

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member**

ITA No.461/Hyd/2020		
Assessment Year: 2011-12		
DCIT, Central Circle-1(3) 7 th Floor, Aaykar Bhawan Hyderabad-500 001	V s.	VNR Infrastructure Ltd. II floor, No.3-11-494 Plot No.13 & 20, Rajiv Gandhi Nagar, Inner Ring Road, L.B.Nagar Hyderabad-500 074 PAN : AACCV2137L
(Appellant)		(Respondent)

&

ITA Nos.462, 463 & 464/Hyd/2020		
Assessment Years: 2012-13, 2013-14 & 2014-15		
ACIT, Circle-8(1) 9 th Floor, Signature Towers, Kothaguda Kondapur Hyderabad-500 084	V s.	VNR Infrastructure Ltd. II floor, No.3-11-494 Plot No.13 & 20, Rajiv Gandhi Nagar, Inner Ring Road, L.B.Nagar Hyderabad-500 074 PAN : AACCV2137L
(Appellant)		(Respondent)

Assessee by:	None
Revenue by:	Shri Y.V.S.T.Sai, CIT-DR
Date of hearing:	27.06.2022
Date of pronouncement:	13.07.2022

ORDER

Per Shri Laliet Kumar, J.M:

These two appeals are filed by the revenue, feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals)-11, Hyderabad, dated 31.01.2020 for the

AY's 2011-12, 2012-13, 2013-14 & 2014-15 respectively, on the following grounds (lead file ITA No.461/Hyd/2020)

“ 1. Whether on the facts and circumstances of the case, and in law the Ld. CIT(A) erred in treating the protective additions in the hand of Assessee Company as Substantive.

2. Whether on the facts and circumstances of the case, and in law, the Ld. CIT(A) has erred in not considering the facts that Shri Vakati Narayana Reddy has not given any cogent explanation with relevant documents for not offering the admitted income in his hands but the same was admitted in the hands of assessee company, which was only an afterthought to avoid the taxes in his hands.

3. Whether on the facts and circumstances of the case, and in law, the Ld. CIT(A) has erred in not considering the facts brought on record by AO in assessment order in respect of income admitted by the Sri Vakati Narayana Reddy as he himself admitted through written submission, the additional income in his hands.

4. The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary.”

2. At the outset, none was present on behalf of the assessee, and it was pointed out that the assessee company has gone into liquidation and the notices were sent to the Official Liquidator Mr. TSN Raja on various occasions, however none was present on behalf of the Official Liquidator, therefore we have left with no option but to proceed in accordance with law.

3. In the present case, the ld. DR had filed the following submissions and arguments on behalf of the revenue.

1. The following submissions are made for kind consideration of Honble ITAT with regard to the above Departmental appeals. The single issue in the appeals is on treating the protective addition in the hands of the assessee by the CIT(A) as substantive, while deleting the corresponding substantive addition in the hands of Shri Vakati Narayana Reddy (Managing Director of the assessee) and Shri G. Praveen Kumar Director) despite the fact that during the search proceedings, they disclosed the unaccounted income in his own hands as well as he could not provide cogent reasons for not disclosing the amounts in his own return of income.

2. It is humbly submitted that the undersigned filed 2 paper book on 17/05/2022 containing detailed chart containing se que-rc of events as well as copies of seized documents, statements of Shri Vak ati Narayan Reddy during the course of search and thereafter and letter filed him during the course of assessment proceedings admitting undisclosed income.

3 It is hurrrblv submitted that ~n this case search action u/s 132 was conducted On 23/10/2013 and the last warrant was executed O!1 19/11/2013. Subsequently, assessments u/s 143(3) rjw 153A were completed on 31/03/2016 for A.Ys 2011-12 to 2013-14 and u/s 143(3) on the s-ame date for A_Y 2014-15 being assessment for previous year which is yea, of search. In the returns ot income filed by the assessee for respective years, certain amounts were disclosed on the basis of seized documents. Apart from this,through revised returns the assessee also disclosed certain income which was offered inindividual hands of Shri Vakati Narayana Reddy (managing Director of the assessee) and Shri G.Praveen Kumar (Director). The seized dccurnents atpages 67 to75 & 81of Annexure A/SSE/Hyd/06 andPages 14 & 15 of Annexure A/GPK/Olwhich are filed by the unde'signed in the above cited paper book (at pages 9 to 20) are relevant for the purpose of income admitted in the hands of the individuals but disclosed in hands of the assessee through revised returns. These transactions apparently relate to the activities of Shri Vakati Naryayana ReddY and Shri G. Praveen Kumar being personal and other accounts.

4. In response to the notices u/s 153A dated 10/11/2014, the assessee filed returns of income on 23/02/2015 for A. Ys 2011-12 to 2013-14. These returns were later on revised on 25/03/2016 to include income which was ofered in individual hands during search orceedings. For A.Y 2014-15, though the due de:e for filing of return was 30-09-2015, the return was filed on 24/02/2016 and a revised return was also filed on 26/03/2016 In the said returns. th e un disclosed incorn e adm ined in the hands of the asseSiee was included. Howeve, the income disclosed by Shri Vakati Narayan Reddy, and Shri G. Praveen Kumar in their respective hands on the basis of seized documents at pages 67 to 75 & 81 of annexure A/SSE/HYD/D6, page no' 5 of annexure A/GBP/02 and pages 14 & 15 of Annexure A/GPK/01 were also included in the hands of the assessee through revised returns dated 25/03/2015 despite the fact that the amounts were admitted durir, 'he search in the individual hands. The AO assessed the amounts on protective basis in the hands of the assessee whereas the substantive assessments were made in the hands of the invididuals.

5. The CIT(A) accepted the arguments of the assess on face value and as he has deleted !he addition in the hands of Shri Vakati Narayana Reddy, he treated the protective addition in the hands of the assessee as substantive.

6. For A.Y 2011-12, there is also another issue of addition of Rs 20.89 lakhs being a property purchased by one Mr K. Subba Reddy and during the assessment proceedings, it was claimed that the source for the investment is that of the assessee. The AO addpd the amount on

protective basis in the hands of the assessee and on substantive basis in the hands of Shri Vakati Narayana Reddy. The Id.CIT(A) treated this addition also on par with the addition cited above and deleted the addition in the hands of the Shri Reddy and made the addition substantive in hands of the assessee.

7. It is also pertinent to mention here that the claim of the assessee u/s 80IA made through return u/s 153A was disallowed by the AO and the disallowance was confirmed by the CIT(A). Apparently, the assessee did not file any appeal on this issue though the disallowance is substantial.

8. The undersigned filed copy of order of CIT(A) in the case of Shri Vakati Narayana Reddy for A.Ys 2010-11 to 2014-15 (available at pages 31 to 46 of the paper book). The CIT(A) described year wise amounts and held that the transactions belong to the assessee and not to the individuals though in statements during search action, the amounts were disclosed in individual hands, the amounts have to be assessed in the right hands.

9. The undersigned filed the decision of Hon'ble ITAT on the appeals filed by the Department in case of Shri Vakati Narayana Reddy (a: pages 47 to 63 of the paper book). The Hon'ble ITAT upheld the decision of CIT(A) on the ground that there is no indication in the grounds of Revenue that the impugned additions pertain to the assessee (Shri Reddy) as well as the discussion in the order of CIT(A) indicates that the amounts are of the company (present assessee). In this regard, it is humbly submitted that the present set of appeals were also pending albeit in B bench when the case of the individual was heard by the A bench of Hon'ble ITAT and the very reason for the present appeals was that the Department is contesting the decision, of the CIT(A) that the income belongs to the assessee. It is also submitted that appeals on the order of Hon'ble ITAT in case of Shri Vakati Narayana Reddy are filed before Hon'ble High Court for A.Ys 2012-13 to 2014-15 (based on monetary limits) and the same are pending as in ITTA/167/2022, ITTA/169/2022 and ITTA/176/2022.

10. It is also humbly submitted that the undersigned filed a chart showing sequence of events (at page 1 of the paper book). A significant event took place on 17/03/2016 wherein the assessee filed petition before BIFR u/s 15(1) of the SICA Act. It may kindly be noticed that the revised returns admitting income which was disclosed in the individuals hands during search proceedings u/s 132(4) were included in the revised returns of the assessee which were filed on 26.03.2016 clearly indicating the fact that the liability is cleverly shifted from individual hands to the assessee which has turned sick and the recovery of tax would be remote in such a case.

The submissions before the CIT(A) which are not verified in detail by him and accepted on face value are apparently with a view to shift the liability. Before the AD also the brief submissions which are the basis for the CIT(A) to grant relief were filed on 28/03/2016. The petition of the assessee was registered by BIFR on 14/07/2016 and an order in summary proceedings was passed on 10/11/2016. Therefore after due

to dissolution of BIFR, the matter came up before NCLT which culminated in the liquidation proceedings as no resolution plan could be put up. It is humbly submitted that in the proceedings in the case of Shri Vakati Narayana Reddy either before CIT(A) or before Hon'ble ITAT, this aspect was never under examination.

11. In light of the above, the appeals of the Department may kindly be allowed

4. We have gone through the order passed by the Id.CIT(A). It is the matter of record that the assessee company was declared sick under the provisions of Companies Act and the liquidator was appointed by the NCLT.

5. The dates and events in the present case are as under:-

DATE	EVENT
17.03.2016	Petition before BIFR under section 15(1) of Sick Industrial companies(Special Provision) Act, 1985
31.03.2016	Assessment orders for Asst Year 2011-12, 2013-14 & 2014-15 passed by AO.
14.07.2016	BIFR order resting the petition filed by the assessee.
25.08.2016	Asst Order for Asst year 2012-13 was passed by the Assessing Officer
10.11.2016	BIFR passed order in summary proceedings
1.12.2016	BIFR was dissolved before passing order in the case of the assessee
January, 2017	Company filed petition No.CP(IB) 12/10/HDB/2017 before Hon'ble NCLT under section 10 of IBC, 2016 read with Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
25.01.2017	Insolvency Resolution Professional(IRP) was appointed
10.02.2017	Coprate Insolvency Petition in the case of assessee was admitted by Hon'ble NCLT vide CP(IB) No.12/10/HDB/2017
24.08.2017	Since No resolution plan came forth, Hon'ble NCLT passed order vide CA No.142/2017 in CP(IB) 12/10/HDB/2017, initiating liquidation of the assessee
21.09.2017	Liquidator was appointed vide CA No.142/2017 in CP(IB) 12/10/HDB/2017
31.01.2020	Order of CIT(A) for Asst.Years 2011-132 to 2014-15 was passed.

6. All these facts were available on the record of the Id.CIT(A), however, the effect of these proceedings / facts were not considered by the Id.CIT(A), while passing the impugned order. The Id.CIT(A), in paragraphs 5 to 5.4 have decided the issue in a cryptic manner without giving any cogent reasoning. The paragraph 5 to 5.4 it was mentioned as under:-

5. Ground No.2 is protective addition made in the hands of the company amounting to Rs.3,41,21,994/- and Rs.20,89,000/- totalling to Rs.3,62,10,994/-. In the assessment order dated 31.03.2016, the AO has stated that based on the seized material A/SSE/HYD/02 Page No.67 to 75 and 81, an amount of Rs.61,21,994/- was initially offered as additional income in the hands of Sri Vakati Narayana Reddy, who is the Managing Director of M/s. VNR Infrastructures for the AY 2011-12. Subsequently, it was submitted by Sri V.N.Reddy before the Authorities that after reconciliation it was noticed that this amount of Rs.61,21,994/- belonged to the company's transactions and accordingly the same was offered in the hands of the company M/s. VNR Infrastructure. However, the AO held that as the assessee has not given any cogent explanation with relevant documents to show that this amount of Rs.61,21,994/- actually pertained to VNR Infrastructure, protective addition of Rs.61,21,994/- was made in the hands of the company and substantive addition in the hands of Sri V.N.Reddy, for the AY 2011-12.

“ 5.1 In course of appellate proceedings, the AR has reiterated that though it was admitted in course of search proceedings that the same pertained to Sri V.N. Reddy, yet, after reconciling with the affairs of the company, it was found that the transaction belonged to the company VNR and not that of Sri V.N. Reddy. Accordingly, a revised return was filed by the company on 26.03.2016, duly including this amount of Rs.42,59,88,970. Hence, it was submitted that the same should be considered as substantive addition in the hands of the company instead of protective addition.

5.2 I have gone through the facts of the case and the submissions of the appellant. It is pertinent to mention here that a common appellate order in the case of Sri V.N. Reddy was passed by me vide appeal No.129 to 134/2016-17/DCIT CC-1(3), Hyd/17-18, dated 27.02.2018, wherein, I had held that addition of Rs.61,21,994 made in the hands of Sri V.N. Reddy, on substantial basis was not warranted as the same belonged to the company VNR Infrastructures and was accordingly deleted in the hands of Sri V.N. Reddy. Hence, when I have already deleted the substantive addition in the hands of Sri V.N. Reddy for the A.Y. 2011-12 the protective addition made in the hands of the company VNR, for the year under consideration, is now treated as substantive addition. The A.O. is directed to assess the same accordingly.

5.3 With regard to addition made of Rs.20,89,000/-, which was disclosed in course of search proceedings, the appellant submitted before the AD that a property was purchased by Mr. K. Subba Reddy, Father of the appellant at Ragalapalem. As the same was found to be belonging to his father, this amount of Rs.20,89,000/- was not offered in company's name for the AY 2011-12. However, the AO made addition in the hands of the company and substantive addition in the hands of Sri V N Reddy, for the AY 2011-12.

5.4 I have gone through the facts of the case and the submissions of the appellant. It is pertinent to mention here that a common appellate order in the case of Sri V.N.Reddy was passed by me for the AY 2011-12 vide appeal no.129 to 134/2016-17/ DCIT CC-l(3), Hyd/17-18, dated 27.02.2018, wherein, I had held that addition of Rs.20,89,000/- made in the hands of Sri V.N.Reddy, on substantial basis was not warranted as the same belonged to the company VNR Infrastructures and was accordingly deleted in the hands of Sri V.N.Reddy. Hence, when I have already deleted the substantive addition in the hands of Sri V.N.Reddy for the AY 2011-12, the protective addition made in the hands of the company VNR, for the year under consideration, is now treated as substantive addition. The AD is directed to assess the same accordingly.”

7. From the persual of the finding recorded by the ld.CIT(A), we are of the opinion that the above said aspect of liquidation of the company has not been considered by the ld.CIT(A). Moreover, there is no independent application of mind by the ld.CIT(A), as he had wrongly accepted that the money belongs to the company rather than Shri V.N.Reddy, merely on the basis of submissions of Shri V.N.Reddy. In our view, this is shifting of liability from Shri V.N.Reddy to assessee is a device to evade the tax liability both by assessee as well as Shri V.N.Reddy. In fact, at the time of passing of the order, the company had already gone into liquidation and the ld.CIT(A) was fully concisous of the consequences of declaring a company as sick and also the effect of appointment of liquidator. All these aspects were required to be kept in mind by the ld.CIT(A) while passing the order, which had not been done for the reasons best known to the ld.CIT(A). In the light of the above, we are of the opinion that matter is remanded back to the file of the ld.CIT(A) for passing a fresh order after considering the above said aspects, it is expected the ld.CIT(A) shall give cogent reasons as to why the addition can be made in the hands of the

assessee on substantial basis. In light of the above, we deem it appropriate to set aside the order passed by the Id.CIT(A) to the file of the Id.CIT(A) with the direction to pass a fresh order in light of the submissions made by the revenue before us.

8. In the result, all the appeals of the revenue are allowed for statistical purposes.

Order pronounced in the Open Court on 13th July, 2022.

Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
--	--

Hyderabad, dated 13th July, 2022.

Thirumalesh/sps

Copy to:

S.No	Addresses
1	DCIT, Central Circle-1(3) 7 th Floor, Aaykar Bhawan Hyderabad-500 001
2	ACIT, Circle-8(1) 9 th Floor, Signature Towers, Kothaguda Kondapur Hyderabad-500 084
3	VNR Infrastructure Ltd. II floor, No.3-11-494 Plot No.13 & 20, Rajiv Gandhi Nagar, Inner Ring Road, L.B.Nagar Hyderabad-500 074
4	CIT(A)-11 Hyderabad
5	Pr.CIT(Central), Hyderabad
6	DR, ITAT Hyderabad Benches
7	Guard File

By Order