks Hotels Pvt Ltd.,
11-2-16, Prashanth, Daspalla
Hills, Visakhapatnam,
Andhra Pradesh.
PAN: AACCH 3481 P

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Assessee by

प्रत्यर्थी की ओर से / Revenue by

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of

Pronouncement

Vs. DCIT,
Circle-3(1),
Visakhapatnam.

(प्रत्यर्थी/ Respondent)

Sri GVN Hari

Sri MN Murthy Naik, CIT-DR

17/05/2022

15/06/2022

ORDER

PER S. BALAKRISHNAN, Accountant Member :

The captioned appeal is filed by the Revenue against the order of the Ld. CIT(A)-1, Visakhapatnam in appeal No. 10100/2017-18/ACIT, C-3(1), Vsp/2019-20, Dated 14-06-2019 passed U/s. 143(3) r.w.s 250(6) of the Act for the AY 2014-15.

2. Brief facts of the case are that the assessee is a company filed its return of income for the AY 2014-15 declaring total income of Rs. 53,75,296/-. Return was processed U/s. 143(1) of the Act on 30/11/2014. Subsequently, the case was selected for limited scrutiny under CASS and the statutory notices U/s. 143(2) and 142(1) were issued and served on the assessee. In response to the notices, the assessee's Authorized Representative furnished the information as required by the AO. On verification of the submissions made by the assessee's representative, the AO considering the cost of construction of the property which was let out to Incor Hospitals has adopted the value of the property at Rs. 5,04,03,584/- as on 31/3/2014. The Ld. AO then referred the matter to the DVO vide letter dated 7/9/2016. The DVO submitted his report on 29/06/2017 valuing the above property at Rs. 9,47,06,000/-. Considering the valuation report submitted by the DVO, the AO made addition to the income of the assessee

for Rs. 4,43,02,416/- and concluded the assessment. Aggrieved by the order of the Ld. AO, the assessee went on appeal before the Ld. CIT(A). Before the Ld. CIT(A), the Ld. AR made various submissions on the impugned additions made by the Ld. AO. Considering the submissions made by the Ld. AR, the Ld. CIT(A) partly allowed the appeal. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us. Assessee also filed cross objections.

3. Revenue has raised the following grounds of appeal:

- “1. *The order of the Ld. CIT(A)-1, Visakhapatnam is erroneous both on facts and in law.*
2. *The Ld. CIT(A) has erred in allowing relief of Rs. 26,82,067/- by holding that the DVO failed to exclude a sum of Rs. 21,82,067 towards construction above terrace B and a sum of Rs. 5,00,000 towards steel fire escape, when the DVO has considered this issue and, in Annexure-1 of the report dated 29/06/2017, has clearly noted that “the above cost does not include the cost of items as detailed in the letter of the assessee dated 27/06/2017 duly signed by the assessee and the lessee, the details as per the agreement between the assessee and the lessee and the movable items, machineries etc” and at column 10 of the valuation report that “the assessee has not submitted any bills and / or payment details, bills raised by contractors / suppliers, work-orders, etc., for the material used in the work.*
3. *The Ld. CIT (A) has erred in allowing relief of Rs. 15,65,500/- by holding that the claim of the assessee that it had incurred only Rs. 16,05,000/- and Rs. 10,82,000/- is duly evidenced by the invoices issued by the supplier Kone Elevator India Pvt Ltd when the DVO has considered this issue and in his report dated 29/06/2017 has noted at 6.5 under Internal Electrical Installations of his Valuation Report that “As stated by the assessee and the lessee, the electrical fittings/fixtures have been provided by the lessee. The assessee has provided only conduiting/wiring. Lifts of 13 passengers and 8 passengers (1 number each)*

has been provided by the assessee” and at column 10 of the said report that “the assessee has not submitted any bills and / or payment details, bills raised by contractors/suppliers, work-orders, etc., for the material used in the work.

- 4) The Ld. CIT(A) has erred in allowing relief of Rs. 4,85,391/- by holding that the AO rejected the contention without any basis and as per the invoice no. 496 dated 20/03/2013 the cost of transformer is only Rs. 5,14,609/- when the AO relied on the report of the DVO, who has considered this issue and in his valuation report dated 29/06/2017 at 6.5 under infrastructure facilities the DVO noted that “50% transformer, the fighting pump etc., have been provided by the lessee” and at column 10 of the said report that “the assessee has not submitted any bills and/or payment details, bills raised by contractor/suppliers, work orders etc., for the material used in the work.”
- 5) The Ld. CIT(A) has erred in allowing rebate of 25% (15% towards difference between CPWD rates and local rates and a rebate of 10% towards self supervision), when the DVO has considered this issue and, in his valuation report dated 29/06/2017, allowed relief of 7.5% towards self supervision vide his noting at column 11 of his valuation report that “based on the statement made by the assessee, that he has executed the work through self supervision by purchasing the materials and by employing labour directly, a rebate of 7.50% is allowed”, and at column 10 of the said report that “the assessee has not submitted any bills and/or payment details, bills raised by contractors/suppliers, work orders etc., for the material used in the work.”
- 6) The Ld. CIT(A) has erred in holding that the cost of construction incurred by the assessee and disclosed in the financial statements before the date of inspection of the DVO requires to be included in the cost incurred by the assessee for the purpose of arriving at the difference in cost of construction, when the DVO, in his valuation report dated 29/06/2017 has clearly noted that “in the calculation, it is assumed that the period of construction is from December 2009 to March 2013, because the permission has been received on 30/11/2009 and documents were submitted to GVMC on 2/4/2013. Hence the period of construction considered is justified.
7. The Ld.CIT(A) has erred in directing the AO to delete the entire addition made towards unexplained investment U/s. 69B of the Act, when the AO has referred the matter to the

DVO as per the procedure laid down in Sec 50C(2) of the Act, and made such addition on the differential amount, as per the DVO report.

- 8) *The appellant craves leave to add or delete or amend or substitute any ground of appeal before and / or at the time of hearing of appeal”.*

4. In the Cross Objection, the assessee raised the following sole addition ground in which is extracted herein below:

“Whether on the facts and in the circumstances of the case, the assessment completed U/s. 143(3) of the Act vide order dated 24/08/2017 is barred by limitation?”

5. Grounds No. 1 and 8 are general in nature and need no adjudication.

6. With respect Ground No.2, the Ld. CIT (A) granted relief to the extent of Rs. 26,82,067/- towards construction above Terrace B and towards steel fire escape. The Ld. DR submitted that the DVO has considered the cost of construction and since the assessee has not submitted any details, the Ld. AO has rightly disallowed the same and treated it as unexplained investment U/s. 69B of the Act. The Ld. AR demonstrated before us from the DVO’s report dated 29/06/2017 that the construction above Block-B Terrace and steel fire escape is included in the valuation report submitted by the DVO. The Ld. AR pleaded that this was also demonstrated before the Ld. CIT(A) and hence the Ld. CIT(A) granted relief on this issue. We also note from page 37 of the

paper book which is an Annexure-1 to the DVO report and in Sl. Nos. 1.9.0 & 1.10.0 and 3.2 of the Annexure the DVO has considered the valuation in valuing the construction of the property. The Ld. AR pointed that these expenses were incurred by the lessee and hence adding it to the cost of construction of the assessee is not valid. We find from the valuation report of the DVO that this cost of construction has been included in the valuation report and being considered as cost of construction of the assessee. We therefore find merit in the arguments of the Ld. AR and from the materials placed before us, we find that there is no infirmity in the order of the Ld. CIT(A) on this ground and hence no interference is required.

7. Ground No.3 is with regarding allowing relief by Ld.CIT(A) for Rs. 15,65,500/- with respect to cost of lifts. The Ld. AR submitted that the DVO erred in considering the invoices submitted for cost of lifts and has wrongly valued the same at Rs. 24,30,000/- for 13 passenger capacity and Rs. 18,22,500/- for 8 passenger capacity. The Ld. DR argued that the bills were not provided before the DVO. We find from the page no.95 & 96 of the paper book submitted by the Ld. AR the copies of bills have been made available to us and before the Ld. CIT(A). The Ld.

CIT(A) has therefore rightly considered the cost of invoices given by Kone Elevator India Private Limited vide Inv No.133612336 dt. 29/07/2013 for Rs. 16,05,000/- for 13 passenger capacity and Rs. 10,82,000/- and vide Inv No. 133611583, dt.29/06/2013 for 8 passenger capacity. The cost of lifts is evidenced by the invoices issued by the supplier which was also produced before us. Therefore, on going through these documents and the facts involved in this issue, we find no infirmity in the order of the Ld. CIT(A) and hence no interference is required on this ground.

8. Ground No.4 relating to cost of transformers estimated by the DVO. The Ld. AR demonstrated before us invoice copy from the supplier of Transformers namely Esennar Transformers Private Limited vide Invoice No.496, dated 20/03/2013 for an amount of Rs. 5,14,609/-. The Ld. DR submitted that the invoice copy was not presented before the AO or the DVO. We find from the paper book page No. 66 that the invoice from Esennar Transformers Pvt Limited is placed before us where the cost of transformer is only Rs. 5,14,609/- and the Ld. CIT(A) has rightly considered the same in his order. We therefore find no infirmity in the order of the Ld. CIT(A) and hence no interference is required on this ground.

9. Ground No.5 relating to allowing of rebate of 25% (15% towards difference between CPWD rates and local rates and 10% towards self supervision) as against 7.5% granted by the DVO. The Ld. AR pleaded that the DVO has not considered the issue of rebate difference between CPWD rates and local rates. Similarly, the DVO has considered the relief of 7.5% only towards self supervision charged in the valuation report. The Ld. DR argued that no details were provided before the DVO or the AO regarding the self-supervision charged.

9.1. We find merit in the argument of the Ld. AR that CPWD rates are generally higher than the State PWD rates which was not at all considered by the DVO. The DVO has erred in adopting the CPWD rates in lieu of local State PWD rates in the valuation of the property. The Ld. CIT(A) has referred to the Hon'ble ITAT, Vizag Bench decision in many cases cited by the assessee before him and allowed the rebate of 15% towards the difference between the CPWD rates and State PWD rate and also allowed the relief of 10% towards self-supervision from the cost estimated by the DVO. We find that the Ld. CIT(A) has rightly observed the difference between the CPWD rates and local State PWD rates and we find that the rates adopted by Ld.CIT(A) is reasonable and

we are of the considered view that there is no infirmity in the order of the Ld.CIT(A) and no interference is required.

10. On Ground No.6 is with regarding to the cost of construction of the property subsequent to handing over of possession to the lessee. The Ld AR submitted that the Ld. AO erred in not considering the cost of construction shown as capital work in progress in the books of accounts in the AY 2014-15 to 2016-17 for Rs. 1,84,11,777/-. The Ld. AR submitted that in order to suite the requirements of the lessee, this additional construction was warranted and it has been rightly accounted in the books of account as capital work in progress. The Ld AR also placed before us the copies of accounts submitted before the Registrar of Companies before any reference made to the DVO by the AO. The Ld AR also submitted that except the construction of the impugned property, no other property was under construction by the assessee during the relevant Assessment Years. Per contra, the Ld. DR argued that since the completion of construction has been submitted to the GVMC on 2/4/2013, no construction after the period should be considered for valuation of the property under dispute. The Ld. DR could not demonstrate that the capital work in progress shown in the books

of accounts pertains to any other property. We find force in the argument of the Ld. AR and we are of the considered view that the construction activities as disclosed in the books of accounts for the impugned property after the submission of documents from GVMC on 2/4/2013 deserves consideration towards cost of construction. The Ld. CIT(A) has rightly considered the same and therefore we find no infirmity in the order of the Ld. CIT(A) and no interference is required on this ground.

11. Ground No.7 relating to disallowance of Rs. 4,43,02,416/- towards unexplained investment U/s. 69B of the Act. The Ld. AR argued that since the additions made by the Ld. AO have been addressed item by item aggregating to Rs. 4,43,02,416/- which has been duly recorded in the books of accounts no addition is warranted U/s. 69B of the Act. Since the issues has been adjudicated item by item in earlier paras, we therefore find no infirmity in the order of the Ld. CIT(A) and no interference is required on this ground.

12. The Ld. AR has also argued that the DVO has not submitted the report within six months as specified U/s. 142A of the Act and therefore it is not valid. Ld. DR countered that section 142A(6) came into force only from 1/10/2014 and the case of the

assessee pertains to AY 2014-15 and hence no limitation applies in the instant case. We agree with the contentions of the Ld. DR that since the amendment came into force from 1/10/2014, the limitation specified therein shall be applicable for the AY 2015-16 and shall not be applicable for the AY 2014-15.

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13. The original grounds raised in the Cross Objection are supportive in nature and therefore need no adjudication. The assessee has also raised a petition for admission of Additional Grounds which are legal in nature.

Additional Ground

14. With respect to the additional grounds raised by the assessee since the appeal is adjudicated based on merits of the case, this additional ground needs no separate adjudication and hence it is dismissed.

15. In the result, appeal of the Revenue is dismissed. Cross Objection raised by the assessee is also dismissed.

Pronounced in the open Court on the 15th June, 2022.

Sd/-

(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)
(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated :15.06.2022

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – M/S. Hillocks Hotels Pvt Ltd., 11-2-16, Prashanth, Daspalla Hills, Visakhapatnam, Andhra Pradesh.
2. राजस्व/The Revenue – DCIT, Income Tax Office, Infinity Tower, Shankaramatham Road, Santhipuram, Visakhapatnam, Visakhapatnam – 530016.
3. The Principal Commissioner of Income Tax-1, Visakhapatnam.
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax-1, Visakhapatnam.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam