

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

Before

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

ITA Nos.2262 & 2263/Hyd/2018		
Assessment Years: 2007-08 & 2008-09		
The Deputy Commissioner of Income Tax, Central Circle – 3(1), Hyderabad.	Vs.	M/s.Lakshmi Engineering & Construction Company, Hyderabad. PAN : AACFL5044R.
(Appellant)		(Respondent)
ITA No.2265/Hyd/2018		
Assessment Year – 2012-13		
The Deputy Commissioner of Income Tax, Central Circle – 3(1), Hyderabad.		M/s. Lakshmi Builders & Co., Hyderabad. PAN : AACFL8920C
(Appellant)		(Respondent)
ITA No.2267/Hyd/2018		
Assessment Year: 2012-13		
The Deputy Commissioner of Income Tax, Central Circle – 3(1), Hyderabad.	Vs.	Sri Pusa Nanda Kumar, Hyderabad. PAN : ACUPP6100E
(Appellant)		(Respondent)
ITA No.2269/Hyd/2018		
Assessment Year: 2012-13		
The Deputy Commissioner of Income Tax, Central Circle – 3(1), Hyderabad.	Vs.	Sri Pusa Pramod Kumar, Hyderabad. PAN : AKGPP5529D
(Appellant)		(Respondent)
Assessee by:		Sri P. Murali Mohan Rao, C.A.
Revenue by:		Shri K.P.R. Murthy.
Date of hearing:	11.07.2022	
Date of pronouncement:	21.07.2022	

ORDER

Per Laliet Kumar, J.M.

These five appeals are filed by the Revenue feeling aggrieved by the separate orders of Id. Commissioner of Income Tax (Appeals) – 11 Hyderabad, (hereinafter referred as “Id.CIT”) all dated 31.08.2018 for A.Ys. 2007-08, 2008-09 and 2012-13.

2. The grounds raised by the Revenue in ITA No.2262/Hyd/2018 are similar to the grounds raised in all the remaining appeals except the amounts involved. Hence, we are adjudicating all the appeals together by taking ITA No.2262/Hyd/2018 for A.Y. 2007-08 as lead case.

3. The grounds raised by the Revenue in ITA No.2262/Hyd/2018 reads as under :

“1. The Ld.CIT(A) is not justified on facts and in law in deleting the addition made by the Assessing Officer u/s.68 of the IT Act.

2. The Ld.CIT(A) erred in appreciating the adverse finding on the incorrectness of the assessee’s fresh submissions to treat all cash deposits of assessee’s of the group as explainable out of cash withdrawals reduced in capital account as consumed / spent during the assessment proceedings.

3. The Ld. CIT(A) erred in not appreciating the fact that the cash withdrawals were not available to explain the unexplained cash deposits in various firms that too for various assessment years after a time gap of 1-2 years.

4. The Id. CIT(A) erred in appreciating the fact that withdrawals reflected in the statement of affairs during the assessment proceedings stands spent and not available to explain the sources of some other firm/assessee cash deposits much after months of such claim of withdrawal that too in a different assessee's bank account. Hence, this analogy of explaining the cash deposits Act without group attracting concerns provisions is neither u/s.269SS possible nor and permitted 269TT as the case may be.

5. The Ld. CIT(A) erred in factual inaccuracy leading to factual infirmity.

6. Whether on the facts and circumstances of the case, the ld.CIT(A) is justified in deleting the addition made u/s 68 towards unexplained cash credits when conditions precedent u/s 68 were fulfilled for addition.”

4. The brief facts of the case are that assessee is a firm and is in the business of construction. Assessee has not filed its return of income originally. Search and seizure operation u/s 132 was conducted in Pusa Nanda Kumar group of cases including that of the assessee on 21.09.2012. Subsequently, notice u/s 153A of the Act was issued on 28.08.2013 and in response to which, assessee filed return of income on 30.12.2013 admitting loss of Rs.10,48,488/-. Notices u/s 143(2) and 142(1) of the Act were issued. During the course of search, department officials found bank statement of the assessee showing huge cash deposits during the year under consideration. On enquiry, assessee replied that the same are out of cash withdrawals in the year under consideration as well as from the earlier years. Assessee was asked to reconcile the cash deposits vis-à-vis cash withdrawals and was asked to furnish cash flow statement. As there is no reply from the assessee, cash deposits of Rs.2,16,08,000/- made during the year were added as unexplained cash credits u/s 68 of the Act. Further assessee had shown business loss of Rs.10,48,488 as business loss, however assessee had not declared any receipts during the year but has only claimed expenses and in the absence of any details, the said loss was disallowed and finally the Assessing Officer completed the assessment u/s 143(3) r.w.s. 153A of the Act.

5. Feeling aggrieved with the order of AO, assessee carried the matter before ld.CIT(A), who granted partial relief to the assessee.

6. Feeling aggrieved with the order of Id.CIT(A), Revenue is now in appeal before us.

7. Before us, Id.DR submitted that Id.CIT(A) had passed the order on the basis of the reconciliation of cash balance produced by the assessee during the appellate proceedings without granting opportunity of hearing to the Assessing Officer. It was also submitted that there is a contradiction in the Balance Sheet filed by the assessee before the Assessing Officer and Balance-Sheet filed before Id.CIT(A). Our attention was drawn to page 20 of the paper book where the balance-sheet filed by the assessee before Assessing Officer was provided as under :

LAKSHMI ENGINEERING & CONSTRUCTION COMPANY
Hyderabad

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BALANCE SHEET AS ON 31.03.07

LIABILITIES		Amount in Rs.	Amount in Rs.	ASSETS	
Capital Accounts:				Fixed Assets:	
P.Nanda Kumar	1,500,000			Gross Block	12,905,120
P.Sri Krishna	1,250,000			Less: Depreciation	522,488
P.Prashant	1,250,000				12,382,632
P.Pramod Kumar	1,000,000	5,000,000		Investments:	
Partner's Current A/c - Capital		66,287,032		Share Capital in Pusala Power Projects P Ltd	15,000,000
Current Liabilities & Provisions:				Current Assets, Loans & Advances:	
Advance from Customers - Plots	401,327,000			Deposits	500
FBT Payable	32,000			Advances for Land Purchase	331,006,766
Audit Fees Payable	49,126	401,408,126		Loans and Advances	81,992,851
				Refund Due (2004-05)	1,359,190
				Refund Due (2005-06)	364,328
				FBT - Advance Tax	32,000
					414,755,635
				Cash and Bank Balances:	
				Cash Balance	11,693
				Balance with banks	30,545,198
					30,556,891

(0)

7.3. The Id.DR submitted that since there was discrepancy in both the balance - sheets, therefore, high degree of scrutiny was required to be made by the Id.CIT(A). The Id.DR further submitted that the action on the part of Id.CIT(A) is in gross violation of principles of natural justice as the Id.CIT(A) had decided the issue without giving any reasons for accepting the subsequent balance sheet in negation of the earlier balance sheet and has also not discussed in detail the explanation of the assessee accepting huge cash and its source.

7.4 In addition to the above, it was submitted that the order passed by the Id.CIT(A) was a cryptic, non-reasoned and non-speaking order, as no reasoning was given by the Ld. CIT(A) for accepting the explanation given by the assessee on the point of availability of cash generated from internal transfer from the group entities. There was no detailed examination of the cash flow of all the entities, as claimed by the assessee during the appellate proceedings. Hence, it was prayed that the order is required to be set aside and the direction be issued for passing the fresh order.

8. On the other hand, Id.AR for the assessee has drawn our attention to the order of Id.CIT(A) wherein the submissions of the assessee were recorded and the Assessing Officer had submitted remand report on 17.11.2000. Another remand report was called on 29.01.2018 and thereafter, the Assessing Officer had again filed the remand report on 29.05.2018 wherein at para 5.5 it was mentioned by the Assessing Officer as under :

“4) In response, the assessee’s AR submitted a different unaudited cash book, balance sheet and profit and loss account before the Assessing Officer. The cash balance submitted before the Assessing Officer during the remand report proceedings and the cash book submitted revealed that the cash deposits were made without any proper narration and sources of cash could not be explained nor substantiated by any evidence.

5) *The opening and closing balances of cash in hand as per the cash books and cash flow statements filed before the Assessing Officer and before ld.CIT(A) are as per Annexure A separately enclosed.*

5.1. *The cash book accounts of the assessee submitted during the assessment proceedings and during the appellate proceedings differ in the opening balance shown in both the submissions. There is no evidence of the version and variation submitted by the assessee during remand proceedings. There was no substantiating facts or any material to support assessee's claim. Hence, the same appears to be only an afterthought. The same was never submitted during assessment proceedings despite various opportunities. Hence, it is nothing but an afterthought of the assessee.*

6. *It is clear from the submissions the assessee has made certain changes in balance sheet and flow statements to justify the cash deposits to the respective assessee account for years under consideration. In the balance sheet for the relevant financial year the assessee has changed opening balance of capital account, figures of unsecured loans and investment made without any basis. The balance sheet and cash flow statement submitted are unaudited without any supporting evidences. Hence, these submissions are without any base or logic, nor the entries are supported by evidence.*

7. *Further, the cash book accounts of the assessee submitted during the appellate proceedings clearly indicate that the changes have been made to justify the cash deposits and the same is an afterthought.*

8. *It is also apparent from the bank statement of the assessee that certain amount is deposited in cash to the account of the assessee. It is also pertinent to mention here that during the remand proceedings the assessee has stated that the deposits were in the form of internal cash transfer among the group entities. However, this fact could not be substantiated by any documentary evidence, nor any reason was given that why this fact could not be brought on record before the Assessing Officer during assessment proceedings. The assessee himself furnished those particulars before the Assessing Officer. There is no reason to consider those particular as inaccurate particulars and three particulars as accurate particulars. Also, the altered statements produced by the assessee during the appellate proceedings, consequent to the additions made by the Assessing Officer cannot be considered as an additional evidence.*

9. *In view of the foregoing paragraphs and also considering the factual facts of the cases, it is requested that the addition made u/s 68 of the I.T.Act, 1961, may kindly be upheld."*

9. The assessee has replied to the remand report submitted by the Assessing Officer and based on reply, the Id.CIT(A) had deleted the addition made by the Assessing Officer. Ld.AR had submitted that despite various opportunities granted to the Assessing Officer, no remand report on the reconciliation of cash and its availability from internal transfer from the group was given.

10. We have heard the rival submissions and perused the material on record. The assessee had filed the submissions in support of its claim before the Id.CIT(A) on which the remand report was called by Id.CIT(A). The Assessing Officer in his remand report dt.29.05.2018 in para 8 (supra) had not controverted that “*deposits were in the form of internal cash transfer among the group entities*” were made . It was the case of the Assessing Officer that no documentary evidence or any reasoning was given as to why this was not brought on record before the Assessing Officer and therefore, the Assessing Officer has submitted that these facts need not be considered. In our view, once the sufficient opportunity was granted to the Assessing Officer by the Id.CIT(A), to examine cash flow statement, cash book of the assessee during the period from dt.01.04.2006 to 31.03.2007, bank statement, Balance -Sheets, Profit and Loss accounts and reconciliation documents, then it is the duty of the Assessing Officer to verify the facts on his own and submit the remand report. In the absence of denial by the Assessing Officer, facts/evidence brought on record should be considered by the Id.CIT(A) and formed basis of passing a reasoned speaking order. In the present case, despite the Assessing Officer acknowledged that there was internal cash transfer between group companies, no contradiction was brought on record.

11. The perusal of paragraph 5.7 of the ld.CIT(A) order, shows that the Ld. CIT(A) has passed the order without any factual discussion on the reconciliation of the cash and its availability from the internal transfer from the group companies. There was not even an iota of discussion on this aspect and only general cryptic order was passed by the ld.CIT(A). It is essential for the lower authority to discuss the availability of the cash with reference to availability of funds, withdrawal, deposits thereof from the internal borrowing with the help of various documents.

12. In the light of the above, we deem it appropriate to remand back the matter to the file of the Assessing Officer for denovo assessment. It is accepted that the Assessing Officer shall consider the explanation of the assessee with respect to cash deposits and transfer thereof made by the assessee in its own account and in the account of the group entities. In light of the above, the appeal of the Revenue is allowed for statistical purposes. Needless to say the Assessing Officer shall grant the opportunity of hearing to the assessee and shall also permit the assessee to file documents / evidences in support of its case. Accordingly, the appeal of Revenue is allowed for statistical purposes.

13. In the result, the appeal of Revenue in ITA No.2262/Hyd/2018 for A.Y. 2007-08 is allowed for statistical purposes.

14. Now, coming to the remaining appeals i.e., ITA 2263, 2265, 2267 and 2269/Hyd/2018 which are identical to the facts and issues raised in lead appeal ITA 2262/Hyd/2018 except the amounts involved, we hold that our decision would apply mutatis mutandis.

15. In the result, all the captioned appeals filed by the Revenue are allowed for statistical purposes. A copy of this common order be placed in their respective case files.

Order pronounced in the Open Court on 21st July, 2022.

Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 21st July, 2022.

TYNM/sps

Copy to:

S.No	Addresses
1	M/s.Lakshmi Engineering & Construction Company, D.No.1-7-510/E/2 & 3, Gemini Colony, Zamisthanpur, Musheerabad, Hyderabad.
2	M/s. Lakshmi Builders & Co., D.No.1-7-510/E/2 & 3, Gemini Colony, Zamisthanpur, Musheerabad, Hyderabad.
3	Shri Pusa Nanda Kumar, D.No.1-7-510/E/2 & 3, Gemini Colony, Zamisthanpur, Musheerabad, Hyderabad.
4	Shri Pusa Pramod Kumar, D.No.1-7-510/E/2 & 3, Gemini Colony, Zamisthanpur, Musheerabad, Hyderabad.
5	The Deputy Commissioner of Income Tax, Central Circle – 3(1), Hyderabad.
6	The Commissioner of Income Tax (Appeals) – 11 Hyderabad.
7	The Pr. CIT (Central), Hyderabad.
8	DR, ITAT Hyderabad Benches
9	Guard File

By Order