

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. Nos. 83, 84, 85, 86, 87 & 88/Viz/2022
(निर्धारण वर्ष / AYs: 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 & 2018-19)

M/s. Yugaandhar Housing Pvt Ltd., Vijayawada. PAN: AAACY 4328 C (अपीलार्थी/ Appellant)	Vs.	Asst. Commissioner of Income Tax, Central Circle, Vijayawada. (प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Assessee by	:	Sri MV Prasad, CA
प्रत्यर्थी की ओर से / Revenue by	:	Sri MN Murthy Naik, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	26/07/2022
घोषणा की तारीख/Date of Pronouncement	:	30/08/2022

ORDER

PER Bench :

The captioned appeals are filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-12, Hyderabad vide Appeal No.10596, 10598, 10599, 10601, 10602 & 10813/2019-20, dated 24/01/2022 arising out of the orders passes U/s. 143(3) r.w.s 153A of the Income Tax Act, 1961 [“the

Act”] for the AYs 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 & 2018-19. Since the issues involved in the grounds of appeal for the all AYs under consideration are identical, for the sake of convenience, these appeals are clubbed, heard together and disposed off in this consolidated order.

2. It is noted that in all these appeals, there is a delay of 31 days in filing the appeals before the Tribunal. In this regard, the Ld. AR brought our attention to the affidavits filed by the assessee and submitted that during the relevant period the assessee was fully engaged in shifting of his office from Vijayawada to Hyderabad because of lack of business avenues at Vijayawada and this consumed time and moreover because of change of assessee’s address, the CIT(A)’s order could not be received in time. Under these circumstances, the assessee filed the appeals beyond the prescribed time limit. Therefore, the Ld. AR prayed for condonation of the delay. After hearing the Ld. AR and on perusal of the Affidavits filed by the assessee, we are of the view that there is a sufficient and reasonable cause for not filing the appeals before the Tribunal within the prescribed time limit and hence we hereby condone the delay of 31 days in the instant appeals and proceed to adjudicate the appeals on merits.

3. The assessee has raised identical grounds in all the appeals. Therefore, we take ITA No. 83/Viz/2022 as lead appeal and grounds raised therein are extracted herein below for reference:

- “1. *The Ld. CIT(A) is erred in facts and law while passing the order.*
2. *The Ld. CIT(A) ought to have considered the appeal based on merits of the case instead of dismissing the appeal.*
3. *On the facts and circumstances of the case, the AO has made an addition without dismissing the appeal.*
4. *On the facts and in the circumstances of the case, the Assessing Officer is erred in relying on the statement U/s. 132(4) as no incriminating material was addressed/referred in the statement recorded U/s. 132(4) for which there is no evidentiary value.*
5. *On the facts and in the circumstances of the case the Assessing Officer has not considered the written submissions submitted point wise in response to show cause notice before passing the order which amounts to breach of natural justice.*
6. *On the facts and in the circumstances of the case, the Assessing Officer has not brought any material or evidence in which the appellant company has sold the plot for the consideration which is more than the sale value in the ventures carried by the appellant company.*
7. *On the facts and in the circumstances of the case, the Assessing Officer was made the assessment under surmises and conjectures.*
8. *On the facts and in the circumstances of the case, the Assessing Officer has arrived at the profit ie., net income for which there is no basis.*

9. *On the facts and circumstance of the case, the Assessing Officer has resorted to make the addition on mere document/loose paper without corroborative evidence. The document which does not describe and express any meaning cannot be relied upon by the Assessing Officer with mere guess work.*
10. *Without prejudice to the other grounds, on the facts and circumstance of the case, the Assessing Officer is not justified in making the addition by taking only income without considering the expenditure incurred like interest paid on unsecured loans, commission paid etc., which are available in the seized material.*
11. *On the facts and in the circumstances of the case the Assessing officer is not justified in making the addition in the hands of the appellant company by referring to the material found in the premises of the partnership firm M/s. Life Style Housing without satisfaction note.*
12. *Without prejudice to the other grounds, on the facts and in the circumstances of the case, the Assessing Officer is not justified in making the addition the whole receipt without considering the profit element on turnover suppressed.*
13. *On the facts and in the circumstances of the case, the Assessing Officer is not justified in making the addition relying on the Annexure-A/YHPL/24 which contained soft copy of the transactions noted in an excel file by name "realpro.xisx" which does not contain corroborative material.*
14. *On the facts and in the circumstances of the case, Assessment is not valid in the eyes of law as certificate envisages U/s. 65B of the Evidence Act was not obtained by the Assessing Officer before relying on the transactions noted down in the excel file by name "realpro.xisx" for making the assessment.*
15. *On the facts and in the circumstances of the case, the Assessing Officer erred in making the addition basing on*

the annexure-A/YHPL/24 by the name “realpro.xisx” without bringing the corroborative evidence that the alleged amount of consideration received over and above the document value has been passed from the buyer to the assessee company.

16. *On the facts and in the circumstances of the case, the Annexure A/YHPL/1 to 23 contains the loose papers/dumb document which does not convey any meaning and the Assessing Officer relying on these document for making the assessment is not justified.*
17. *On the facts and in the circumstances of the case, either the Assessing officer or the investigation department has proved that the appellant has in the possession of assets which are unaccounted with the alleged income and no where it was proved that the alleged income admitted has applied for acquisition of the assets which are not recorded in the books of accounts. In the absence of which, the Assessment is devoid of any merit.*
18. *Without prejudice to other grounds, on the facts and circumstances of the case, the Assessing Officer has ascertained the turnover as per the seized material A/YHPL/BO/69 and 93, A/KRR?PO/01 is Rs. 117.89 Crs and admitted turnover is Rs. 72.52 Crs. He further calculated the difference in turnover of Rs. 44.77 Crs which is suppressed turnover. If it is so, turnover instead of making the addition the receipt as entire addition which is against the principles of law and facts.*
19. *On the facts and circumstances of the case, the Assessing Officer has made an addition of Rs. 2.20 Crs without any basis hence not justified.*
20. *The appellant may add, alter, modify or substitute any other points to the grounds of appeal at any time before or at the time of hearing of the appeal.”*

4. Brief facts of the case are that the assessee is a Private Limited Company and was searched on 25/10/2017 u/s. 132 of

the Act including group concerns and connected individuals. Subsequently, notice U/s. 153A of the Act was issued calling for the return of income, which was served on the assessee on 27/09/2018. In response to the notice, the assessee filed its return of income declaring the total income as disclosed in the original return filed by the assessee. Subsequently, a notice U/s. 143(2) and 142(1) of the Act were issued and served on the assessee. In response to the notices the assessee's Authorized representative appeared and filed the details called for by the AO. The AO considering the submissions issued show cause notice dated 3/12/2019 to explain as to why the admitted income during the search proceedings has not been offered for taxation in the return of income filed by the assessee. The assessee filed its reply to the show cause notice issued by the AO. Subsequently, considering the replies and submissions made by the assessee's Authorized Representative, the AO concluded the Assessments for the AYs under consideration by making additions to the total income as per the table below:

Asst. Year	Income Admitted (Rs.)
2012-13	2,20,00,000
2013-14	3,52,45,271
2014-15	6,99,87,741
2015-16	7,85,16,886

2016-17	6,38,24,401
2018-19	49,37,890
Total	27,45,12,189

Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT (A).

5. During the first appellate proceedings, the Ld. CIT (A) dismissed the appeals in limine for the AYs under consideration as none attended the first appellate proceedings. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us. The assessee has raised the grounds of appeal as mentioned in para 2 of this order.

6. The main crux of the issue is with respect to the additions made by the Ld. AO to the extent of Rs. 27,45,12,189/- as income for various AYs ie., 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 and 2018-19. The Learned Authorized Representative [Ld. AR] argued that the assessee has not disclosed the gross receipts to the extent of Rs. 44,77,69,667/-. The Ld. AR further submitted that the Managing Director of the company has admitted undisclosed income of Rs. 40 Crs in respect of all group concerns in the statement recorded U/s. 132(4) of the Act on 26/10/2017, covering all the above mentioned AYs. The Ld. AR

further submitted that the search team has also seized the material pertaining to unaccounted expenditure incurred by the assessee in earning the unaccounted income. The Ld. AR submitted that the undisclosed turnover is Rs. 52,12,93,979/- and not Rs. 44,77,69,667/-. The Ld. AR also further submitted that in most of the projects, the assessee earned only marketing commission and not from sale of lands. The Ld. AR submitted that the average profit for the assessee in respect of the AYs 2012-13 to 2018-19 is 8.18% only on the declared turnover by the company which has been duly assessed. The Ld. AR therefore pleaded that the Ld. AO has taxed the income of Rs. 27,45,12,189/- solely based on the income admitted by the Managing Director of the company while recording the statement U/s. 132(4) of the Act. The Ld. AR further submitted that the Ld. AO has erred in not considering the unaccounted expenditure which was available in the seized material. The Ld. AR therefore pleaded that the net income may be taxed considering the unaccounted expenditure also as seized by the search team. The Ld. AR produced before us the paper book containing the vouchers seized by the search team. Further, the Ld. AR also relied on various case laws some of them are (i) Hon'ble Supreme Court decision in the case of CIT vs. Williamson Financial Services

[2007] 165 taxman 638 (SC); (ii) Gujarat High Court decision in the case of CIT vs. President Industries [2002] 124 taxman 654 Hon'ble Gujarat High Court and (iii) ITAT, Hyderabad decision in the case of Sri Sri Estates Hyderabad vide ITA No. 2242 to 2245/Hyd/2017.

Per contra, the Learned Departmental Representative [Ld. DR] submitted that the assessee-company's Managing Director has voluntarily offered income aggregating to Rs. 27,45,12,189/- for the AYs 2012-13 to 2018-19 under consideration. Accordingly, the Ld. AO has taxed the income in the respective assessment years. The Ld. DR also further submitted that out of the total undisclosed income of Rs. 52,12,93,979/-, only Rs.27,45,12,189/- is taxed by the Ld. AO where the Ld. AO has considered the unaccounted expenditure to the extent of Rs. 50% (approximately) of the unaccounted turnover. The Ld. DR pleaded that the order of the AO be upheld.

7. We have heard both the sides and perused the material available on record and the orders of the authorities below. The admitted facts are that the assessee has failed to disclose the full turnover of Rs. 110,17,21,680/- but has disclosed only Rs. 72,51,69,083/-. However, it is noticed that the turnover not

admitted as mentioned in page 9 of the paper book amounts to Rs. 52,12,93,979/- as per the sworn-in statement of the MD of the assessee-company dated 26/10/2017. We also find from page 8 of the paper book, the assessee has also given details project wise, assessment year wise unaccounted turnover in the books of accounts. We also find from page 11 of the paper book the assessee has declared the net profit and turnover as per the audited books of accounts while filing the return of income for the respective AY, which is extracted below:

Asst. Year	Turnover (Rs.)	Net Profit (Rs.)	N.P %
2012-13	9,49,58,318	1,62,34,346	17.10%
2013-14	9,24,21,574	84,70,899	9.17%
2014-15	30,21,48,711	2,17,59,882	7.20%
2015-16	11,13,70,080	32,31,052	2.90%
2016-17	12,39,13,400	47,30,017	3.82%
2017-18	65,00,4000	26,60,302	4.09%
2018-19	8,70,07,900	42,22,440	4.85%

8. The average net profit on the declared profit on the accounted turnover for all the AYs ie., from 2012-13 to 2018-19 works out to 8.18%.

9. It is imperative to note that the estimated profits are embedded in the sales and hence treating the undisclosed sales/gross receipts as income is not valid.

10. In the instant case, there is no dispute on the unaccounted turnover. The grievance of the assessee is that the income/net profit embedded in unaccounted turnover must have been taxed and not the entire turnover. We find merit in the argument of the Ld. AR that the assessee has consistently declaring net profit on the accounted turnover ranging from 3% to 10%. It is also noted that the unaccounted turnover of the assessee works out to 33% of the total turnover both disclosed and undisclosed and hence the assessee has disclosed nearly 67% of the turnover in the books of accounts. The net profits declared for the various assessment years as per the above table was assessed and not disputed by the AO. Similarly, it is also admitted that the seized material contains unaccounted expenditure also. We find that the AO has merely relied on the sworn-in statement recorded by the Managing Director of the assessee-company admitting the total income of Rs. 27,45,12,189/- for various assessment years but has failed to give deduction for the unaccounted expenditure by the assessee for earning unaccounted income. Hon'ble Gujarat High Court in the case of CIT vs. President Industries [258 ITR 654] (Gujarat HC) has held that it cannot be the matter of an argument that the amount of sales by itself cannot represent the income of the assessee. It is the realization of excess over the

cost incurred that only forms part of the profit included in the configuration of sale. Similar view was taken in the case of CIT vs. Gurubachhan Singh J. Juneja [215 CTR 509] (Gujarat HC) and CIT vs. Sharada Real Estate (P) Ltd., [99 DTR 100] (MP-HC) and in the case of Jyotibhaichand Bhaichand Saraf & Sons (P) Ltd., vs. DCIT [139 ITD 10] the Coordinate Bench at Pune has confirmed the addition could only be made only to an extent of gross profit earned on an unaccounted/suppressed sales and not on the entire sales itself. Similar view was taken in the case of ACIT vs. M/s. Archana Trading Co., in ITA Nos. 351 & 352/Coch/2011, dated 28/02/2013 and also ACIT vs. Pahal Food [IT(SS)A No. 42/Hyd/2005, dated 30/09/2009] by ITAT, Hyderabad. In the case of CIT vs. Williamson Financial Services reported in [2007] 165 Taxman 638 (SC) the Hon'ble Supreme Court has observed as follows in Para 29:

“.....Under the income tax Act the tax is on the income and not on gross receipts. It is also important to bear in mind that U/s. 4 the levy is on ‘total income’ of the assessee computed in accordance with and subject to the provisions of the Income Tax Act. What is to chargeable to tax under the Income Tax Act is the profit and gains of a year. What is chargeable to tax under the Income Tax Act is not gross receipts but income.....”

Respectfully following the ratio laid in the above decisions, we are of the opinion that the entire unaccounted turnover cannot be brought to tax or the turnover admitted at the time of search operations cannot be brought to tax and as such there can only be a reasonable estimation of net profit on the unaccounted turnover. In the instant case, since the assessee has declared an average net profit of 8.18% for the AYs 2012-13 to 2018-19, we are of the considered view that the same net profit percentage shall be adopted on the unaccounted turnover of the assessee for the various assessment years. We are therefore inclined to set-aside the orders of the Ld. Revenue Authorities and the grounds raised by the assessee are allowed.

11. In the result, all the six appeals of the assessee are allowed.

Pronounced in the open Court on the 30th August, 2022.

Sd/- (दुव्वूरु आर.एल रेड्डी) (DUVVURU RL REDDY) न्यायिकसदस्य/JUDICIAL MEMBER	Sd/- (एस बालाकृष्णन) (S.BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER
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Dated : 30.08.2022

OKK - SPS

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

1. निर्धारिती/ The Assessee – M/s. Yugaandhar Housing Private Limited, C/o. CA M.V. Prasad, D.No.60-7-13, Ground Floor, Siddhartha Nagar, 4th Lane, Vijayawada.
2. राजस्व/The Revenue – Assistant Commissioner of Income Tax, Central Circle, Stalin Towers, Autonagar, Vijayawada.
3. The Principal Commissioner of Income Tax (Central), Visakhapatnam.
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals)-12, Hyderabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam