

आयकर अपीलियअधिकरण, 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. Nos. 127, 128 & 129/Viz/2022

&

S.A. Nos.02, 03 & 04 arising out of ITA Nos. 127, 128 & 129/Viz/2022
(निर्धारण वर्ष / Assessment Year : 2016-17, 2017-18 & 2018-19)

M/s. Sreedhars CCE,
D.No.29-6-6/1, Vani Nikethan
Building, Suryaraopet, Kaleswara
Rao Road, Vijayawada,
Andhra Pradesh.

PAN: ABYFS 5082 K

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

Vs. Asst. Commissioner of
Income Tax,
Central Circle,
Vijayawada.

(प्रत्यर्थी/ Respondent)

Sri C. Subrahmanyam, CA

Sri MN Murthy Naik, CIT-DR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of
Pronouncement

: 23/06/2022

: 21/07/2022

ORDER

PER S. BALAKRISHNAN, Accountant Member :

All the captioned appeals (ITA Nos.127, 128 & 129/Viz/2022) are filed by the assessee against the orders of the Ld. Commissioner of Income Tax (Appeals) [in short CIT(A)] in DIN & Order No. ITBA/APL/S/250/2022-23/1043252458(1), ITBA/APL/S/250/2022-23/1043252826(1) & ITBA/APL/S/250/2022-23/1043253643(1) dated 30/05/2022 arising out of the orders U/s. 143(3), 147 r.w.s 144

of the Income Tax Act, 1961 [in short “the Act”] for the AY 2016-17, 2017-18 & 2018-19 respectively.

2. Since the issues raised in all the instant appeals are identical, therefore all these three appeals are clubbed, heard together and disposed off in this consolidated order. Accordingly, we take up ITA No.127/Viz/2022 (AY 2016-17) as a lead appeal for adjudication.

3. Brief facts of the case are that the assessee is a coaching institute and gives coaching for all competition exams, filed its return of income for the AY 2016-17 on 29/09/2016 admitting a total income of Rs. 20,71,250/-. A survey operation U/s. 133A of the Act was conducted on 26/02/2019. During the course of survey the survey team noticed fee collection sheets for the period from the Financial Year 2011-12 to 2018-19 in the premises of the assessee firm and they were impounded. The partners of the firm vide their statement recorded on 27/02/2018 and 01/03/2019 confirmed the suppression of receipts. The Assessing Officer having reasons to believe that the assessee has not disclosed fully and truly all material facts commenced proceedings U/s. 147 of the Act and issued notice u/s. 148 of the Act. The assessee re-filed the return of income for the AY 2016-17 on 15/4/2019 admitting a total income of

Rs. 1,15,71,250/-, which includes Rs 95,00,000/- accepted by the assessee during the survey proceedings. Later, the Assessing Officer issued notices U/s. 143(2) and 142(1) of the Act through ITBA module and called for information from the assessee. The AO also issued a show cause notice on 01/11/2019 calling for objections of the assessee on the same. The assessee has not responded either to the notice or to the show cause notice of the AO. Therefore, the AO completed the assessment U/s. 144 of the Act after determining the gross receipts, including the receipts found during survey, for the AY 2016-17 at Rs. 6,55,99,600/-. The AO deducted the income already offered by the assessee while filing the original return and income accepted by the assessee during the survey proceedings based on the return filed in response to Notice u/s 148, and considered the remaining amount of Rs.4,33,64,367/- as the total income of the assessee for the AY 2016-17. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee's representative made required submissions with respect to the incomes accepted during the course of survey for the AY 2016-17 and pleaded that the entire gross receipts cannot be taxed. The Ld. CIT(A) considering the submissions and in the absence of any proof provided by the assessee's representative

confirmed the addition made by the AO and dismissed the appeal. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

4. The assessee has raised the following grounds of appeal:

- “1. *The order passed U/s. 250 of the Act is contrary to the provisions of the law and facts of the case.*
2. *The Ld. CIT(A) erred in confirming the additions made by the Assessing Officer in respect of entire unaccounted gross receipts without allowing deduction towards expenses in this regard.*
3. *The Ld. CIT(A) failed to appreciate that at the time of recording statement U/s. 131 of the IT Act, the net income that should suffer to tax has been worked out by the assessee firm at Rs. 7,06,20,000/- for the AY 2012-13 to AY 2019-20 which alone is liable for tax and not the gross receipts.*
4. *The Ld. CIT(A) ought to have held that the AO being the survey officer himself, having taken the admission during survey of the amount that should suffer to tax, which admission is supported by the workings of the assessee firm produced during survey could not have ignored all these and tax the entire gross receipts.*
5. *The Ld. CIT(A) failed to appreciate that unrecorded receipts and unrecorded expenses are synonymous to each other and go together, considering these, the Ld. CIT(A) could not have ignored the expenditure part while confirming the gross receipts liable for tax.*
6. *The case laws relied upon by the Ld. CIT(A) are distinguishable wherein the facts of those case are different from the case of the assessee firm. While on this the Ld. CIT(A) simply brushed*

aside the case laws relied upon by the assessee's firm in a summary manner.

7. *For these and other reasons that are to be urged at the time of hearing of the case the appellant prays that the impugned disputed addition is to be deleted in the interest of justice."*

5. The Ld. Authorized Representative (Ld. AR) submitted that the assessee being a partnership firm is running a coaching centre from the year 2011. During the survey operations conducted on 26/02/2019 certain unrecorded receipts were found for eight assessment years for which the assessee has accepted the undisclosed receipts in the statement recorded u/s 133A of the Act. The survey team at the time of survey quantified the undisclosed receipts at Rs. 29,49,39,973/-. The Ld. AR further submitted that the assessee admitted an amount of Rs. 7,06,20,000/- as undisclosed income for the AY 2012-13 to 2019-20 with respect to undisclosed fee collections admitted by the assessee during the survey proceedings, which includes fees collections from franchisees, etc. The Ld. AR further submitted that as per the admission made during the survey proceedings and as per the sworn statement recorded by the assessee on 27/02/2019 and 01/03/2019, the assessee admitted an income of Rs. 95 lakhs for the impugned assessment year. The Ld. AR further submitted that as per the admissions made during the survey proceedings, the assessee

has filed his revised return of income U/s. 148 of the Act duly disclosing the income of Rs. 95 lakhs admitted during the search proceedings. The Ld. AR further submitted that the AO during the assessment proceedings without considering the returns filed U/s. 148 duly disclosing the admitted income during survey proceedings, proceeded to consider the gross receipts (both disclosed and undisclosed) as income of the assessee and assessed the same accordingly. The Ld. AR further submitted that the rate of net profit as per the assessment order worked out to 82.49% which is totally unimaginable. The Ld. AR also submitted that the Assessing Officer while framing the assessment U/s. 143(3) of the Act for the AY 2019-20 relevant to the FY in which survey was conducted wherein the assessee has filed his return of income after fully disclosing the undisclosed income computed during the survey proceedings, the net profit ratio works out to 16% of the assessed income. The Ld. AR therefore pleaded that the same percentage shall be considered as net profit for the impugned assessment year.

Per contra, the Ld. Departmental Representative (Ld. DR) relied on the order of the Revenue Authorities. The Ld. DR also submitted that there was no evidence with respect to expenditure relating to the undisclosed income of the assessee

for the relevant assessment year and hence AO has added the entire gross receipts as income of the assessee and considered that all the expenses have been accounted and the only income has not been accounted. The Ld. DR therefore pleaded that the orders of the Revenue Authorities be upheld.

6. We have heard the rival parties and perused the material available on record and gone through the orders of the Authorities below. Admitted facts are that the survey operation conducted on the assessee's premises on 26/02/2019 wherein certain incriminating materials was found with respect to unaccounted receipts of the firm for the FYs 2011-12 to 2018-19. The amount arrived at by the survey team for the AYs 2012-13 to 2019-20 amounts to Rs. 29,49,39,973/-. However, it is noticed that the assessee admitted unrecorded gross receipts of Rs. 32,54,20,132/-. It is also admitted that no material was found by the survey team with regard to expenses incurred by the assessee for earning the undisclosed income. We also find from the sworn statement of the assessee U/s. 133A of the Act recorded on 01/03/2019 in respect of Q.No.30, the assessee has denied that the entire expenditure relating to receipt is not accounted for in the books of accounts. The Q.No.30 and the reply given by the assessee are extracted herein below:

“Q.30. Do you agree that the entire expenditure related to the receipts of Rs.29,49,39,973/- has already been accounted for in your books of accounts? If not, please provide the details for the same.

Ans. No, the entire expenditure related to these receipts is not accounted for in the books of accounts.”

7. We find merit in the argument of the Ld. AR that by no stretch of imagination the profit percentage as assessed by the AO while passing the order u/s 143(3) r.w.s 147, cannot be 82.49%. As admitted by the assessee in the sworn statement u/s 133A of the Act, we are of the considered view that certain expenditure must have been incurred by the assessee in earning such undisclosed income which was not accounted by the assessee. We also find from page 126 of the paper book that the assessee has on an average disclosed 8% to 10% on the reported turnover. Further, we also find from the assessment order passed for the AY 2019-20 U/s. 143(3) of the act, the net profit ratio including the reported and unreported incomes worked out to 16% as detailed in page 128 of the paper book. In the absence of evidences for unaccounted expenditure, it cannot be concluded that the entire gross receipts should be assessed as total income. Further, it is noticed from the sworn in statement U/s. 133A of the Act that the assessee has offered Rs 95 lakhs for the current

assessment year as income of the assessee with regard to the unreported income detected during the survey. The survey team has not disputed the income offered by the assessee and has also not treated the gross undisclosed receipts as total income of the assessee. The Ld. AO in his order has quantified the total turnover at Rs. 6,65,99,600/- against which the assessee has offered an amount of Rs. 1,15,71,250/- as taxable income. The net profit ratio accordingly works out to 17.37% with respect to accounted and unaccounted income of the assessee for the AY 2016-17. It is imperative that certain expenses would have been incurred in respect unrecorded sales though not recorded in the books of accounts. During the survey proceedings, while answering to Q.No.30, the assessee stated that *“No, the entire expenditure related to these receipts is not accounted for in the books of accounts.”* Therefore it is ascertained by the assessee that there exists unexplained expenditure relatable to the unaccounted receipts. The computation of profit after inclusion of unaccounted sales in the turnover would necessarily require deduction of unrecorded expenses. The Courts in such cases have taken the view that there is a presumption of expenditure having been incurred in respect of unrecorded sales. The Hon’ble

Supreme Court in the case of CIT vs. Williamson Financial Services [2007] 165 taxmann 638 (SC) has observed as follows:

“It is pertinent to bear in mind that U/s. 4 the levy is on total income of the assessee computed in accordance with an subject to the provisions of the Income Tax Act. What is chargeable to tax under the Income Tax Act is not the gross receipt but the income under the Income Tax Act. The tax is on income but on gross receipts.”

Respectfully following the judicial precedents and in view of the above discussions, we find that taxing the entire gross receipts, where the Net Profit ratio is at 82.49%, by AO for the relevant assessment year is not justifiable by any stretch of imagination. Similarly the plea of the Ld.AR to adopt the Net Profit ratio of 16% based on the assessment order passed for the AY 2019-20 also could not be accepted because of the fact that the assessee himself has admitted a net profit ratio of 17.37% with respect to accounted and unaccounted income of the assessee for the AY 2016-17. Therefore, we are of the considered view that the net profit ratio shall be computed at the rate of 18%, which is as accepted by the assessee during the survey proceedings. The Assessing Officer is directed accordingly.

8. The Grounds raised by the assessee in Ground No.1, 4, 5, 6 and 7 are general in nature and need no adjudication.

9. In the result, appeal of the assessee is allowed.

ITA No.128 & 129/Viz/2022

10. Since the facts and circumstances as well as the issues raised in the assessee's appeals ITA No.128 & 129/Viz/2022 are identical to that of the appeal in ITA No.127/Viz/2022 and the only difference is in figures, our decision given on the issues involved in appeal ITA No.127/Viz/2022 in the above paragraphs of this order squarely applies *mutatis mutandis* to the ITA No.128 & 129/Viz/2022 also. Accordingly, both these appeals (ITA No.128 & 129/Viz/2022) are allowed.

10. Ex-consequenti, all the three appeals filed by the assessee are allowed.

S.A. Nos.02, 03 & 04
arising out of ITA Nos. 127, 128 & 129/Viz/2022

11. With regard to Stay Applications filed by the assessee, since the early hearing of the appeals as sought by the assessee is granted, and have disposed of the main appeals, hence all the Stay Applications are dismissed as infructuous.

Pronounced in the open Court on the 21st July, 2022.

Sd/-
(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-
(एस बालाकृष्णन)
(S.BALAKRISHNAN)
लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 21.07.2022

OKK - SPS

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

1. निर्धारिती/ The Assessee – M/s. Sreedhar CCE, D.No.29-6-6/1, Vani Nikethan Building, Suryaraopet, Kaleswara Rao Road, Vijayawada, Andhra Pradesh.
2. राजस्व/The Revenue – Asst. Commissioner of Income Tax, Central Circle, Vijayawada, Revenue Colony, Siddhartha Public School Road, Mogalrajapuram, Vijayawada, Andhra Pradesh – 533401.
3. The Principal Commissioner of Income Tax (Central), Visakhapatnam.
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals)-3, Visakhapatnam.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam